
(2023) 10 KL CK 0122

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.18576, 20208, 25492, 26271, 27126, 30768, 30793, 30824, 30905 Of 2023

Iqujakrishna.K.Santhosh

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Citation : (2023) 10 KL CK 0122

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : P.S.Abdul Kareem, Nazif K.N., P.Sreekumar, Sabu George, P.B.Krishnan, P.B.Subramanyan, Manu Vyasan Peter, N.R.Sangeeth Raj

Final Decision : Dismissed

Judgement

N. Nagaresh, J

1. Petitioners in all these writ petitions are students pursuing Pharm D Course in various Colleges affiliated to Kerala University of Health Sciences. The writ petitions have been filed seeking to direct the University to count certain period of attendance of the petitioners or for identical and incidental reliefs, so as to enable the petitioners to appear for examinations to be conducted by the University.

2. The petitioners in W.P.(C) No.18576 of 2023 are pursuing 4th year Pharm D. Course in KVM College of Pharmacy at Cherthala. Pharm D. is a six year course including five years of learning and one year of internship. As per the regulations of the University, for promotion to 4th year, a student should clear all the Papers in the 2nd year. The petitioners are of 2019 Batch. The Covid-19 pandemic affected the structure of the Course and the 3rd academic year of 2019 Batch was very short from December, 2021 to June, 2022 (7 months). The 4th year classes started early.

3. The petitioners state that the 4th year examination was to start on

26.06.2023. Though the petitioners have cleared all the 2nd year examinations and they had sufficient attendance to appear for the 4th year examinations, the College authorities informed the petitioners that their entire 4th year attendance cannot be counted and the attendance of 4th year can be counted only from the date of clearance of the 2nd year examinations, which is May, 2023. According to the petitioners, other Colleges have counted the actual attendance of the 4th year students.

4. The petitioner in W.P.(C) No.20208 of 2023 is a Pharm D. student of Pushpagiri College of Pharmacy, Thiruvalla. According to the petitioner, due to pandemic and online studies, she could not clear the Paper Pharmacology-1 in the first attempt. She appeared for examination on the said Paper on 06.04.2023 and was declared pass in the Paper, in the result published on 25.05.2023. In the meanwhile, the petitioner paid the 4th year tuition fee of ₹ 1,92,000/-. The petitioner paid the 4th year examination fee of ₹ 6,395/- also. However, hall ticket for 4th year examination was not issued to the petitioner stating that she had no sufficient attendance as per the University norms, for attending the 4th year examinations.

5. The petitioners in W.P.(C) No.25492 of 2023 are undergoing Pharm D. Course in respondents 3 to 17 Pharmacy Colleges. Petitioners 1 to 61 are of 2020 Batch and petitioners 62 to 76 are of 2018 and 2019 Batches. As far as petitioners 62 to 71 are concerned, they have been permitted to appear in the examinations and the writ petition has become infructuous as far as petitioners 62 to 71 are concerned, it is conceded.

6. The petitioners would submit that due to Covid-19 pandemic, 70% of the 1st year classes were in online mode. Classes started in October, 2020 and the examinations were scheduled to October, 2021. The examinations were postponed to January, 2022 due to the pandemic. Without completing mandatory 200 days, the 2nd year examinations were held in October, 2022 and the 3rd year examinations in August, 2023. The petitioners were not permitted to appear for the 3rd year examinations.

7. The petitioner in W.P.(C) No.26271 of 2023 is studying for Pharm D. Course in Devaki Amma College of Pharmacy, Chelambra. She belongs to 2020 admission Batch. Physical classes were interrupted due to Covid-19 pandemic and their first year examination was conducted only in January, 2022. The petitioner completed 2nd year and wrote the 2nd year examination in September, 2022. As the Course of the junior Batch of 2021 was also lagged, the petitioners lost a chance of writing 1st year supplementary examination along with their junior Batch, to clear the failed subjects.

8. The petitioner states that the 2nd year examination was completed in September, 2022 and the 3rd year classes started in November, 2022. The petitioner failed in one subject Medicinal Bio Chemistry which is a Paper of the 1st year. The 3rd year classes of the petitioner started in November, 2022. The

petitioner was allowed to attend the classes till December, 2022. From January, 2023, the petitioner was not allowed to attend the 3rd year classes as she failed in one subject of the 1st year examination. The petitioner passed the failed subject in April, 2023. The petitioner was allowed to attend the 3rd year classes thereafter.

9. The grievance of the petitioner is that now the 3rd year examination is commencing from 14.08.2023, but the petitioner is not permitted to register for the 3rd examination as she is not having requisite attendance. The petitioner would submit that if the attendance is counted from 20.04.2023, the date of passing 1st year examination, she may not have requisite attendance. The petitioner has been attending the 3rd year classes since November, 2022. The petitioner therefore should be permitted to remit 3rd year examination fee and attend the 3rd year examination scheduled from 14.08.2023.

10. The petitioners in W.P.(C) No.27126 of 2023 are 3rd year Pharm D.. students of the Sree Krishna College of Pharmacy and Research Centre, Parassala. Though the petitioners remitted examination fee to appear in the 3rd year examination scheduled to be conducted from 14.08.2023, hall tickets were not issued to them on the ground that they passed two Papers of the 1st year only at the third supplementary attempt. The petitioners would submit that they have sufficient attendance in the 3rd year and are legally entitled to write the 3rd year examination.

11. The petitioner in W.P.(C) No.30768 of 2023 is a Pharm D.. student of Nirmala College of Pharmacy, Moovattupuzha. Though the petitioner was admitted in the 2019 Pharm D.. Batch, the 1st and 2nd year examinations were conducted in the year 2021. The duration of third year Batch was very short. The petitioner states that she has cleared all the Papers up to the 3rd year and attended the 4th year classes from the beginning of the academic year. Though the petitioner remitted the examination fee for the 4th year, she was not permitted to write the examinations on the allegation that she does not have adequate attendance.

12. W.P.(C) No.30793 of 2023 is filed by the petitioner, who is a Pharm D.. student of Nirmala College of Pharmacy, Moovattupuzha. The petitioner states that though she has cleared all the Papers of the 3rd year, she is not permitted to appear in the 4th year Pharm D.. examination on the ground that she does not have requisite attendance. The petitioner would assert that she has attended the classes from the very beginning and has adequate attendance to her credit.

13. W.P.(C) No.30824 of 2023 has been filed by the petitioner who is a student of St. James College of Pharmaceutical Sciences, Chalakudy. The petitioner was admitted for Pharm D.. Course in the year 2019. The petitioner states that due to the Covid-19 pandemic, the academic schedule was restructured and the 3rd year batch was very short. The 4th year classes started early. Now, the petitioner is not being permitted to appear for the 4th year examination even though fee has been remitted, on the ground that the petitioner's attendance if counted

from the clearance of 2nd year examinations, the petitioner does not have adequate attendance to write the 4th year examinations.

14. W.P.(C) No.30905 of 2023 has been filed by the petitioners who were admitted to Pharm D.. Course in the Jamia Salafia Pharmacy College, Malappuram during the years 2017 and 2018. Petitioners 1 to 4 cleared their 3rd year examinations in the fourth attempt in February, 2023, of which results were published belatedly in May, 2023. The 5th petitioner also cleared her failed Paper of the 1st year in February, 2023. The petitioners would submit that they are not permitted to appear in the 5th year examinations on the ground that they do not have sufficient attendance.

15. When W.P.(C) No.18576 of 2023 came up for admission, this Court passed an interim order on 22.06.2023, as follows:-

In the light of the order passed today in W.P.(C)No.20208 of 2023, the petitioners in this writ petition shall also be permitted provisionally to appear for the 4th year examination of the Pharm D. Course conducted by the 2nd respondent University, making it clear that their participation in the examination will be purely provisional and subject to further orders in the writ petition. The petitioners will also be permitted to remit fee for the examinations tomorrow itself. It is made clear that I have already taken a prima facie view in W.P. (C)No.20208 of 2023 that the petitioners may not be entitled to claim that they are eligible to sit for the 4th year examination on account of shortage of attendance, which can be counted only from the date they qualify themselves for the examination going by the provisions of the regulations. Since the examinations are scheduled on 26.06.2023, the petitioners are being permitted to sit for the examinations provisionally, making it clear that they will not be entitled to claim any right equitable or otherwise that they are also entitled to have their results declared as they had taken part in the examinations.

Post along with W.P.(C)No.20208 of 2023 on 27.06.2023.

16. The petitioners state that for appearing in the 4th year examination of Pharm D., they have to clear all the Papers of the 2nd year. For appearing in the 5th year Pharm D.. examination, they have to clear all Papers of previous years. They have cleared the Papers in supplementary attempts. However, their attendance is counted only from the date of publication of the supplementary examination, consequent to which they do not satisfy the requirement of sufficient attendance. The petitioners would submit that they have been attending the classes from the very beginning and the actual attendance if counted, they will satisfy the attendance requirements. They could clear the examinations belatedly for the reason that due to Covid-19 pandemic, the structure of their Pharm D.. Course was altered. The petitioners should not be penalised for the adverse impact of Covid-19 pandemic on the Pharm D.. Courses commenced in 2017, 2018, 2019 and 2020. According to the petitioners, in similar circumstances, certain other Pharm D.. students have been permitted to

appear in the examinations counting their actual attendance.

17. Though the Colleges in which the petitioners are undergoing studies are made respondents in the writ petitions, the Colleges have not come forward to give the attendance particulars of the petitioners.

18. The Kerala University of Health Sciences appeared in the writ petitions and vehemently opposed grant of any relief to the petitioners. In its statement, the University submitted that the impact of the pandemic over the Pharm D.. Course is over and the Course and carriculam has returned to normalcy since the year 2021.

19. The Standing Counsel for the University submitted that in tune with the Pharmacy Council of India Regulations, the University has framed Regulations governing Pharm D.. Course. The petitioners did not attend sessional examination for registering for the 4th year examination. Their eligibility to attend the 4th year classes would be satisfied only after publication of result of 2nd year supplementary examination on 26.05.2023. As the petitioners became eligible to attend the 4th year course belatedly, their attendance cannot be counted from the beginning of the 4th year classes.

20. It is further submitted that some Colleges have violated the Regulations and have permitted the students to attend the 4th year class before their acquiring eligibility to attend the said classes. No classes attended prior to the acquisition of the eligibility can be reckoned, as the attendance should be in terms of the Regulations. The University has already caused an enquiry into the violation committed by certain Colleges. Necessary action would be taken against such Colleges in accordance with law. The writ petitions are therefore without any merit and are liable to be dismissed, urged the Standing Counsel for the University.

21. I have heard the counsel for the petitioners in these writ petitions, the Government Pleader representing the Controller of Examinations, the Standing Counsel appearing for the Kerala University of Health Sciences, counsel appearing for various Pharmacy Colleges and the Deputy Solicitor General of India representing the Pharmacy Council of India.

22. The Kerala University of Health Sciences has framed Regulations governing the Pharm D.. Course in tune with the Pharmacy Council of India Regulations. Regulation 1.8 of the Regulations of the University mandates that the number of working days should not be less than 200 days per year and a candidate is required to put in at least 80% attendance in theory and practical subjects separately in a recognised institution affiliated to the Kerala University of Health Sciences.

23. As per Regulation 1.18, all the students of Pharm D.. Course, who have registered for all the Papers in the annual regular examinations, shall be permitted to attend the classes of the next higher year, on condition that he/she

shall have to discontinue the studies in the higher year, if he/she fails in more than two subjects of the lower year even after the first supplementary examination available for him/her for that particular year.

24. The Explanation below Regulation 1.18 provides that the failed students of regular examinations are eligible to appear for the first supplementary examinations in the failed Papers and if they passed in the failed Papers, they are eligible to continue with the original Batch without losing additional six months. However, if the student has more than two failed Papers of the 1st year even after the first supplementary examination, he/she shall have to discontinue the 2nd year studies and will be considered as not promoted to the 2nd year.

25. A student, after 1st year supplementary examination, can carry two or less than two subjects of the 2nd year and continue with the 2nd year. Failure in no more than two subjects shall keep the student with the succeeding regular Batch. For promotion to the 3rd year, the candidate should have cleared all the 1st year Papers and for promotion to 4th year he/she should clear all the Papers in the 2nd year and so on. The Regulations make it abundantly clear that attendance will be counted for each year from day one only when the candidate is qualified to be promoted to that year.

26. The petitioners argued that a student who has registered for the 2nd year examination can sit in the 3rd year classes up to the 1st year supplementary examinations. A student who has two or less than two arrears of the 2nd year after 1st supplementary examination can continue in the 3rd year. Before entering the 4th year, the student should clear the balance arrears (two or less than two) of the 2nd year. So, an examination is inevitable after the first supplementary and before the commencement of the 4th year classes to clear the balance arrears. The University conducted this examination in the midst of the 4th year. Without conducting this examination, the Colleges cannot deny the right of students to attend the 4th year. The shortage of countable attendance after clearing the 2nd year is due to the delay occurred from the University in conducting the 2nd year supplementary examination as per the above criteria, contended the counsel for the petitioners.

27. I am unable to agree to the above proposition. The petitioners are not students who did not get an opportunity to clear the regular Papers. The petitioners have opportunity to clear their failed Papers through supplementary examinations conducted earlier. Therefore, the petitioners cannot be heard to contend that as the last supplementary examination was not conducted sufficiently early, the petitioners should be permitted to appear in the regular examinations.

28. This Court had opportunity to consider similar issue relating to Pharm D.. Course itself in W.P.(C) No.1142 of 2023. This Court held that the petitioners therein were unable to clear the failed Papers in the supplementary examinations also and therefore going by the Regulations, the petitioners are not entitled to

attend the 3rd year. This Court found that the exemption granted to B. Pharm students was treating it to be not a precedent and the factual situation obtaining therein. The judgment of the learned Singled Judge in W.P.(C) No.1142 of 2023 was taken in appeal, in W.A. No.376 of 2023. Taking note of Regulation 1.18 of the University Regulations, the Division Bench repelled the contentions of the appellant and upheld the judgment of the learned Single Judge.

29. As per the University Regulations, attendance will be counted for each year from day one only when the candidate is qualified to be promoted to that year. The issue arising in these writ petitions is regarding the claim of the petitioners that they have sufficient attendance to appear in the 4th and 5th year examinations. The contention of the petitioners is that they were permitted to attend the classes by the Colleges and therefore they have sufficient attendance. In so far as the claims to appear in the 4th year examination, the petitioners got eligibility to attend 4th year classes only from 26.05.2023 when they passed all the 2nd year Papers. The last date for application for 4th year Pharm D.. examination without fine was 29.05.2023 and with fine 31.05.2023. Going by the Regulations, the petitioners would have attendance only for four days. Even the University is not competent to relax the Regulations which are framed in tune with the Pharmacy Council of India Norms.

30. It is to be noted that in all these writ petitions, the petitioners had the opportunity to appear in more than one supplementary examinations for their failed Papers. The petitioners could not successfully utilise those chances. Though the petitioners might have actually attended the 4th year classes from the beginning of classes, in view of the Regulations, their attendance can be counted only from the date on which results of supplementary examinations were published in which the petitioners have cleared the failed Papers of earlier years.

31. As rightly pointed out by the Standing Counsel for the University, Regulations contemplate the minimum required attendance and participation in the internal assessment during the Course period. The six year Pharm D. Course undertaken by the petitioners is a superior professional course. The University has made Regulations for Pharm D. Course keeping in view the high standard required by the candidates obtaining Pharm D. Degree. Any dilution in the Regulations will be against public interest also.

In the afore facts and circumstances of the case, I am of the firm view that the petitioners are not entitled to the reliefs claimed by them. The writ petitions are therefore dismissed.