

(2004) 03 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 825 of 2002 and CMP No. 669 of 2003

Seema Choudhary

APPELLANT

Vs

University of Jammu and Others

RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JKJ 261

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : P.N. Bhat, for the Appellant; D.S. Thakur, for Respondents-1 and 2, for the Respondent

Judgement

S.K. Gupta, J.—The petitioner appeared in the Entrance Test in response to the advertisement by the Competent Authority for selection to

Medical Courses available in Medical Colleges. The select list of the candidates was declared in November-December, 1996, but the name of the

petitioner did not figure in the list. However, the Competent Authority subsequently issued additional list of 20 candidates in order of merit and the

petitioner was selected and allotted Jammu Medical College for undergoing Medical Course. She was admitted in the Jammu Medical College in

July, 1997. The petitioner appeared in Ist Professional MBBS in the supplementary examination and was declared successful on 22nd June, 1999.

It is stated that since there was some back-log against the petitioner after the clearance of Ist Professional Examination, but she was not allowed to

appear in 2nd Professional Examination to be commenced on 30-10-2000, which compelled the petitioner to approach the Court and prefer a

writ petition seeking a direction to the respondents to issue Examination Form,

so as to enable her to sit in the 2nd Professional Examination of MBBS Course. The petitioner, however, on the basis of the interim order appeared in the 2nd Professional Examination on 30-10-2000 by virtue of the Court order dated 25-10-2000. The petitioner was, however, allowed to take part in the examination being held by respondents-1 and 2, which was, however, subject to the decision of the writ petition, vide order dated 30-10-2000. Again, the petitioner applied to the Court seeking permission to sit further in the next Examination of MBBS Course and she was permitted vide order dated 14-08-2001, provided she is eligible for old Course. In order to sit in the pre-final MBBS Examination, the petitioner filed CMP No. 817/2001 and Court vide order dated 06-09-2001 permitted her to take part in the MBBS pre-final Examination and allowed the aforesaid CMP. The petitioner was further permitted to sit in the Final Examination on the basis of the order dated 17-7-2002 passed by the Court, which too was subject to the outcome of the main writ petition. When the result of the petitioner was not declared and withheld by the respondents-University, she approached the Court by filing CMP No. 669/2003 seeking direction to respondents-University for declaration of the result of Final MBBS Course, with a further prayer that in case she has not cleared the Sane.+Obsc paper, she may be allowed to reappear in the said paper, for which the examination is likely to be held in the near future.

Since the writ petition was already admitted and pleadings were complete, with the consensus of the learned counsel for the parties, the same was also taken up for final hearing alongwith CMP.

2. The Respondents-University in their objections submitted that after clearing the Ist Professional Examination, the petitioner was admitted in 2nd Professional Course, duration of which was 18 months. According to the respondents, as per the statutes, the petitioner would be eligible to appear in 2nd Professional Examination after 19-12-2000. She was, however, permitted on the basis of interim order. The petitioner appeared in 2nd Professional Examination on 30-10-2000, but her result has not been declared. It is further submitted that the petitioner, after having come to know from her own sources to have not secured minimum pass marks in the paper of Pathology in the 2nd Professional Examination, again

approached the Court and she was granted permission to appear in the examination by interim order. It was further contented that unless and until the statute 7.2 struck down, the petitioner could not appear in the 2nd Professional Examination before completing the duration of 18 months in the Course. That the petitioner; being ineligible to appear in the Examination under the statutes, her result was not declared.

3. Heard the arguments and also perused the record meticulously.

4. It may be pointed out at the first flush that the petitioner was permitted to sit in the Examination of MBBS, provided she is eligible in the old

Course vide order dated 14-08-2001. It is not disputed by the respondents that she was permitted to appear in the Examination. The order in its

plain reading and unambiguously ordains that the Court granted permission to appear in the Examination subject to eligibility of the petitioner, which

was to be seen and examined by the respondents-University. This order has not been appealed against by the respondents-University. The

petitioner was permitted by the respondents-University ,to appear in the Examination, which clearly indicates that she was found eligible to sit in the

Examination. In such event, the plea that the petitioner was not eligible to sit in the Examination in old Course raised by the respondents-University

is neither factually nor legally tenable. The petitioner, who was permitted to sit in the Examination on the basis of the interim order of the Court,

completed the Course except declaration of her result. Notwithstanding that the petitioner was permitted to sit in the Examination on the basis of

the interim order of the Court and subject to eligibility to be determined by the University, the order having not been appealed against assumed

finality. This makes it clearly evident that declaration of her result is inherent in permitting the petitioner to appear in the Examination against which

no appeal was preferred by the respondents-University nor her eligibility questioned, which was left to them to be determined in the interim order

dated 14-08-2001 passed by the Court. In such circumstances, the plea of disputed eligibility is not available to the respondents-University. It is

also not disputed that during the currency of the writ petition, the petitioner has also appeared in the Final Examination of the MBBS Course, of

course, on the basis of the interim order of the Court. Mr. Bhat, learned counsel appearing for the petitioner, prayed for declaration of the result of

the petitioner for the said Examination as well.

5. In this view of the matter, I am of the view that since the petitioner has appeared in all the Examinations without any contest from the respondents-University with whom the eligibility was left to be determined by the interim order of the Court, her result cannot be withheld and is required to be declared in the interest of justice.

6. Consequently, the writ petition is allowed and the University-respondents-1 and 2 are directed to declare the result of the petitioner of all the Examinations in which she has appeared and the result withheld. The University-respondents-1 and 2 have submitted the result of the petitioner in a 'sealed cover'. The 'sealed cover' containing result of the petitioner was opened and found that the petitioner has been graded in the MBBS Final Professional Examination 2003 April session as ""Re-appear in Obst. & Gynao/ (Disputed Eligibility)"". The result shall form part of the record. The result of the petitioner of MBBS Final Professional Examination 2003 April session is declared accordingly.

7. Petition is disposed of in the terms indicated as above, along with all connected CMP(s). Under the peculiar circumstances of the case, no order as to costs.