

CWP No. 13670 of 2014
Date of decision: 1.04.2015**Anju Thakur**

.....Petitioner

versus**State of Haryana and others**

.....Respondents

CWP No. 14158 of 2014

Tanu Shree

.....Petitioner

versus**State of Haryana and others**

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain**Present:** Ms. Anju Arora, Advocate
for the petitioner(CWP No. 13670 of 2014).Mr. Surender Deswal, Advocate
for the petitioner(CWP No. 14158 of 2014).

Mr. D.K.Mittal, DAG, Haryana.

Mr. Rajesh Hooda, Advocate
for respondent No. 2.**Rakesh Kumar Jain, J.(Oral)**

This order shall dispose of two petitions bearing CWP Nos. 13670 and 14158 of 2014. However, CWP No. 13670 of 2014 is taken up as a lead case and the facts are extracted from it.

The petitioner took admission in the BDS Course in the year 2010 for the session 2010-2011 in the college of respondent No. 3 which is affiliated with respondent No. 2. She appeared in the final examination of BDS Ist year and passed one subject out of total subjects. She re-appeared

in the examination in which she had failed, held in the month of December, 2011 but could clear only one subject. Thus, the petitioner had cleared only two subjects out of three. She again appeared in the 3rd subject of Ist year in July, 2013 but could not pass. The petitioner has thus, prayed that she may be given last/mercy chance to appear in the third subject of the Ist year.

After notice, reply has been filed by respondent Nos. 2 and 3.

Counsel appearing on behalf of respondent No. 2 has contested the petition on the ground that mercy chance cannot be given to the petitioner because of clause 6.8 of the Ordinance No. 13 issued by the University in conformity with the Dental Council of India Revised BDS Course Regulations, 2007 (as modified upto 10th September, 2007). It is submitted that *“if a student of Ist year does not clear the first BDS University Examination in all subjects within 3 years from the date of admission, he shall be discharged from the Course”*. It is also submitted that respondent No. 2 has not granted mercy chance to similarly situated student so far. In this regard, averment has been made in paragraph No. 8 of the reply.

Counsel for the petitioner, however, has submitted that the Dental Council of India notification dated 25.07.2007, relied upon by respondent No. 2, including the Kurukshetra University, who is giving the mercy chance to the similarly situated students. Though, no detail is given in the petition of the students to whom the mercy chance had been given.

Counsel for respondent No. 2 has otherwise referred to a decision of the Division Bench of this Court in the case titled as ***Gurpreet***

Kaur versus Punjab Technical University, Jalandhar 2004 (1) S.C.T. 890

to contend that if the University travels beyond the guidelines then it can be held liable for violating the statutory provisions as has been done in the said case.

I have heard both the counsel for the parties and perused the available record.

The facts in the present case are not disputed, therefore, it would suffice to note that in the Ist year BDS examination, the petitioner had to clear the following three papers:

1. General anatomy including embryology and histology
2. General human physiology and biochemistry
3. Dental Anatomy, Embryology and Oral Histology.

According to the notification, ***“any student who does not clear the first year BDS University examination in all subjects within 3 years from the date of admission, shall be discharged from the Course”***. It further states that ***“any candidate who fails in one subject in an Examination is permitted to go to the next higher class and appear for the subject and complete it successfully before he is permitted to appear for the next higher examination.”*** Since the petitioner has admittedly not cleared all the three papers of the Ist year examination even after availing three chances and there is no provision for mercy chance and that the respondent-university has categorically averred in paragraph Nos. 8 and 9 that such type of mercy chance has not been given to any similarly situated student, therefore, no relief can be granted to the petitioner. Accordingly, both the petitions bearing CWP Nos. 13670 and 14158 of 2014 are hereby dismissed.

A photocopy of this order be placed on the file of the another connected case.

1st April, 2015
Shivani Kaushik

[Rakesh Kumar Jain]
Judge