

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.17748 of 2015 (O&M)

Shivani & others

... Petitioners

Versus

Shri Dhanwantry Ayurvedic College & Dabur Dhanwantry Hospital
& others

... Respondents

CWP No.14582 of 2015 (O&M)

Amanpreet Dhariwal & others

... Petitioners

Versus

Shri Dhanwantry Ayurvedic College & Dabur Dhanwantry Hospital
& others

... Respondents

CWP No.17800 of 2015 (O&M)

Baljinder Singh

... Petitioner

Versus

Shri Dhanwantry Ayurvedic College & Dabur Dhanwantry Hospital
& others

... Respondents

Decided on : 18.12.2015

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Pranav Chadha, Advocate, for the petitioner(s).

None for respondent No.1.

Mr.Subhash Ahuja, Advocate
and Mr.Sanyam Malhotra, Advocate,
for respondent No.2.

Mr.S.S.Chauhan, Advocate, for respondent No.3.

G.S. Sandhawalia , J. (Oral)

This order shall dispose of CWP-17748, 14582 & 17800-2015, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-17748-2015.

Prayer in the present writ petition is for the relief to fill in the examination forms for B.A.M.S. 2nd Prof and to appear in the examination commencing from 24.08.2015. An interim order was passed on 25.08.2015, permitting the petitioners provisionally to sit in the balance of the examinations, subject to final decision of the writ petitions. Application has also been filed for declaration of result.

It is the case of the petitioners that they got admission in the respondent-College in the session 2012, which commenced in December, 2012. The examinations for the first year were conducted in November, 2014 and the three petitioners, for the 5 subjects, could only clear 2 subjects, 1 subject and 2 subjects, respectively, in March, 2015. Thereafter, they appeared in the supplementary examinations in April, 2015, the result of which was declared in 23.06.2015 (Annexure P2) and they cleared all the subjects. The examination forms for the 2nd Prof were also got filled up by the respondents and they claimed to have attended classes of the 2nd Prof. The action of respondent No.1-College for

not allowing to fill up the examination forms for the 2nd year, was challenged.

The petitioners, thereafter, approached this Court alleging that since they had passed their supplementary examinations held in April, 2015 and also attended classes, therefore, it was permissible for them to sit in the examinations for the 2nd Prof.

In the reply filed on behalf of respondent No.2- University, the plea taken is that the petitioners were granted admission in view of the directions issued in LPA-1959-2012 on 03.12.2012 and the curable deficiencies were to be removed. The matter had been taken to the Apex Court also but since the students had already been admitted, the University, due to the litigation and cross-litigation, took a decision that there was no fault on the part of the students. They could not be punished and therefore, they were allowed to continue with their respective examinations, on account of the fact that there was delay in holding of the professional examinations. The petitioners have failed in more than 2 subjects were allowed to sit in the supplementary examinations, as per Regulation 10 (iv) of the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulations, 2012. However, Regulation 6.1 (iii) provided that the students who had not cleared more than 2 subjects were eligible to take admission in the 2nd Prof

course but they were not eligible to appear and the roll numbers had only been issued to them, in compliance of the orders of this Court.

In the opinion of this Court, the issue already stands concluded against the petitioners in CWP-20456-2015 titled *Monika Thakur & others Vs. Shri Dhanwantry Ayurvedic College & another*, decided on 07.12.2015. In the said case also, the students had only cleared 2 subjects and they also claimed that they had deposited the full fees for the 2nd Prof and are also liable to deposit the fees for the 3rd Prof, as has been alleged herein. The argument raised, therein, was also that by way of passing the supplementary examinations, they would become eligible and therefore, should be allowed to appear in the 2nd Prof examination since the passing in the compartment examinations would relate back. The said argument was rejected by placing reliance upon the Full Bench judgment of this Court in ***Rupinder Singh & others Vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh & others 2012 (2) SCT 726***. Reliance upon the judgment passed in **CWP-11956-2014** titled *Kajal Vs. Guru Ravidas University*, decided on 12.11.2014, had also been distinguished. Relevant regulations read as under:

“3. DURATION OF COURSE

Degree Course 5½ years. Comprising

a) I Professional -12 months

b) II Professional -12 months

- c) *III Professional -12 months*
- d) *Final Professional -18 months*
- e) *Compulsory Rotary Internship -12 months*

4.xxxxxxx

5.xxxxxxx

6.1 FIRST PROFESSIONAL EXAMINATION:

i) *The first professional examination shall be at the end of the academic year of First Professional session. The First Professional session will ordinarily start in July.*

ii) *The First Professional examination shall be held in the following subjects:-*

1. *Padarth Vigyanavam Ayurved Itihas*
2. *Sanskrit*
3. *Kriya Sharir (Physiology)*
4. *Rachna Sharir (Anatomy)*
5. *Maulik Siddhantavam Astang Hridaya (Sutra Sthan)*

iii) *A student failed in not more than two subjects shall be held eligible to keep the terms for the second professional course, however he/she will not be allowed to appear for second professional examination unless he/she passes in all the subjects of the first professional.”*

The petitioners, admittedly, would have to do attend classes for 12 months for 2nd Prof as per the above regulations. Their result was only declared on 23.06.2015 and therefore, having not completed the full term of the professional course, they cannot claim that they were entitled to sit in the examinations, within 2 months of declaration of the result and prior to completing the full

term. In such circumstances, the benefit of the observations Kajal's case (supra) would also not be applicable.

Counsel for the University is also justified in pleading that the petitioners had to be treated as failed students, as per Clause 10 (iv), since they had failed to clear more than 2 subjects. In such circumstances, the petitioners cannot claim that they were eligible and were entitled to sit in the examinations, for the 2nd Prof.

Counsel for the petitioners has brought to the notice of this Court of the permission granted to one Ramesh Kumar (Annexure P4), in CWP-17800-2015, wherein the said student was allowed to appear in the second annual examinations. However, the same would not entitle the petitioners for the same relief as an illegal order cannot be a basis to issue a mandamus against the statute. The concept of Article 14 of the Constitution of India is a positive right and not a negative one which can be got enforced. No mandamus can be issued against the statute and the same has been held in ***A.P.Christians Medical Educational Society Vs. Government of A.P. & another 1986 (2) SCC 667***, by the Apex Court.

Accordingly, finding no merit in the present writ petitions, the same are, hereby, dismissed. All interim orders stand vacated.

DECEMBER 18, 2015
sailesh

(G.S. SANDHAWALIA)
JUDGE