

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

**CWP No.20456 of 2015
Decided on : 07.12.2015**

Monika Thakur and others

... Petitioners

Versus

Shri Dhanwantry Ayurvedic College and another

... Respondents

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

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

None for respondent No.1.

Mr. T.S. Chauhan, Advocate
for respondent No.2.

G.S. Sandhawalialia , J. (Oral)

The petitioners seek the direction for filling up the examination form in BAMS 2nd Year Prof. and for permission to appear in the same examination which is to commence from December, 2015.

The case of the petitioners is that after completing 10+2, they had got admission in the Bachelor of Ayurvedic Medicine & Surgery (BAMS) in the respondent No.1-college for the session 2013-2014. The examinations were conducted for the 1st Prof. in December, 2014 and the petitioners cleared two subjects out of total five, as per the result declared on 27.04.2015 (Annexure P-1). Thereafter, they appeared in three supplementary examinations held in July, 2015, the result of which was declared

on 27.08.2015 (Annexure P-2). They resultantly cleared all the examinations and therefore were entitled to sit in the 2nd Prof. Examination, which is now to be held in December, 2015. It is their specific case that in spite of not having cleared all three subjects, they still attended the regular class for 2nd Prof., till July, 2015, but were not allowed to mark their presence in the attendance register after April, 2015. The examination forms were not allowed to be filled up by the respondent No.1-college and, thus, representation dated 11.09.2015 (Annexure P-3) was made to the Vice-Chancellor of the University. Full fees had been paid in the 2nd Prof. and the receipts have been attached as Annexure P-4 (colly.). The petitioners had also deposited the fees of third Prof. in July, 2015 and the receipts have been attached as Annexure P-5 (colly.). Reliance was accordingly placed upon the Regulations 6.1 (iii) that since the petitioners had passed all the subjects of 1st Prof., after supplementaries they were entitled to sit in the examinations in December, 2015.

Respondent No.1-college took the defence that the petitioners were not eligible to sit in the examinations without clearing the backlog papers of the 1st Prof. as they stood detained by the virtue of their failing in more than two subjects. As per regulations, the students who have failed in more than two subjects in the 1st Prof. were liable to be detained. The students

had not attended the classes of 2nd Prof. nor they have undergone minimum number of days of studies. It was categorically denied that the petitioners have regularly attended the classes for the 2nd Prof. and neither they were allowed to fill up the form for 2nd Prof. The petitioners could not be allowed to deposit the fees for the 3rd Prof, as the required conditions were not fulfilled. The petitioners had not complied with the conditions for 2nd Prof examination and, therefore, the question of depositing the fees for 3rd Prof. did not arise.

The respondent No.2-University took the plea that the duration of the course is 5½ years and first three prof. are divided into 12 months each and the final prof. was of 18 months. The 12 months study was, thus, mandatory, since theory, practical and clinical work had to be undertaken. The student having re-appears in more than two subjects were not eligible. The table was given showing that when the petitioners would become eligible i.e. in May-June 2015, since they had re-appeared in May-June, 2016. As per the regulations petitioners could not be allowed to attend classes, as they had to appear in more than two subjects for re-appear examination.

Counsel for the petitioners has vehemently relied upon a judgment of this Court passed in **CWP No.11956 of 2014** titled as **'Kajal Vs. Guru Ravidas University' decided on 12.11.2014**

to submit that once the petitioners have passed their examinations even by way of supplementary examination, they were entitled to sit in the 2nd Year Prof. examination. The relevant regulations read as under:-

“3. DURATION OF COURSE

Degree Course 5½ years. Comprising

- | | |
|--|-------------------|
| <i>a) I Professional</i> | <i>-12 months</i> |
| <i>b) II Professional</i> | <i>-12 months</i> |
| <i>c) III Professional</i> | <i>-12 months</i> |
| <i>d) Final Professional</i> | <i>-18 months</i> |
| <i>e) Compulsory Rotary Internship</i> | <i>-12 months</i> |

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.”

After hearing counsel for the petitioners, this Court is of the opinion that no directions can be issued against the statute. A perusal of the above said Indian Medicine Central Council

(Minimum Standards of Education in Indian Medicines) Amendment Regulations 2012 shows that a 12 months course is the period prescribed for the professional examination. Though regulation 6.1 (iii) provides that the student is eligible to keep terms for the 2nd Prof. Course, but there is a condition that he will not be allowed appear in the 2nd Prof. examination, until he passes all the subjects. A combined reading of the regulations is, thus, necessary to taken into consideration. Merely, because the petitioners have passed the 1st Prof. Examination by clearing the supplementary in July, 2015, they would not be eligible to sit in the 2nd Prof. examination in December, 2015, solely for the reasons that they have not attended the classes of the 2nd Prof. for the requisite number of lectures, which was mandatory. Rather the college has specifically denied that they had sat in the classes of the 2nd year.

In the absence of any practical experience and in the absence of their requisite number of classes, the petitioners cannot be allowed to sit in the examination. It is settled principle that the supplementary examination cannot relate back to the date of original examination.

A Full Bench of this Court in '**Rupinder Singh and others Vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh and others**' 2012 (2) SCT 726,

overruled the view expressed by the Division Bench of this Court and held that declaration of the result cannot relate back to the date of examination unless otherwise specifically provided by any Act or Rules. The relevant paragraph read as under:-

“18. In the light of the above discussion, we are of the considered opinion that a candidate can be declared to have passed an examination only with effect from the date on which result of the examination is declared. The declaration of the result cannot relate back to the date of the examination unless otherwise specifically provided by any Act or rules as in service Jurisprudence. Nor can it legally be taken that by passing supplementary examination the result will relate back to the date of passing of the annual examination. We are firmly of the view that publication of the result of the examination cannot have any retrospective operation by projecting it backward to the date of the examination or to the date of the main examination. If such a course is adopted, we are clear in our mind that it will become impossible to decide the qualification of a particular candidate with reference to any date like last date of filing the application for any post or for admission to any course. While disposing of the review petition No. 182/96, the Bench went a step further and said that the benefit of the judgment will accrue to petitioners and to all those who had appeared in supplementary examination either in re-appear or in compartment and who have been given admission by the College-Management and whose results were declared after the cut off date. These observations made by the Bench are not correct statements of the law. We do not approve the same.”

Reference can also be made to the judgment of Apex

Court in **'Rakesh Kumar Sharma Vs. Government of NCT of**

Delhi & Others' 2013 (8) SCR 486, wherein it has been held that a person would possess qualification only on the date of declaration of the result. The relevant portion reads as under:-

“16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.02.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.”

In such circumstances, the petitioners have failed to show they are entitled for giving the examination in December, 2015. Reference to the judgment passed in **Kajal's case (supra)** is all no consequence. Firstly, in the said case there was a interim order, where the students had already been permitted to take the examination. Secondly, university had also accepted their examination forms and they had sat in the classes for the 2nd year. It was, in such circumstances this Court recorded a finding that the regulation 6.1 was not bad, whereby the disqualification had been

provided where the students had failed in more than two subjects. However, keeping in view the conduct of the university, which had accepted the examination forms concession was given to the students. In the present case, there is no admission by the university and there is a specific denial by the college itself that the petitioners were not allowed to attend the classes. So, the question of even forwarding their examination forms did not arise. Thus, reliance upon the same is without any basis.

In view of above, there is no scope in the present writ petition and same is accordingly dismissed.

DECEMBER 07, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE