

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

**CWP No.24465 of 2016
Date of decision: 19.12.2016**

Gaurav Sharma & othersPetitioner(s)

Versus

State of Haryana & others ...Respondent(s)

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

Present: Mr.Nipun Vashist, Advocate for the petitioners.

Mr.Indresh Goel, Addl.A.G., Haryana.

Mr.M.S.Longia, Advocate, for respondent No.2.

Mr.Ramesh Hooda, Advocate, for respondent No.4.

Mr.Arjun Pratap Atma Ram, Advocate, for respondent No.5.

G.S.SANDHAWALIA, J. (Oral)

Petitioners seek direction to get the examinations conducted by respondent No.4-Pt. Bhagwat Dayal University of Health Sciences, Rohtak. Prayer has also been made for handing over the attendance record of petitioner No.4, qua the period he studied with respondent No.5-College-Goldfield Institute of Medical Science & Research.

Petitioners No.2 to 4 are studying in the 5th year of the MBBS course, having taken admission in the session 2011-12, whereas petitioner No.1 is studying in the 4th year, having taken admission in the session 2012-13. It is not disputed that in a bunch of petitions, the lead case bearing CWP-8488-2016, *Sumit Singh & others Vs. Union of India & others*, interim directions were issued on 28.09.2016. In the said case also, dispute was regarding the certification of the students who had been shifted from respondent No.5-Institute, which had closed down. Relevant observations

which would affect the petitioners regarding their reappears to be certified from respondent No.4-University, read as under:

“The affidavit of Shri D.K. Behra, Director Medical Education Research Department dated 17.09.2016 has been filed. The said affidavit resolves in principle many of the issues, which were noticed in the earlier order as reproduced above. In principle the State has recognized the fact that the students who have migrated from M/s Gold Field Institute of Medical Sciences & Research (GFIMSR)-respondent No.6 to the private institutes, namely, SGT University, Budhera and M.M. University, Mullana respondents No.7 and 8, respectively would continue studying in those institutes and their examinations would also be certified from those institutes, which are private/deemed universities. The charges the students would be required to pay would be as per the public notice in pursuance of which they have already been shifted from GFIMSR and, thus, they can have no such grievance regarding the said charges for fee for the course which they have to complete on account of the closure of the GFIMSR, since GFIMSR was affiliated with the respondent No.4-University. Therefore, it is necessary that these students be issued migration certificates by respondent No.4-University. However, the exercise is to be done by consultation with the MCI by taking necessary approval.

Accordingly, the respondent No.4-University shall apply to MCI for the approval of the migration of those students to the private/deemed universities within a period of 4 weeks. The MCI shall then process the said cases positively and take a decision on the same and allow the said migration within 4 weeks thereafter, keeping in view the peculiar facts and circumstances, since GFIMSR has closed down and the essentiality certificate stands withdrawn. The State Government has thus taken positive steps to adjust the students to the other institutes to save their academic careers.”

The present petitioners claim parity with the petitioners in CWP-12122-2016, who are also students of final year, on account of the fact that

they were only having reappear examinations in the said year and were studying in the private deemed Universities and were directed to be certified by the respondent No.4-University. Relevant portion of the order qua those students, read as under:

“It is further pointed out that there are 3 students in CWP No.12122 of 2016 who have only re-appear examinations to give and are in the final year, who are studying with the private/deemed University. A dispute has arisen as to whether they have to attend classes or not and as to whether they have to give examinations or not. The said students will also file appropriate applications before the Committee within 10 days and which shall take a call on the said issue within 10 days thereafter. It is, however, pointed out that the said students, since were studying with GFIMSR which was affiliated with respondent No.4-University. Therefore, the said students will have to be certified by the respondent No.4-University. The said students will also deposit the requisite charges for registration with the said Universities, who will further permit them to sit in the following examinations, if found eligible. The issue of the charges of the registration fee will also be considered by the Committee, who will take a decision on the same.”

In the reply filed by the respondent-University, it has been clarified that all the petitioners have reappears in different Profs. and also in full subjects. Details of the same are mentioned as under:

“7. That petitioner No.1 Gaurav Sharma has reappear in MBBS 3rd Prof. Part-I. He has to appear in MBBS 3rd Prof. Part-II in full subjects. The petitioner No.2 Ashish Bajaj has to appear in MBBS 3rd Prof. Part-I in full subjects. Petitioner No.3 Vishal Chhokar has reappear in MBBS 3rd Prof. Part-I. He has to appear in MBBS 3rd Prof. Part-II in full subjects. Petitioner No.4 Akash Sharda has reappear in 2nd Prof. He has to appear in MBBS 3rd Prof. Part-I in full subjects.”

Thus, it is apparent that the petitioners are having reappears in the earlier examinations in all subjects and therefore, cannot seek parity, as such, which was granted to the petitioners in CWP-12122-2016. The specific case of the University is that in pursuance of the interim directions issued on 28.09.2016, the Committee had been set up on 29.11.2016 (Annexure R4/2) and has further confirmed that the students had to be certified from the private University. Relevant portion reads as under:

“1. The issue regarding conduct of examinations

It is submitted that an affidavit was filed on dated 17/09/2015 in the Hon'ble Punjab & Haryana High Court, Chandigarh by Director Medical Education & Research, Haryana. The said affidavit resolved in Principle many of the issues, which were noticed in the earlier order of the Hon'ble High Court, Chandigarh. In Principle, the State has recognized the fact that the students who have migrated from GFMSR, Faridabad to the Private Institutes namely SGT, Budhera and MMU, Mullana respectively would continue studying in those institutes and their examinations would also be certified from those institutes which are private/deemed Universities.

Therefore, the examinations of these students now shifted to SGT University, Budhera and MMU, Mullana shall be conducted by concerned Private/Deemed Universities. In this regard, a letter has been sent to the Secretary, Medical Council of India to grant approval for migration of the concerned students to the above said Private/Deemed Universities as applicable.”

Regarding petitioner No.2, the dispute pertains to the non-supply of the attendance record. The same was also decided by the Committee in the meeting held on 07.10.2016 (Annexure R4/1) wherein it was noticed that inspite of respondent No.5-College having shut-down earlier, certain candidates had attendance more than 100%. Resultantly, it was held that the

eligibility of the students could not be compromised and an official had been deputed to personally collect the records. The relevant portion of the minutes of the meeting reads as under:

“1. The issue regarding the shortage of lectures and the eligibility of the students for the forthcoming examinations.

The Vice Chancellor started the meeting with informing the committee members that during various meetings which were held with the management of GFIMSR, Faridabad we had conveyed to them that University needs the attendance of the students of various batches shifted from GFIMSR, Faridabad to other colleges/deemed Universities and the authorities of GFIMSR, Faridabad repeatedly assured they will give the required attendance of the students to the University but they kept on delaying any action. Some students filed CWPs in the Hon'ble High Court. College authorities thereafter, they provided the attendance on dated 16/08/2016 but there were certain discrepancies. For example in some of the cases the attendance was shown as more than 100%.

From the report of the inspection committee submitted on 09/03/2016, it was clear that college, hostel and hospital everything were shut down. Management was not available. Dr. Rajender Parshad, Rep. DMER stated that he received various complaints in the month of November and December last year i.e. in the year 2015 and on interrogation college authority had accepted the same. But the college authorities had supplied the attendance upto the month of Feb. 2016 in some of the subjects of various batches of students. Moreover, it has been revealed that only official stamp has been affixed on each paper but there were no signature of the competent authority. Only the following letter was signed by the Registrar of the college. The Vice Chancellor stated that we have also written to GFIMSR to provide the proof of having conducting these classes by way of original attendance registers and registers of faculty who have taken the classes. Dr.Sarla Hooda, Dean, SGT Medical College, Budhera stated that if we start counting the attendance from the day of admission of the students in their institution, the students do not fulfill eligibility criteria to appear in the forthcoming examinations as per MCI norms being shortage of lectures. The

candidate shall have to meet the eligibility criteria pertaining to their theory/practical/internal assessment as per MCI norms.

Keeping in view the above discussion the committee is of the unanimous opinion that we can not compromise under any circumstances and we can not assume that they have taken this attendance unless they send us signed attendance with signature on all pages of attendance record. It was decided that Assistant Registrar (R&A), UHS, Rohtak will write a letter to give last opportunity to GFIMSR to rectify discrepancies in the attendance provided by them alongwith original attendance register of the students as well as of the faculty who had taken classes, Internal assessment and class test marks and for the purpose, an official may be deputed personally to collect the above information to avoid delay. Moreover, the GFIMSR authorities may also be directed to provide the name of the competent authority/contact person, postal address, mobile number, email address for further correspondence.

Further no extra classes shall be held to meet out the requirement of shortage of lectures of theory and practical.

The eligibility of students (theory and practical/ internal assessment) shall be displayed by the authority of the concerned college today positively. Representatives of the private/deemed university have been requested to display the eligibility criteria on the notice board of their college today. The Dean, PGIMS, Rohtak is also requested to display the same today itself. The copy of the court order may be sent to Director, BPS GMCW, Khanpur Kalan (Sonipat), Maharaja Agrasen Medical College, Agroha (Hisar) and Director SHKM, Nalhar (Mewat) to act as per the directions issued by the Hon'ble High Court, Chandigarh."

Thereafter, in the subsequent meeting on 29.11.2016 regarding the issue of attendance, the Committee has decided that it will not be possible to allow the students to appear in the examinations, as the management has failed to locate the original attendance registers and that the Secretary of the Institute is in judicial custody. Relevant portion reads as under:

“4. Difficulty of attendance on the absence of record and even otherwise on account of shortage of lecture

In the meeting held on 07/10/2016 the issue regarding the shortage of lectures was discussed in detailed and it was unanimously decided that we can not compromise under any circumstances and we can not assume that they have taken this attendance unless they send us signed attendance with signatures on all pages of attendance record. Moreover, it was also decided in the meeting that a letter may be written to the management of GFIMSR, Faridabad to rectify the discrepancies in the attendance provided by them along with original attendance registers of the students as well as of the faculty who had taken classes, internal assessments and class tests marks and for the purpose, an official may be deputed personally to collect the above information to avoid delay.

Therefore, in view of the decision of the committee, an official was deputed on 14/10/2016 to collect the above said record. It was intimated that the Secretary-Dr. Shashi Adalakha is in judicial custody against the FIR of Haryana Govt. Again a reminder was sent to Gold Field Shiksha Sanstha, Faridabad to provide the above said information but nothing has been heard from their side.

The committee was also informed that a meeting was held on 02/11/2016 under the Chairmanship of the Vice-Chancellor, Pt. B.D.Sharma UHS, Rohtak in the presence of the representative of the management of Gold Field Shiksha Sanstha, Faridabad. The representative of Gold Field management assured that they will try their best to submit the subjectwise attendance in respect of all the MBBS students of all four batches i.e. 2011, 2012, 2013 and 2014 including original attendance registers duly countersigned by the concerned teacher on each and every page within four weeks but till date nothing has been received which is a serious lapse of responsibility.

Therefore the committee is of the view that University will write a letter to Gold Field management and depute staff members to help the management to locate the original attendance registers of all the four batches and without having

proof of 75% of attendance as per MCI norms, it would not be possible to allow them to appear in the examination.”

Keeping in view the above decision by the Committee and in pursuance of the interim directions of this Court dated 28.09.2016 (in CWP-8488-2016, the relief of certification, as prayed, cannot be granted to the petitioners. It is an admitted fact that the Division Bench has also upheld the said order in LPA-2201-2016, decided on 21.11.2016. Consequently, the present writ petition stands dismissed.

19.12. 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No