

CWP No.8366 of 2016 (O&M)

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

**CWP No.8366 of 2016 (O&M)
Date of decision:04.07.2016**

Ravinder Kaur

...Petitioner

Versus

Medical Council of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. D.S.Patwalia, Sr. Advocate, with
Mr. Gaurav Rana, Advocate, for the petitioner.

Mr. Gurminder Singh, Sr. Advocate, with
Ms. Shivangi Sharma, Advocate, for MCI.

Mr. Ashok Sharma, Nabhwala, Advocate,
for respondent Nos.3 and 5.

Mr. Munish Dadwal, Advocate,
for University/respondents No.2 and 4.

Rakesh Kumar Jain, J.

The petitioner got admission in M.D. (Anaesthesia), a three years course, in Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar (hereinafter referred to as the “institute”), which is affiliated to the Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the “University”). After completion of her three years studies, she was issued roll number and was allowed to sit in her annual examination in May/June 2015. The annual examination consists of one theory exam (four papers of 100 marks each) and one practical exam

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(divided into three components: Long Case of 100 marks, two Short Cases of 100 marks and Station Related viva of 200 marks, divided equally among four examiners). The petitioner was required to individually pass the theory as well as practical examination by securing 50% marks in each for declaring herself to be successful. It is alleged that the petitioner had appeared in her practical examination, which were conducted by respondent No.2 at Government Medical College at Amritsar in which Dr. Veena, Head of the Deptt. of Anaesthesia, Government Medical College, Amritsar and Dr. Ruchi, Head of the Deptt. of Anaesthesia of the institute were appointed as two internal examiners and two other external examiners were also appointed to evaluate her performance. The petitioner though passed her theory examination by securing 278 marks out of 400 (69.50%) but failed in the practical examination in which she only secured 161 marks out of 400 marks (40.025%), as per the result declared on 10.08.2015 as the petitioner had secured less than 50% marks in her practical/viva-voce exam. Thereafter, the petitioner appeared in the supplementary examination held in the month of February/March 2016 under Roll No.6154204 and again failed in the practical examination though cleared the theory papers. The petitioner has approached this Court with a prayer for re-conducting the practical/viva-voce examination held in May/June 2015 (main examination) and in February/March 2016 (supplementary examination) on the ground that the said examinations were conducted against the guidelines/rules issued by the Medical Council of India (MCI) and also prayed that since the petitioner has already passed the theory examination, therefore, the

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respondents may be directed not to take the theory exam again.

It was initially argued by learned counsel for the petitioner that in the main practical examination, there were three examiners i.e. two external examiners and one internal examiner, namely, Dr. Ruchi Gupta, who was from the college of the petitioner but the other internal examiner Dr. Veena Chatrath was not from the same institute.

On 31.05.2016, the respondents were directed to produce the relevant record in respect of the main practical examination, which was held in May/June 2015.

Counsel for the respondents has produced the record as per which the first internal examiner was Dr. Ruchi Gupta, Prof. and Head of the Deptt. of Anaesthesia of the institute and second internal examiner was Dr. Veena Chatrath, Prof. and Head of the Department of Anaesthesia, Government Medical College, Amritsar. The other two external examiners were Dr. Satinder Gombar, Prof. and Head of the Deptt. of Anaesthesia, PGIMER, Chandigarh and Dr. J.S.Dali, Director and Prof. of LNJP, Hospital, New Delhi.

During the course of hearing, counsel for the petitioner has fairly admitted that there is no provision in the Post Graduate Medical Regulations 2000 (hereinafter referred to as the "Regulations") that both the internal examiners have to be from the same institute where the petitioner is studying, therefore, there is no substance in the argument raised by the petitioner that the second internal examiner was not from the same institute in which the petitioner was studying.

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The respondents have also pointed out that the petitioner had appeared in the supplementary examinations both theory and practical and in the supplementary practical examinations, which were held on 15.03.2016 at Government Medical College, Patiala, there were following examiners:-

	<u>"Name</u>	<u>Designation</u>
1.	Dr. Kajal Jain	Professor Anaesthesia, PGIMER, Chandigarh.
2.	Dr. Sukanya Mitra	Professor Anaesthesia, Government Medical College, Sector 32, Chandigarh.
3.	Dr. JPS Bhupal	Professor and Head Anesthesia, GMC, Patiala.
4.	Dr. Balwinder Kaur	Associate Professor, GMC, Patiala.
5.	Dr. K.S.Aujla	Professor of Anaesthesia, SGRD, Amritsar.
6.	Dr. Ruchi Gupta	Professor and Head Anaesthesia SGRD, Amritsar."

And the following report was made by Dr. Shobha Aggarwal, Professor and Head, Deptt. of Anesthesia, G.G.S. Medical College, Faridkot:-

"At 9:15 AM, list of cases was given to examiners who are allotted one long and two short cases to each candidate. There were two M.D. Exam candidates and 3 D.A. Exam candidates.

Candidates were examined for the above mentioned long and short cases turn wise from 10:15 AM to 2:30 PM.

Then grand viva/table viva started at 3:30 PM in which every candidate was assessed for about one hour, on Drugs and Equipment and ECG and X-rays, relevant to the subject of Anaesthesia. This session ended at 8:15 PM 15.03.2016 with this the practical Post Graduate Exam was over.

Then the result was compiled by all the concerned four

examiners (2 External 2 Internal examiners) as already assigned for each candidate and was handed over to me in five signed and sealed envelopes by 8:45 PM to me by BFUHS for the above mentioned purpose and arrived at Faridkot at 1:00 AM 16.03.2016.

All the signed and sealed five result envelopes were handed over by me personally in the office of Controller of Examinations BFUHS, FDK at 9:30 A.M. on 16.03.2016.

With the best of my knowledge and experience of more than thirty years as Anaesthetist in various capacities, I can confidently express that whole practical exam for Post Graduates, was conducted in congenial atmosphere and fair manner. All the external examiners were giving sufficient opportunity to extract the knowledge and its applications in regard to the questions posed by them on respective stations.”

It is also argued by counsel for the respondents that the petitioner has failed even in the supplementary practical examination and may now again appear in the theory as well as practical examination.

Counsel for the petitioner has argued that the petitioner is not aggrieved by the result of the supplementary practical examinations but she is aggrieved that the main practical examination was not conducted in accordance with law because no evidence has been led by the respondents of separate marking for her performance.

In this regard, counsel for the respondents has submitted that the petitioner is estopped by her own act and conduct as she did not challenge the result of the main practical examination and had rather appeared in the supplementary examination and after having failed in the same, she has filed the present writ petition to challenge the validity of the main practical examination.

In respect of the second submission, it is argued by the counsel

for the petitioner that even if the petitioner has failed in the practical examinations, she still has passed the theory examinations for which she may not be asked to appear again while taking the practical examination and the result of the theory examinations, which was taken by her as the main examination, may be frozen for all intents and purposes. In this regard, he has also relied upon a decision of the Kerala High Court in the case of **Dr. Geethu S. vs. Kerala University of Health Sciences**, WP(C) No.31364 of 2015, decided on 31.03.2016.

Learned Senior Counsel appearing on behalf of the MCI had submitted that the petitioner cannot get out of the Regulations, more particularly Clause 14 of the Regulations, which was amended on 20.10.2008 in the following manner:-

“The examinations shall be organized on the basis of ‘Grading’ or ‘Marking system’ to evaluate and to certify candidate's level of knowledge, skill and competence at the end of the training. Obtaining a minimum of 50% marks in ‘Theory’ as well as ‘Practical’ separately shall be mandatory for passing examination as a whole. The examination for M.D./MS, D.M., M.Ch. shall be held at the end of 3rd academic year and for Diploma at the end of 2nd academic year. An academic term shall mean six month's training period.”

It is submitted that it is mandatory for a candidate to pass theory and practical examination separately by securing minimum 50% marks and only then the examination as a whole shall be deemed to have been passed and the result of the theory paper of main examination cannot be considered for all intents and purposes as even the petitioner had appeared again in the theory papers in the supplementary examination.

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I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no dispute that Clause 14 of the Regulations, substituted in terms of Gazette Notification published on 20.10.2008, provides that the examination shall be organized on the basis of 'Grading' or 'Marking system' and it would be mandatory for passing the examination as a whole to secure 50% marks both in theory and practical examinations separately. The petitioner has admittedly failed in the main practical examinations as she had secured only 40.025% marks which is less than required 50% marks and had appeared in both theory as well as in the practical exam in the supplementary examinations because she knew that she had failed in theory as well as practical in the main examinations after having failed in the practical examination but again she failed in the supplementary practical examination though cleared her theory papers.

From the perusal of the Regulations, it is apparent that both theory and practical examinations are separate and accordingly, the Regulations provides that in order to pass the examination as a whole, the candidate has to obtain minimum 50% marks in theory as well as practical examinations separately. In view thereof, there is hardly any substance in the argument raised by counsel for the petitioner wherein he has prayed that the result of the main theory examination, which she had passed, shall be maintained for all intents and purposes. Thus, the second prayer of the petitioner is hereby rejected.

Insofar as the prayer of the petitioner for re-conducting the

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main practical examination is concerned, the allegation made by the petitioner that there were 3 examiners as the 4th examiner was not from the same institute is concerned, it does not have the support of law as there is no such provision indicated by the petitioner, which requires that both the internal examiners should be from the same college in which the petitioner has been studying.

After perusal of record submitted by the respondents, I am satisfied that the petitioner has been examined by all the four internal and external examiners who were appointed in accordance with law but unfortunately she could not clear her practical examination, both the main as well as supplementary examinations.

There is one more aspect of the matter that if the petitioner was aggrieved of the procedure having been followed during the main practical examination, then she should have challenged the result at that time instead of appearing in the supplementary practical examination in which again she failed and made a complaint thereafter. Thus, there is no use of crying over the spilled milk.

Insofar as the judgment relied upon by the petitioner is concerned, I also do not subscribe to the reasoning given in that case.

Hence, the cumulative effect of the aforesaid discussion leads to an irresistible conclusion that there is no merit in the present petition and hence, the same is hereby dismissed.

July 04, 2016
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(Rakesh Kumar Jain)
Judge