

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 13510 OF 2017

Bhakti d/o Manojkumar Gaggad,
Age : 22 years, Occu. Education (Student),
R/o. Krishna Kunj, Anandnagar,
Purna, Tq. Purna, Dist. Parbhani ... Petitioner

VERSUS

1. The State of Maharashtra
through the Department of Medical Education,
Secretary, Mantralaya, Mumbai.
2. The Union of India,
Through the Secretary,
Department of Health and Family Welfare,
Room No. 348, 'A' Wing, Nirman Bhavan,
New Delhi – 110011.
3. The Dental Council of India,
Aiwan E Galib Marg, Kotla Road,
Temple Lane, Opp. Mata Sundari College for Women,
New Delhi – 110011.
4. Maharashtra University of Health Sciences,
Through the Registrar,
Dindori Road, Mhasrul,
Nashik-422 004.
5. Saraswati Dhanwantari Dental College and Hospital,
Parbhani, Pathri Road, Parbhani,
Through the Principal. ... Respondents

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Mr Chaitanya V. Dharurkar, Advocate for the petitioner
Mrs Vaishali N. Patil-Jadhav, AGP for respondent No. 1
Mr S. B. Deshpande, ASG for respondent No. 2
Mr Alok Sharma, Advocate for respondent No. 3
Mr K. C. Sant, Advocate for respondent No. 4
Mr S. B. Bhapkar, Advocate for respondent No. 5

.....

WITH
WRIT PETITION NO. 13559 OF 2017

Priyanka D/o Ashok Patil,
Age : 22 years, Occu. Education,
R/o. M/8, Mahada Colony
Shivaji Nagar, Mehakar, Dist. Buldhana. ... Petitioner

VERSUS

1. The State of Maharashtra
2. Maharashtra University of Health Sciences, Nashik
Through its Registrar, Dindori Road, Mhasrul,
Nashik-422 004.
3. Aditya Dental College,
Nalwandi Naka, Beed, Dist. Beed. ... Respondents

.....
Mr Avinash D. Aghav, Advocate for the petitioner
Mrs Vaishali N. Patil-Jadhav, AGP for respondent No. 1
Mr K. C. Sant, Advocate for respondent No. 2
.....

WITH
WRIT PETITION NO. 13607 OF 2017

Prajakta D/o Prabhu Survase,
Age : 21 years, Occu. Education,
R/o. Nageshwara Nagar, Aundha Nagnath,
Tq. Aundha Nagnath, Dist. Hingoli. ... Petitioner

VERSUS

1. The Union of India,
Through Secretary,
Ministry of Health and Family Welfare,
(Health Department), New Delhi.
2. The State of Maharashtra
through its Secretary,
Medical Education and Drug Department,
Mantralaya, Mumbai.

3. The Dean,
Mahatma Gandhi Mission's
Dental College & Hospital,
Sector01, Kamothe, Navi Mumbai.
4. The Examination Controller,
Maharashtra University of Health Sciences,
Dindori Road, Mhasrul/Nashik,
District Nashik.
5. The Secretary,
Dental Council of India,
Kotla Road, Temple Lane,
Verification Committee Aurangabad,
Opp. Mata Sundari College of Woman,
New Delhi-2. ... Respondents

.....
Mr Sunil M. Vibhute, Advocate for the petitioner
Mr S. B. Deshpande, ASG for respondent No. 1
Mr A. S. Shinde, AGP for respondent No. 2
Mr A. S. Bayas, Advocate for respondent No. 4
.....

WITH
WRIT PETITION NO. 11740 OF 2017

Sanjeevanee D/o Mohan Rathod,
Age : 24 years, Occu. Education,
R/o. Pusad, Tq. Pusad, Dist. Yavatmal
At present : MIDSR Dental College Hostel,
Latur, Tq. & Dist. Latur. ... Petitioner

VERSUS

1. The Examination Controller,
Maharashtra University of Health
Science Nashik, Mhasrul, Dindori Road, Nashik.
2. The Principal,
Maharashtra Institute of Dental Science
and Research, Dental College, Latur,
Vishwanathpuram, Ambajogai Road, Latur.

3. Dental Council of India,
Aiwan-E-Galib Marg, Kotla Road,
New Delhi-110002, Through its Secretary. ... Respondents

.....

Mr Vilas P. Savant, Advocate for the petitioner
Mr K. C. Sant, Advocate for respondent No. 1
Mr V. B. Jadhav, AGP for respondent No. 2
Mr Alok Sharma, Advocate for respondent No. 3

.....

WITH

WRIT PETITION NO. 13509 OF 2017

Yogesh Aniruddha Dharpade,
Age : 22 years, Occu. Education (Student),
R/o. Dattanagar, Karegaon Road, H. No. 121/A,
Dist. Parbhani ... Petitioner

VERSUS

1. The State of Maharashtra
through the Department of Medical Education,
Secretary, Mantralaya, Mumbai.
2. The Union of India,
Through the Secretary,
Department of Health and Family Welfare,
Room No. 348, 'A' Wing, Nirman Bhavan,
New Delhi – 110011.
3. The Dental Council of India,
Aiwan E Galib Marg, Kotla Road,
Temple Lane, Opp. Mata Sundari College for Women,
New Delhi – 110011.
4. Maharashtra University of Health Sciences,
Through the Registrar,
Dindori Road, Mhasrul,
Nashik-422 004.

5. Saraswati Dhanwantari Dental College and Hospital,
Parbhani, Pathri Road, Parbhani,
Through the Principal. ... Respondents

.....

Mr Chaitanya V. Dharurkar, Advocate for the petitioner

Mrs Vaishali N. Patil-Jadhav, AGP for respondent No. 1

Mr S. B. Deshpande, ASG for respondent No. 2

Mr Alok Sharma, Advocate for respondent No. 3

Mr K. C. Sant, Advocate for respondent No. 4

Mr S. B. Bhapkar, Advocate for respondent No. 5

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE OF RESERVING THE JUDGMENT : 07.02.2018.

DATE OF PRONOUNCING THE JUDGMENT : 06.03.2018.

JUDGMENT [PER A. M. DHAVALA, J.] :

1. Rule. Rule made returnable forthwith. These writ petitions involve a common question of law and facts. By consent of the parties, they are commonly heard and are disposed of by this common judgment.

2. The issue raised in these petitions is whether the students of Bachelor of Dental Surgery (BDS) would be governed by rule as existing at the time of their admission or by the subsequent rule which substituted the earlier rule.

3. All the petitioners herein are students of BDS. They have taken admission for BDS course on 01.09.2014. Their admissions, selection and migration are governed by 'the Regulations for the Degree of Bachelor of Dental Surgery, 2007' framed by Dental Council of India with the previous sanction of the Central Government.

4. One of the relevant rules with respect to scheme of examination provides as follows:

BDS Course Regulations as modified upto 25.07.2007 provided time limit in following words.

"Any student who does not clear first BDS examination in all subjects within three years from the date of admission shall be discharged from the course".

The amendment dt. 27.04.2015 reads as follows :

The above shall be substituted by following clause that,

"any student who does not clear the BDS course in all the subjects within a period of 9 years including one year compulsory rotatory paid internship from the date of admission shall be discharged from the course."

5. The rule requiring clearing 1st year in all subjects within three years from the date of admission was existing and was applicable on the date of admission of all the petitioners in September - 2014.

6. Thereafter, in 2014, Writ Petition No. 9412 of 2014 came to be filed by one Akshay Kale and the Dental Council of India made a submission that the said rule has been amended and new rule was substituted. The said writ petition was disposed of on 03.03.2015 in the light of the submissions regarding substitution made.

7. Actually, DCI in exercise of powers conferred u/s 20 of Dentist Act, 1948 with the previous sanction of the Central Government amended the said above referred provision on 27.04.2015 as referred above.

8. On 19.01.2016, I/c. Secretary, Dental Council of India, by a communication informed all Principal of Dental Colleges and Institutions in the country that in General Body Meeting of Dental Council of India dt. 28-29th December, 2015, this issue was considered and after discussion and deliberation, decided to inter alia clarify that the provision of revised BDS course 7th amendment Course 2015 is applicable to only those students who have been admitted in BDS course in any Dental Institution after the date of commencement of these regulations dt. 27.04.2015, the date of publication of these regulations in Government Gazette.

9. It is not in dispute that all the petitioners failed to clear at least one subject of first BDS during the year 2014-15, 2015-16 and 2016-17. As such, as per the old rule existing on the date of their admission, the petitioners could not have continued to pursue the studies and would have been discharged from the course, but, as per the new rules, if it is made applicable to them, they can pursue the BDS course subject to new restriction that the entire course along with internship should be completed within nine years from the date of admission.

10. In September-2017, the petitioners filled up examination forms for ensuing examination starting from 22.11.2017.

11. Maharashtra University of Health Sciences, respondent no.4, by letter dt. 06.11.2017 received by the College on 13.11.2017 informed the Principals of the colleges that the students who have not completed BDS course within three years were disqualified to appear for the BDS examination in Winter-2007 till exam and the applications of the petitioners were returned to the college disclosing them to be disqualified.

12. In Indian Dental Council of India Conference dt. 28.04.2017, it was determined that Revised BDS Course Regulation, 2015 was not applicable to the students admitted prior to its commencement and who had already passed their BDS course within three years from the date of their admission.

13. In these writ petitions, the petitioners were protected and were permitted to appear for the examination subject to furnishing undertaking that they would not claim any equity and their examination result will be subject to the decision of these writ petitions.

14. Earlier, the Health University had granted ATKT to the petitioners for the subjects in which they had failed and they were permitted to appear for the next semesters.

15. By communication dt. 13.09.2017, the Secretary to DCI, has informed that in its General Body Meeting on 11.06.2016 and 12.06.2016, after discussion and deliberation, it was decided in the interest of students as well as to achieve the objective of the Revised BDS course and in light of the earlier decision of the High Court in

earlier writ petitions to seek approval of the Central Government to partially modify the amendment as follows:

. *In partial modification of DCI's Revised BDS Course 7th Amendment Regulation, 2015, approved by Government of India by letter dt. 25.02.2015 and 27.02.2015 and notified in the Official Gazette on 27.04.2015, the following proviso is hereby added.*

. *Provided, these regulations are also applicable to the students admitted in BDS course in any dental institutions from the academic sessions 2008-09 onwards but had not cleared their first BDS course within a period of three years from the date of admission.*

16. However, the Government of India by letter dt. 11.09.2017 informed the DCI its decision not to accept the proposal for retrospective implementation of the revised rule by insertion of above referred proviso.

17. Heard learned counsels and learned AGP appearing on behalf of the respective parties.

18. On behalf of the petitioners, the following points were raised.

- (i) The existing rule has not been amended simplicitor but has been substituted. Its effect is of coming into force the same as on the first date of the original rule and it being a beneficial to the petitioners in the light of the submissions

made in the writ petitions, the same should be made applicable from the date of original rules.

(ii) On the point of interpretation of amendment by way of substitution, the reliance is placed on following rulings.

(i) Zile Singh Vs. State of Haryana & Ors. AIR 2004 SC 5100

(ii) Government of India Vs. Indian Tobacco Association
AIR 2005 SC 3685

(iii) Shamrao V. Parulekar Vs. The District Magistrate, Thane
AIR 1952 SC 324

(iv) Hassan Co-op. Milk Producers v State of Karnataka (WA 734/2014 & Ors.
decided by Full Bench, Karnataka High Court)

(v) Hussainali Punjwani v The Board of Trustees of Port of Bombay & Ors.
2017(5) Bom.C.R. 139.

19. Per contra, the respondents argued that, the Central Government has powers to modify and amend the rules as and when it is found necessary and the said power has been delegated by the Union to DCI. It has amended the provision and Union of India has approved it but the proposed proviso intended to give benefit of the said amended proviso to the students admitted before the date of amendment has not been approved by the Central Government. The provisions of any law are presumed to be prospective and not retrospective. Therefore the petitioners are not entitled to claim the benefit of new provision of clearing all exams with internship within nine years, if they have failed to fulfill the earlier condition of

clearing all subjects of first BDS course within three years from the date of admission.

20. On behalf of the petitioner, it was argued that, when the old rule has been replaced, it ceases to be existing and it cannot apply to the petitioners.

21. After hearing the learned counsels for the parties and going through the documents and provisions of law, the points for our consideration with our findings thereon are as follows :

Sr.No.	Points	Finding
1	Whether the Dental Council of India has authority to make such provision?	In the affirmative.
2	Whether the amended provision would be applicable retrospectively or whether it would govern the students admitted only after the date of amendment?	The amended provisions will apply to all the students who have not completed three years' in 1 st BDS examination as on the date of amendment i.e. 27.04.2015.
3	Whether the petitioners would be entitled to pursue their studies by availing the benefit of amended provision?	In the affirmative.
4	What order?	Writ Petitions are allowed.

REASONS

22. It was argued that the admission and pursuing of BDS course is governed by the provisions of the Dentist Act, 1948 which is a Central Legislation. There is no restriction in the said Act on the students for clearing the examination in a particular time limit and the DCI being an authority acting under delegation, cannot make rule which is inconsistent with the provisions of the Dentist Act, 1948.

23. Section 20 of the Dentist Act, 1948 delegates to the DCI power to make regulations with the approval of the Central Government by notification in the Official Gazette provided those are not inconsistent with the provisions of the Dentist Act, to carry out the purposes of this chapter. In particular and without prejudice to the generality of the foregoing purpose, such regulations may

(g) prescribe the standard curricula for the training of dentists and dental hygienists, and the conditions for admission to course of such training.

(h) prescribe the standards of examinations and other requirements to be satisfied to secure for qualifications recognition under this Act.

24. The Dentist Act, 1948 has been enacted as it was expedient to make the provision for regulation of the profession of dentistry and for that purpose to constitute Dental Councils. The object of the act and the Rules is to provide efficient and skillful dental surgeons to the society. This object can be achieved by restricting the admission to the dental course for meritorious students, however, it is well known fact that the proficiency and skill required for a dental surgeon is quite different from the general intelligence and even meritorious students may find it difficult to achieve the desired merit in the theory and practicals of BDS course. The Legislature thought it fit to make provision for limiting the opportunities for student of BDS for showing their merits in dental subjects. The earlier rule was enacted by DCI in 2007 whereby a condition was imposed that the student should clear his first BDS exam within three years. If a student would fail to clear the first BDS within three years, he was disqualified to pursue the BDS course further. This rule was challenged in Writ Petition No. 9412 of 2014 filed by Akshay Kale. During the pendency of this petition and in the light of the discussion before the court, the DCI felt that this rule should be suitably amended and instead of putting restriction of three years for clearing first BDS course, there should be overall limit of nine years for clearing the entire BDS course including internship of one year.

25. Accordingly the amendment was carried out as referred to above. The old rule is done away with and the new rule has been substituted for the same. The amended provision dt. 27.04.2015 specifically lays down that it is a case of substitution.

26. In **Nirmalkumar vs Union of India (WP No. 8351/2013)** decided on 29.10.2015 by Division Bench of this Court to which one of us (S. V. Gangapurwala, J.) was a member, a similar amended provision under Veterinary Academic Regulations, 2002 came up for consideration. Therein the Veterinary Council of India fixed a time limit of 10 years to clear the entire process. It was argued that, the said regulation was not in force at the time of the admission of the petitioners therein in June, 2003 and the said regulation could not have been with retrospective effect. This was made applicable from 2004-05. Reliance was placed on **State of Rajasthan & Ors. v Basant Agrotech (India) Ltd. & Ors (2013) 15 SCC 1** to submit that, the legislation cannot enact law with retrospective effect. The Delegate authority, exercising power of delegated legislation, can make rules only within four corners of the powers laid down under the central enactment and no statute shall be construed to have a retrospective operation unless such a

construction appears very clearly in the terms of the Act, or arise by necessary and distinct implication. Reliance was also placed on the case of **Vice-Chancellor, M. D. University, Rohtak v Jahan Singh (2007) 5 SCC 77** to submit that the Central Government does not confer any power on the University to enact Regulations with retrospective effect.

27. Reading the Central Regulation, 1993, this Court observed that it was silent regarding the duration of the course within which the same is to be completed. The University was empowered to frame regulations. There cannot be any debate with the proposition that the authorities of the University while framing regulation were exercising powers of delegated legislation. The delegated legislation has to supplement and not supplant the parent statute. It was held that, when the Central Regulation Act did not provide for maximum period for completion of course and the delegated authority prescribed such time limit, the Regulation of 2002 was not inconsistent with the Regulation of Act of 1993. Looking to the facts of the present case, we find that, this ruling is squarely applicable to the facts of the present case and the Dental Council of India by framing such rules has not acted inconsistent with the provisions of the Dentist Act, 1948. We, therefore, hold that the DCI had authority

to make such provision in exercise of powers u/s 20 of Dentist Act, 1948 and the said amendment has been approved by the Central Government. Point No. 1 is accordingly answered in the affirmative.

28. With regard to the arguments of retrospectivity/retroactivity, “*nova constitutio futuris formam imponere debet, non praeteritis*” means a new law ought to regulate what is to follow, not the past, is the normal rule.

29. Ld. counsel for the petitioners relied on following rulings on interpretation of effect of amendment by way of substitution.

1. Zile Singh Vs. State of Haryana AIR 2004 SC 5100

. In this case, it is observed that, the presumption against retrospective operation is not applicable to declaratory statutes. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (Para14).

. Retrospectivity is not to be presumed. Presumption is against retrospectivity (Para 15).

. Where a Statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. (Para 16)

. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision.

West U.P. Sugar Mills Assn. and Ors. Vs. State of U.P. and Ors. (2002) 2 SCC 645 relied. (Para 25). In this case, it was held that, the State Government by substituting the new rule in place of old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In **State of Rajasthan Vs. Mangilal Pindwal (1996) 5 SCC 60**, the Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute. In **Koteswar Kamath Vs. K. Rangappa (1969) 1 SCC 255**, while distinguishing 'supersession' and 'substitution', it is held that the process of substitution consists of two steps. First, the old rule is made to cease to exist and, next the new rule is brought into existence in its place. (Para 25).

. It held that, the Second Amendment would operate retrospectively from the date of the First Amendment and in giving such operation no mandate of any law or principle is violated. (Para 26).

2. **Govt. of India v. Indian Tobacco Association**
AIR 2005 SC 3685

. After referring to dictionary meaning of 'substitute', it is held that, by reason of the aforementioned amendment no substantive right has been taken away nor any penal consequence has been imposed. Only an obvious mistake was sought to be removed thereby. There cannot furthermore be any doubt whatsoever that when a person is held to be eligible to obtain the benefits of an exemption notification, the same should be liberally construed. In para 16, relying on *Ramkanali Colliery vs. Workmen by Secy., Rashtriya Colliery Mazdoor Sangh* [(2001) 4 SCC 236], it is observed that, it is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is used. Such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision. In our view there is thus

no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind, we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced.

3. **Shamrao Parulekar v District Magistrate
AIR 1952 SC 324**

With reference to Section 3 of Preventive Detention Act, 1952, Justice Vivian Bose observed in his inimitable style & clarity,

When a subsequent Act amends an earlier one in such a way as to incorporate itself or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that there is no need to refer to the amending Act at all.

Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act, or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used.

4. **Hassan Co-op. Milk Producers v State of Karnataka (WA 734/2014 & Ors. decided by Full Bench, Karnataka High Court).**

. In this case, the issue was whether Section 28(A-4) Karnataka Coop Societies Act as substituted by Amended Act 11.02.2013 is prospective or retrospective in nature. After referring to the above referred Apex Court's judgments, it was held that, Section 28(A)(4) shall be retrospective in operation and the members of the Board shall continue to hold the office till expiry of five years.

5. **Commissioner of Income Tax v. Shah Sadiq**
AIR 1987 SC 1217

It deals with the provisions of saving and repeal but it is not applicable to the present case.

6. **Hussain Ali Panjwani v Board of Trustees of Bombay**
2017(5) Bom.C.R. 139, decided by Division Bench at Principal Seat of this Court on 13.06.2017.

It was held that, the jurisdiction of Small Causes Court to decide suits filed by the trust which are pending on the date of amendment is not lost in view of Section 15 of the Public Premises Eviction Act by which the jurisdiction of small cause court is ousted and it is vested with Estate Officer. It was held that Small Causes Court would continue to have jurisdiction to decide the suits filed earlier.

7. **Uttam Steel Ltd. v Union of India 2004 (1) Mh.L.J. 497**, decided by the Division Bench at the Principal Seat of this Court.

In this case, the Court was considering the effect of amendment Section 11(B) to Central Excise Act, 1944. It provided a period of one year and six months for rebate claims. It was held that, the change in procedural law would be applicable retrospectively so as to cover all the cases falling within the altered period of limitation. It was held that, the amendment was enabling and expanded remedy period. In other words, even if the amendment is not to have retrospective effect, it would nevertheless have retroactive effect and in that view of the matter, the case of the petitioner's would be covered within the amended period of limitation.

8. **Ramdas Laxman Khesar V. State of Maharashtra (WP No. 7847 of 2011)** decided by the Division Bench of this Court on 29.10.2015) to which one of us (S. V.Gangapurwala, J.) was a member. It was dealing with the recruitment rules framed on 22.12.1988 giving retrospective effect from 01.04.1981. Referring to Section 6 of the General Clauses Act, it was observed that,

70. The expression "unless a different intention appears" contained in Section 6 of the General Clauses Act, thus, in this case, would be clearly attracted. A right whether inchoate or accrued or acquired right can be held to be protected provided the right survives. If the right itself does not survive and either expressly or by necessary implication it stands abrogated, the question of applicability of Section 6 of the General Clauses Act would not arise at all. [See *Bansidhar and Others v. State of Rajasthan*, (1989) 2 SCC 557 and *Thyssen Stahlunion GmbH v. Steel Authority of India Ltd.*, (1999) 9 SCC 334].

9. ***Shripatrao Dajisaheb Ghatge v State of Maharashtra***
AIR 1977 Bombay 384 (Full Bench).

In this case, the Court was considering the impact of amended Article 227 of the Constitution of India on the pending petitions filed under the same provision. After elaborate discussion, referring to various case laws, it was held that the Judicial Superintendence under the amended Article 227 certainly covers the judgments of all the Courts, Tribunals, Bodies or Authorities provided, such Tribunal, Body or Authorities basically a court i.e. it performs judicial function and be such Tribunal, Body or authority subject to High Court appellate or revisional jurisdiction.

30. The principles of interpretation of statute are well settled. Normally, the court has to interpret the statute as per the literal meaning of the words used. The words are to be understood as they are used in the light of the object of the enactments. The statutes and the amendments are prospective in nature. However, the amendments in the form of declaratory nature or the amendments effected for substitution of the original provisions have to be construed as applicable from the date of the earlier provisions. Till the introduction of the amendment, the old provision will prevail, but

from the date of amendment, the old provision will no more exist and will not govern anybody.

31. In the present case, the old provision provided for condition to pass out 1st year BDS within three years. Those who have not passed out 1st year BDS examination within three years before the amendment dt. 27.04.2015 will be governed by the old provisions and will have no right to take advantage of the new provisions. However, the students who are studying in 1st year BDS and have failed one or two times but have not yet completed period of three years before amendment will be entitled to benefit of amended provisions. If on the date of amendment, they are still studying without completion of period of three years of 1st year BDS they will be governed by the amended provisions which are in the nature of substitution.

32. The old provisions will become non-existent. The petitioners in this case belong to this category. They have joined the college in September-2014 and were still in BDS on the date of amendment on 27.04.2015 but they have not completed period of three years in first year BDS. Thus, they were not disqualified under

the old provisions. We therefore hold that their subsequent failure to complete first year BDS in a period of three years from the date of their admission will not affect their right of pursuing the studies. They will be governed by new provision which provides that they will have to complete the entire course including internship within a period of nine years. The amended provision will be applicable to all students studying B.D.S. Course as on 27.04.2015 if they were not cleared or disqualified earlier as per old provision.

33. It is axiomatic that, the students who have completed first year BDS within a period of less than three years before introduction of amendment dt. 27.04.2015, would not be further subjected to new condition that the entire course will have to be completed by them within nine years. DCI in communication dt.28.04.2017 has rightly clarified that, the students who have fulfilled earlier condition will not be subjected to fulfill another condition.

34. The Secretary to DCI in communication dt. 19.01.2016 based on discussion and deliberation with the members of DCI has taken a stand that the students who have joined before 27.04.2015 would be governed by the old provisions. This stand is contrary to the basic rules of interpretation of statutes as explained in various supreme court rulings. Merely because the petitioners had joined

BDS course on 01.09.2014, they will not be continued to be governed by the old provision which in view of the substitution is no more in existence. Therefore, the said communication will not affect the interpretation of the amended provisions. Similarly, the communication dt. 06.11.2017 made by Maharashtra University of Health Sciences, Nashik, based on the communication by DCI holding the present petitioners as ineligible for the examination of Winter-2017, is not sustainable and needs to be quashed.

35. In the light of the above findings, we allow the writ petitions and direct respondents no. 3, 4 & 5 to allow the petitioners to prosecute their BDS course and to appear for the examinations to be held without considering the time limit fixed before the amendment dt. 27.04.2015 but subject to the time limit fixed by amendment dt. 27.04.2015. We direct the respondents not to cancel the admissions of the petitioners by applying the provisions of time limits as per provision existing before the amendment.

36. We hereby quash the communication made by DCI to all the Principals of Dental Colleges/Institutions in the country vide letter dt. 19.01.2016 so far it is inconsistent with the above findings

and communication dt. 06.11.2017 issued by respondent No. 4 – University to respondent No. 5 – college thereby returning the examination form of the petitioners.

37. Rule is made absolute in the aforesaid terms. No order as to costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde