

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4269 OF 2023
KIMAYA UTTAM DHUMALE
VERSUS
UNION OF INDIA THROUGH ITS SECRETARY AND
OTHERS

...

Advocate for the Petitioner : Shri Tushar C. Shinde
Advocate for Respondent 2 : Shri S.K. Kadam
Advocate for Respondent 3 : Shri S.P. Brahme

...

CORAM : RAVINDRA V. GHUGE

&

SANJAY A. DESHMUKH, JJ.

DATE :- 13th April, 2023

Per Court :-

1. The Petitioner is before this Court with prayer
clauses B, C and D as under:-

- “B) By issue of writ of mandamus or any other appropriate writ, the respondents may kindly be directed to consider granting an additional attempt to the petitioner for First Professional University Examination (MBBS).*
- C) By issue of appropriate writ or order, the respondents may kindly be directed to grant an additional attempt to the petitioner to appear for First Professional University Examination (MBBS).*
- D) Pending hearing and final disposal of the writ petition, the petitioner may kindly be allowed to appear for the First Professional University Examination (MBBS), scheduled to be conducted in June-2023.”*

2. The learned Advocate for the Petitioner submits that

the Petitioner got admitted in the MBBS course in the academic year 2019-2020. Two semester examinations are conducted in one year. Her first attempt was in December, 2020. Her second attempt was in June, 2021. Her third attempt was in March, 2022 and her fourth attempt was in July, 2022. By communication dated 28.09.2022, she has been informed by the Maharashtra University of Health Sciences, Nashik, that as she has taken the maximum four attempts and there is no attempt available in view of clauses 11.2.6 and 11.2.7 of the Regulation on Graduate Medical (Amendment), 2019.

3. The learned Advocate for the Petitioner submits that earlier there were eight attempts permissible and in view of the 2019 amended Regulation, the attempts were reduced to four. He, therefore, submits that since some of the students in the Ayurved Colleges were given mercy attempts and additional attempts owing to the Covid-19 pandemic, this Court may grant mercy to the Petitioner and permit one more attempt.

4. The learned Advocates representing Respondent No.2/ National Medical Commission and Respondent No.3/University, submit that the amended Regulations of 2019 were challenged before the Delhi High Court in Writ Petition

No.13180/2022. By the judgment of the Delhi High Court dated 17.11.2022, the challenge was turned down. The Petitioners, Sachin and others, approached the Honourable Supreme Court in Petition for Special Leave to Appeal (Civil) No.22716/2022 and the Honourable Supreme Court dismissed the said SLP as well as other Writ Petitions that were filed directly challenging the 2019 Regulations, by order dated 10.02.2023.

5. Considering the above, we do not find that it would be appropriate for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to grant a mercy attempt to the Petitioner when the rules specifically do not provide for such attempt.

6. We are informed that the Ayurved students were given such opportunity since there was a provision which permitted a mercy attempt and even after exhausting the mercy attempts, they were granted another opportunity. This was in the light of the 2016 Regulations.

7. In view of the above, this Writ Petition sans merit and is, therefore, dismissed.