

22.03.2024
Item No. 11
Court No.11
Avijit Mitra

MAT 492 of 2024
with
CAN 1 of 2024

The West Bengal University of Health Sciences & ors.
-Versus-
Nilanjana Chattopadhyay alias Nilanjana Chatterjee.

Mr. R. Chowdhury,
Mr. D.N. Maiti,
Ms. A. Singh
...for the appellants
Mr. Sahasrangshu Bhattacharjee,
Mr. Loknath Chatterjee
...for the writ petitioner/ respondent

The present appeal has been preferred by the West Bengal University of Health Sciences (in short, the said University) and its functionaries challenging an order dated 19th February, 2024 passed in a writ petition being WPA 3536 of 2024. By the said order the writ petition was disposed of with a direction upon the University to allow the writ petitioner/respondent herein to take her supplementary Pathology examination on the scheduled date. It was further directed that the writ petitioner would also be entitled to sit for the 3rd Professional (Part-I) Examination without the result of the supplementary examination in the Pathology Paper being published.

The respondent's case in the writ petition was that she is a student of Calcutta National Medical College,

Calcutta (in short, the said College) and is pursuing her MBBS Course under Physical Disabled person category. She successfully completed the first year MBBS course. She was, however, unable to obtain pass marks in the subjects of Pathology and Micro Biology in the 2nd Professional Examination. She was allowed to participate in the supplementary examination to pass the said subjects. She succeeded in the Micro Biology paper. However, she was unsuccessful in the Pathology paper and as such she was not being allowed to participate in the 3rd Professional (Part-I) MBBS Examination scheduled on and from 1st April, 2024. Aggrieved thereby, the writ petitioner filed the writ petition.

Mr. Chowdhury, learned advocate appearing for the appellants submits that the entire MBBS course is conducted on the basis of the regulations of National Medical Commission (in short, the said Commission) wherein it has been categorically stated that a candidate unsuccessful in the 2nd Professional Examination shall not be allowed to appear in the 3rd Professional MBBS (Part-I) Examination. The respondent is yet to pass in the Pathology subject through the supplementary examination. In view thereof, the learned single Judge erred in law in passing the order impugned.

He further argues that the writ petitioner in fact would not be prejudiced in any manner. She has already appeared in the theoretical paper of Pathology in the

supplementary examination and her practical examination commences from 1st April, 2024. As per the guidelines, if she emerges to be successful in the said supplementary examination, she would be entitled to appear in all the subjects of the 3rd Professional (Part-I) Examination, which would again be conducted in the month of July, 2024. Even if a candidate fails to appear in the 3rd Professional (Part-I) Examination, he/she would be allowed to join the 3rd Professional (Part-II) training and as such there would be no break in her studies.

Per contra, Mr. Bhattacharya, learned advocate appearing for the writ petitioner/respondent submits that by a notice dated 13th September, 2023 the date of 2nd Professional MBBS Examination in the theoretical paper of Pathology was fixed on 19th March, 2024 and 20th March, 2024. In the said notice, it was also stated that oral and practical examination will commence on 1st April, 2024. Subsequently, by a notice dated 28th December, 2023 the University revised the dates of 3rd Professional (Part-I) Examination and scheduled the same on and from 1st April, 2024. For such preponement and revision of the said examination schedule, the respondent had been prejudiced and as such the learned single Judge has rightly directed the University to allow her to appear in the 3rd Professional (Part-I) Examination without her result in the supplementary examination of Pathology being published moreso when a candidate cannot suffer

for the administrative lapses on the part of the said University.

He further argues that unless the respondent is allowed to appear in the 3rd Professional (Part-I) Examination scheduled on and from 1st April, 2024 she would be deprived of an opportunity to pass the subjects pertaining to the 3rd Professional course.

In reply, Mr. Chowdhury, submits that the direction of the learned single Judge, if not interfered with, would severely prejudice the University since on the basis of the order passed in respect of this candidate, the University would have to allow all the candidates, who have not passed the supplementary examination.

He however, upon instruction, submits that the writ petitioner would not be prejudiced in any manner since after emerging to be successful in the supplementary Pathology examination she would be allowed to appear in the said next 3rd Professional (Part-I) Examination, which is scheduled in the month of July, 2024. She would also be allowed to join 3rd Professional (Part-II) Training. Let the written instruction, as produced, be kept on record.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the guidelines of the said Commission provide that a candidate has to pass in all the subjects of

2nd MBBS course to be eligible to participate in the 3rd Professional MBBS Examination. The respondent has not yet passed the supplementary examination in the subject of Pathology. She has appeared in the theoretical paper in Pathology on 20th March, 2024 and the practical examination is due to commence on and from 1st April, 2024. Upon successful completion of the Pathology paper, she would again be allowed to appear in the 3rd Professional (Part-I) Examination scheduled to be held in the month of July, 2024. She would also be allowed to join the 3rd Professional (Part-II) Training. In the said conspectus, the direction of the learned single Judge that the respondent would be entitled to sit for the 3rd Professional (Part-I) Examination without the result of her supplementary examination in the Pathology being published, is not sustainable in law and accordingly, the order impugned in the present appeal is set aside and the appeal together with connected application are, disposed of.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)