

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.16699 OF 2024

Ms Samruddhi Sundeep Amberkar)
Age: 22 Years, presently residing at)
1/12, Malhar Society, K. C. Road,)
Bandra Reclamation (West), Mumbai-400050) .. Petitioner

Versus

Controller of Examination of Maharashtra)
University of Health Sciences, Nashik)
Mhasrul, Vani Dindori Road, Nashik – 422004)
having its Corporate Office at St. Georges,)
Hospital Compound, 3rd Floor, Near CST,)
Mumbai – 400001) .. Respondent

Mr. A. Y. Sakhare, Senior Advocate a/w. Mr. Ashok R. Punde & Mr. Shobit Shukla, Advocates for the Petitioner.
Mr. Ashutosh Kumbhakoni, Senior Advocate a/w. Mr. Sachindra B. Shetye, Mr. Akshay Panasare, Ms. Vrushali Ghevade, Advocates for the Respondent - MUHS

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATED : 17th APRIL 2025

JUDGMENT (Per M. M. SATHAYE, J):

1. Rule. Learned Counsel for the Respondent waives service. Rule made returnable forthwith. Heard finally by consent.
2. By this Petition under Article 226 of the Constitution of India, the

Petitioner, a final year M.B.B.S. student is seeking direction to the Respondent, a health university established under the Maharashtra University of Health Sciences Act, 1998 ('the said Act' for short) to issue corrected marksheet of the Petitioner for Winter 2023 exam, by deleting earlier marks of practical exam of Obstetrics and Gynaecology ('OBGYN' for short) and to replace the same by marks scored by her in the exam conducted on 07/06/2024. The Petitioner is also seeking directions to remove the word "Supplementary Exam" from the corrected marksheet of the Petitioner for the Winter 2023 exam. A direction is also sought to retain OBGYN theory marks of the Petitioner as shown in marksheet of Winter 2023 and not the theory marks of Summer 2024 exam. Further direction is sought for correction in roll number and showing the Petitioner as "pass" in all subjects of Winter exam including practical exam of OBGYN.

3. The case of the Petitioner in short is as under. The Petitioner was pursuing her M.B.B.S. course from K. J. Somaiya Medical College and Research Center. She passed all exams of M.B.B.S. course i.e. 1st M.B.B.S., 2nd M.B.B.S. and 3rd M.B.B.S. (Part I) in first class, first attempt. She was admitted to 3rd M.B.B.S. (Part II) which has a compulsory subject of OBGYN. It is alleged that her attendance for the said subject was wrongly calculated, which was pointed out to the Head of the Department - Dr. Sonawane, who took it as a challenge to his authority and as a result, failed the Petitioner in practical exam of the said subject. The Petitioner appeared for Winter 2023 exam of 3rd M.B.B.S. (Part II) in the month of January-February 2024 and successfully passed both theory and practicals of all other subjects in first attempt except the said subject - OBGYN practicals. According to the Petitioner, this was a result of vindictive act of the said head of the

department, who was the internal examiner. Being aggrieved by the same, she complained to the Respondent–University requesting for an inquiry. Internal committee of the college was appointed, who gave report against the Petitioner. Therefore, 2nd committee was appointed by the Respondent–University, which observed that inquiry was conducted without hearing the Petitioner.

4. In these circumstances, the Petitioner filed first Writ Petition being W.P.No. 6837 of 2024 before the Vacation Bench of this Court, who directed under order dated 30/05/2024 that practical exam of the Petitioner in OBGYN for M.B.B.S.-3rd year-part-II be conducted at different examination center on or before 06/06/2024. It was further directed that result of the exam be submitted to the Court and shall not be publicly declared. The Respondent filed Special Leave Petition (SLP) in the Hon'ble Apex Court against the said order of Vacation Bench, however by order dated 07/06/2024, the Apex Court declined to interfere, keeping the question of law, if any, open. After the dismissal of SLP, the Respondent conducted practical exam of the Petitioner on 07/06/2024 and tendered Petitioner's result in a sealed envelope to the Court on the subsequent hearing on 13/06/2024. This Court by order dated 13/06/2024, found that the Petitioner has secured more than passing marks (133 out of 200 i.e 66.5%) in the practical exam. Therefore it was not felt necessary to undertake any further consideration of rival contentions and therefore it was directed that marks secured by the Petitioner in practical exam conducted on 07/06/2024 be treated as marks secured by her in 2nd term practical examination in the said subject of OBGYN. Corrected marksheet was directed to be issued and it was further directed that on declaration of said results, all necessary

consequences would follow. The said order clarified that it will not be treated as a precedent and all contentions of the Respondents were kept open.

5. The Respondent thereafter issued revised marksheet, which revealed that the Petitioner was shown passed in “supplementary exam”, which means passing in 2nd attempt. The marksheet also contains an endorsement that the result is subject to decision in the Appeal to be filed before the Supreme Court against the order dated 13/06/2024. Therefore, the Petitioner aggrieved again, by the use of word “supplementary” as well as the said endorsement has approached this Court by filing present Writ Petition.

6. Learned Senior Advocate Mr. Sakhare appearing for the Petitioner, submitted that the Respondent has adopted adamant approach and the Petitioner is being harassed. He submitted that use of word “supplementary” on the marksheet seriously prejudices her career prospects in as much as the Petitioner will be branded as a repeater student when all throughout she has performed well and cleared subjects in first attempt, however, for the last year part-II, only for the subject of OBGYN, she was required to appear again for practical exam. He submitted that the Respondent-University and its authorities have not considered the order of this Court dated 30/05/2024 which directed the Respondent to take a exam of the Petitioner on 06/06/2024 when supplimentary exams were scheduled thereafter. He submitted that the Court had not directed the exam of the Petitioner as repeater. He submitted that the marksheet as issued to the Petitioner is against the directions of this Court if the orders dated 30/05/2024 and 13/06/2024 are read conjointly in proper perspective. He submitted that

since the Petitioner appeared for separate exam under the order of Court, she has to be treated as giving first attempt and not as repeater. It is also submitted that only because of the Petitioner's complaint against the Head of the Department, who failed her in the 1st attempt, that this situation has arisen and therefore the word "Supplementary" must be removed from the marksheet. He also pointed out that the endorsement of result being subject to the Appeal being filed in the Supreme Court is unwarranted in as much as so far no notice is received of such Appeal.

7. On the other hand, learned Senior Advocate Mr. Kumbhakoni appearing for the Respondent-University, at the outset submitted that the Respondent is removing the endorsement from the Petitioner's marksheet about the result being subject to Appeal to be filed in the Supreme Court. He submitted on instructions that in fact fresh marksheet without such endorsement is already issued. He submitted that the Respondent-University has nothing against the student, however the University is worried about the pattern being observed recently adopted by students of approaching the Court parallelly with appearing in exams by filing necessary forms and then turn around as seek orders from the Constitutional Courts to bend the Rules. He also expressed concerns over recent trend of asking for declaration of result by clubbing results of two different exams, which is against the Rules. He submitted that under the latest policy and applicable rules, in order to save precious academic years of the students, Rules provide for 'supplementary exam' which is conducted within 90 days of the result of the main exam. Inviting our attention to the repeater form filled by the Petitioner on 05/04/2024 (page 122-125), it is contended that the same is filled by the Petitioner as a repeater and after due counseling of the

Petitioner and her parent and the said form bears the signatures of the Petitioner as well as her parent. He submitted that the Petitioner has attended the supplementary exam without any protest. He submitted that the present petition as well as earlier the earlier petition filed by the Petitioner are nothing but chance litigation. He pointed out that in fact the Petitioner has performed better in the supplementary exam, because earlier she had scored total 119 marks, however, in supplementary exam she had scored 268 marks. He submitted that orders of this Court are being misinterpreted. He submitted that if the Petitioner's contention is accepted of treating her exam on 07/06/2024 as first attempt, it will be open floodgates and more and more students would opt for such method of parallel actions of silently following procedure and appearing in the exam and pursuing the litigation at the same time. He submitted that such trend should not be encouraged. Lastly, he submitted that a *writ of mandamus* cannot be issued by the Court directing any authority to break the rules. He prayed for no interference.

8. Mr. Sakhare, learned Senior Counsel, in rejoinder submitted that this Court must give proper meaning to its earlier orders and the exam attended by the Petitioner under order of the Court must not be treated as supplementary.

9. We have carefully considered the rival submissions and perused the records with the assistance of the learned Counsel for the parties.

10. At the outset, it must be noted that the Petitioner and her parent, after due counseling, and as a matter of conscious decision, have filed application on 05/04/2024 for supplementary exam. Perusal of the said application

indicates that it is signed by the Petitioner and her parent. Petitioner is an aspiring medical professional and not an illiterate person. She understands effect of signing a document. The said application clearly indicates that the Petitioner had opted to appear as a repeater. We also note that when the first order of Vacation Bench was passed on 30/05/2024, the Petitioner had already opted on 05/04/2024 for appearing as a repeater. At least from the order dated 30/05/2024 it cannot be gathered that this fact was brought to the notice of the Court. Nothing is shown to us to suggest that supplementary exam was taken under protest. We note that under the present applicable Rules, since the supplementary exam is conducted within 90 days from the result of the main exam, indeed, students get an opportunity of saving their precious academic year. Viewed in this angle, the Petitioner has opted for this benefit and has in fact scored better than the main exam of OBGYN and has undisputedly saved her academic year.

11. It is not seen from both the earlier orders dated 30/05/2024 and 13/06/2024 passed by this Court in earlier round of litigation, that this Court had even remotely indicated that the Petitioner was to appear for the exam 'in place of original exam' and therefore to be treated as 'first attempt student'. The order also does not indicate whether the Petitioner was permitted to appear for exam as a repeater. In such circumstances, fact that she attempted second time will prevail. We further note that Hon'ble Supreme Court while confirming the order of 30/05/2024 passed by the Vacation Bench of this Court, has kept the question of law, if any, open. We further note that under order dated 13/06/2024, this Court has clarified that all contentions of the Respondents are kept open and it is not to be treated as precedent. This order also does not indicate that the Petitioner's

marks were interpreted by this Court as first-attempt marks. Therefore, on the conjoint reading of the orders, as indicated above, we are unable to accept the submission on behalf of the Petitioner that the Petitioner's appearance on 07/06/2024 under order of the Court must be treated as 'first attempt' and therefore word "supplementary" must be removed.

12. We have perused the definition of "Repeater Student" under Clause 2(viii) of Conduct of Examination and Use of Unfair Means at an Examination Regulations, which indicates that repeater student means a candidate, who is once admitted to an examination of the university, is again required to take the same examination by reason of his failure or absence and shall include a candidate who may have joined the institute again in the same class. We note that this definition does not have any reference or connection to 'the reason why' the student failed or remained absent or joined again in the same class. Therefore notwithstanding the dispute as raised by the Petitioner that she was failed by the Head of the Department on purpose, the Petitioner can not escape the said definition. Therefore we cannot issue a Writ of Mandamus, directing the Respondent to not follow the applicable definition under Rules and treat the Petitioner in breach thereof.

13. In any case, the basis of the dispute as raised by the Petitioner that the particular Head of the Department has acted with vengeance or has treated the Petitioner's action as a challenge to his authority and therefore failed her, are in realm of disputed questions of facts and therefore we cannot adjudicate the same in the writ jurisdiction. For the same reason, the argument that the repeater form was not filled voluntarily and it is filled as per procedure under compulsion also can not be considered. The Petitioner is at liberty to adopt appropriate proceedings against the concerned person

or Institute in accordance with law for redressal. All contentions on merits in that regard are kept open.

14. Before parting, we must note that the concern expressed by Mr. Kumbhakoni, learned Senior Counsel for the Respondent-University requires consideration. We find that students are increasingly approaching the Constitutional Courts raising grievances and disputes between them and the Institute, ultimately praying for writs and orders against the University. We may remind the students and ourselves that one of the statutory objects of the Health University under Section 4(b) and 4(f) of the said Act is to promote discipline and to help younger generation to develop right attitudes, interests and values. We can not issue a writ directing the authorities to breach their Rules, as is well settled and highlighted by the Hon'ble Supreme Court in para 17 of the judgment in **Maharshi Dayanand University Vs. Surjeet Kaur (2010) 11 SCC 159**. The tendency to follow the procedure and sign on the required forms under Rules on one hand, by an educated student, and challenging the same simultaneously by filing a writ petition in this Court contending the same to be involuntary and under compulsion, concerns us.

15. In the aforesaid facts and circumstances, we do not find any reason to interfere in the writ jurisdiction under Article 226 of the Constitution of India. The Petition is accordingly dismissed with no order as to costs.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)