

# RAJASTHAN HIGH COURT

Sushma Choudhary

Vs.

State of Rajasthan

Civil Writ Petn. No. 4659 of 2000

(Bhagwati Prasad, J.)

23.01.2001

## ORDER

### **Bhagwati Prasad, J.**

1. The present petitioners are students of Dr. S. N. Medical College, Jodhpur and are studying at Jodhpur. They have joined the M.B.B.S. Course on 8-10-1998. While they took up their Ist Year M.B.B.S. examination, they obtained supplementary. Their result of Ist Year M.B.B.S. was declared on 4-5-2000. Supplementary examinations were held from 19th July to 8th August, 2000 and their result of supplementary examination was declared on 15-11-2000. All the petitioners were declared successful.

2. The case of the petitioners is that the respondents are denying them opportunity of sitting in the IInd M.B.B.S. because the petitioners have passed the supplementary examinations late. The case of the petitioners is that the stand of the respondents is incorrect. Regulation 7(7) of the Regulations on Graduate Medical Examination, 1997 (referred to hereinafter as 'the Regulations') clearly states that the supplementary examination may be conducted within 6 months. Regulation 7(7) of the Regulations reads as under:-

" (7) Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year."

3. The purport of the above-quoted Regulation 7 is clear and unambiguous that the supplementary examination may be conducted within 6 months of the last result. Such result having been declared and purpose for conducting such examination within six

months is to permit the students who pass to join the main batch. Those students who have failed in the supplementary examinations will have to appear in the subsequent year. The case of the petitioners is that in terms of Regulation 7(7) of the Regulations the supplementary examinations were conducted within 6 months i.e. in July and August, 2000 after the result of the main examination was declared in the month of May, 2000. The result of the supplementary examinations has been declared on 15-11-2000. This declaration of the result cannot be considered to be of any consequence because it is not the declaration of the result which is of any consequence in terms of Regulation 7(7) of the Regulations. Regulation 7(7) of the Regulations provides that the supplementary examination may be conducted within 6 months. Such conducting of the examination within 6 months is with a view to permit such students to keep the term. Such examinations having been held within two months of the declaration of the result of the main batch should be treated to be an examination under Regulation 7(7) of the Regulations and, therefore, the petitioners should be permitted to appear in IInd M.B.B.S. with the main batch. The respondents are denying the opportunity to the petitioners to appear with the main batch illegally and such cannot be permitted to happen.

4. Learned counsel for the petitioners has further submitted that the 1997 batch examinations were required to be held in terms of the Regulations of 1997. Because in terms of the University Letter and Medical Council of India Circular, these Regulations have come in vogue in the year 1997 itself. The respondents are making misuse of these Regulations according to their own convenience. Vide Ex. 2 the 1997 batch has been permitted to be treated as a special case and the Vice-Chancellor has condoned the delay. In the present case, there is no delay. Regulation 7(7) of the Regulations provides that the supplementary examination should be held within 6 months and they have been held within 6 months and the petitioners have passed the supplementary examination. In this view of the matter, the respondents cannot contend that the stand of the petitioners is incorrect.

5. The respondent-University has neither filed a reply nor has explained as to why the 1997 batch has been treated to be a special category batch. These Regulations had come into force from the year 1997. They were to be applied with the same rigor in the year 1997, as in 2000. The respondent-Medical College has filed a reply and has contested the case of the petitioners. It has been contended that the petitioners cannot be permitted to take up the IInd M.B.B.S. course because before that passing in the Ist

professional is necessary in terms of Regulation 7(8)(a) of the Regulations, which reads as under:-

"(a) Passing in Ist Professional is compulsory before proceeding to phase II training."

6. Regulation 7(8)(a) provides that before passing the Ist Professional, the students cannot be permitted to take up the IInd Professional. Since in the instant case the result of the petitioners was declared in the month of November, 2000, therefore, they had lost 6 months studies which cannot be completed and unless the petitioners complete the requisite classes and the term is completed, they cannot be permitted to take up the examination as contended by them. The eligibility for entering into phase IInd is that the Ist phase examination is clear. In the instant case, the petitioners have cleared the Ist phase only in the month of November, 2000 by which time the period of more than 6 months has elapsed. Therefore, they cannot be permitted.

7. Counsel for the respondents has relied upon a Supreme Court decision rendered in the matter of *Maharshi Dayanand University v. Dr. Anto Joseph*, reported in <sup>1</sup>

8. I have considered the rival submissions and have given my thoughtful consideration to the submissions raised by the counsel for the parties.

9. The statement of law as has been contained in the case decided by the Hon'ble Supreme Court in the matter of *Maharshi Dayanand University* (supra) is clear and unambiguous. The Regulations of the Medical Council of India are binding and the University and the Colleges should not be permitted to flout easily. In the instant case, the respondents have with impunity flouted the Regulations in relation to 1997 batch as has been contained in Ex. 2. By merely writing that the Vice-Chancellor has permitted is no ground to do away with the Regulations and the respondents should be made to adhere to the calendar provided by the Medical Council of India and the Medical Council of India should devise a mechanism that the University and the Colleges should not be permitted to flout the Regulations.

10. The present case appears to be a case where the respondents have flouted the Regulations. Regulation 7(7) of the Regulations provides that as and when a student

gets supplementary the supplementary examinations should be conducted within 6 months. This has been provided that if a student fails in the supplementary examination, he should be made to appear in the next year examination but if he passes then the student can join the main batch. (Emphasis added). Thus, the Regulation 7(7) of the Regulations is clear and unambiguous that the supplementary examinations may be conducted within 6 months.

11. The holding of supplementary examination within 6 months is with an intention to permit the student to join the main batch. This was provided under the Regulations. Denial to the petitioners to keep the term is an obvious attempt to flout the Regulations.

12. The respondents have contended that the result of the main examination was declared in May, 2000, the supplementary examinations were held in July and August, 2000 and the result of the supplementary examination was declared in November, 2000. Therefore, the petitioners have taken more than 6 months in clearing the examination. The stand of the respondents is fallacious.

13. When in the month of May the petitioners were declared to have supplementary in some subjects, the supplementary examinations were conducted in the months of July and August, 2000. If the respondents have not declared the result of the supplementary examinations until November, 2000 then it cannot be said that it was the petitioners who are contributory to the delay. After taking the examination as held by the respondents, the petitioners, could not have done anything to get their results declared.

14. The seriousness attached by the respondents in contesting the present writ petition should have also been shown by them while declaring the result of the supplementary examination. There was no reason as to why the result of the examinations which have been concluded in the month of August, 2000 was not declared upto November, 2000. For late declaration of the result of the supplementary examination the petitioners cannot be made to suffer on account of the inability and inefficiency of the respondents. The petitioners in terms of the Regulation 7(7) of the Regulations were provided an opportunity. Such opportunity has been availed by them and they have been declared to be successful. This being the position, the interpretation given by the respondents is not the construction/interpretation which can be said to be one, which gives the Regulations their true meaning.

15. Regulation 7(7) of the Regulations is clear and unambiguous. The holding of supplementary examination is for the purpose that the passers can join the main batch. That being the position, the respondents took up the examination within 2 months of their main examinations. The respondents have failed to declare the result of the supplementary examination expeditiously, for which the petitioners cannot be penalized.

16. In this view of the matter, the action of the respondents cannot be permitted to stand. The petitioners are entitled to receive a direction in their favour that they should be permitted to keep the term and for facilitating the same the respondents are directed to make all necessary arrangements to permit the petitioners to complete their studies so as not to make them to suffer qualitatively in their studies.

17. In this view of the matter, the writ petition is allowed. The action of the respondents in not permitting the petitioners to appear in IInd M.B.B.S. is declared to be one opposed to Regulation 7(7) of the Regulations.  
Petition allowed.

Cases Referred.

1. (1998) 6 SCC 215