

**PESHAWAR HIGH COURT PESHAWAR**

Form "A"

**Order Sheet**

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
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27.04.2023	<p><b><u>Writ Petition No. 3058-P/2022 with IR with CM No. 758-P/2023.</u></b></p> <p>Present:</p> <p>Petitioners, Farooq Hassan, Afraz Khan &amp; Munawar Khan in person.</p> <p>Mr. Abdul Munim Khan, advocate for the respondents-KMU.</p> <p>*****</p> <p><b><u>ABDUL SHAKOOR, J.-</u></b> Through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioners, Zain Khan &amp; others have prayed to this Court for issuance of a writ to the following prayer:-</p> <p>“In view of the submissions made above, it is most respectfully prayed that the petition may kindly be allowed in terms that suit may kindly be decreed in favour of the petitioners while granting the petitioners are students of third year and second year (MBBS) and are entitled to appear for the final as well as supply examination as stated in the body of the petition. Furthermore, the respondents be directed that either Special Supply examination be conducted / arranged for the students before the final examination that is to be held in November-December 2022 or the students be permitted to appear in</p>



their supply papers in the final examination cited above and in the papers of their current sessions (third year or second year as the case may be) in the supply examination that is to be tentatively conducted in March, 2023 which will not only be in consonance with the rules but will also save the previous year of the applicants alongwith the enormous expenses incurred on their education by their families.”

2. In essence, the petitioners claim is that they are entitled under the law to appear in a re-take examination, and to be promoted to the next higher class despite being failed in the subjects / papers and; prayed for issuance of a direction to the respondents qua arrangement of a re-take examination for their failed subjects / papers as well as promotion to the next higher class without detaining them.

3. Comments were called for from the respondents which they furnished and opposed the issuance of the desired writ.

4. Arguments heard and available record gone through.

5. Before going further to discuss merits of the case, it is pertinent to mention that first part of the petitioners' prayer had become infructuous

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vide order sheet of this Court dated 22.12.2022 and for conduct of supplementary examinations for the sessions under which each petitioner is required to pass the same, the petition was adjourned sine die and after conduct of the examinations an application bearing No. 553-P of 2023, was moved for its restoration and vide order dated 16.03.2023, same has been restored.

6. Record shows that the petitioners are the students of 1<sup>st</sup> and 2<sup>nd</sup> professionals of various Medical Colleges and have failed their respective subjects / papers in the annual examinations as well as in the Supplementary Examination 2021. During pendency of the petition, except four petitioners-candidates of 2<sup>nd</sup> Professional MBBS, rest of them have passed their failed subjects / papers in the annual examinations for the sessions 2022 and now claims to sit in the forthcoming supplementary examinations of 2<sup>nd</sup> / 3<sup>rd</sup> year Professional MBBS, scheduled to be held in the months of March and May, 2023. In order to appreciate as to whether the petitioners are entitled to appear / sit in the forthcoming



supplementary examinations of 2<sup>nd</sup> / 3<sup>rd</sup> Professional MBBS, we feel it highly pertinent to reproduce the relevant clauses of the Khyber Pakhtunkhwa University Examinations Regulations, 2017 as under:-

**Clause. 3.** A student shall be eligible to appear in a professional examination if he / she fulfill the following conditions.

- (a) Has passed all the subjects of the previous examination.
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) Any student who fails to clear the 1<sup>st</sup> Professional MBBS examination in FOUR chances availed or un-availed after becoming eligible for the examination shall cease to become eligible for further medical examination in Pakistan.
- (g) Any student who fails to clear the 2<sup>nd</sup> Professional MBBS examination in FOUR chances availed or un-availed after becoming eligible for the examination shall cease to become eligible for further medical education in Pakistan.
- (h) Maximum of FOUR chances availed or un-availed will be allowed to a student to clear First Professional BDS Examination. If a student fails to pass First Professional BDS in stipulated FOUR chances, his / her name will be struck off from the college. He / she will be considered ineligible (to undertaken) BDS studies anywhere in Pakistan.

**Clause.5** Any student who fails both in annual and supplementary examinations in any subject of any Professional examination shall not be promoted to the next higher class. He / she shall undergo the course of studies in the subject(s) in which he / she failed. There will be no provisional promotion in such cases.

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**Clause.9.** Only two examinations, one Annual and one Supplementary of same professional are allowed in any one year. No third or extra supplementary examination is permitted.

7. Before appreciating the case of petitioners in the light of above regulations, we may mention here that petitioners Nasir-ud-Din, Siraj ud Din and Yama are the students of 1<sup>st</sup> Professional MBBS, wherein Siraj ud Din despite availing of four chances, could not qualify for higher class while the two have qualified and are eligible to be promoted to the next higher class i.e. 2<sup>nd</sup> year Professional MBBS. Whereas petitioners Zain Khan & others are the students of 2<sup>nd</sup> year Professional MBBS, wherein except petitioners Irum Jan, Sunny Kumar, Umar Adil and Ahmad Belal, have passed their 2<sup>nd</sup> year Professional MBBS examinations in three and four chances and their result of all papers was announced on 22<sup>nd</sup> February 2023, and they too become eligible for the next higher class i.e. 3<sup>rd</sup> Professional MBBS.

8. It is the contention of the petitioners that they while availing three / four chances for clearance of their 1<sup>st</sup> and 2<sup>nd</sup> Professional MBBS

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Examinations, for the purpose of their promotion to the higher classes, they have also attended the classes of 2<sup>nd</sup> / 3<sup>rd</sup> years Professional Examinations with permission of their respective colleges by paying the requisite fee to them and as such they have become eligible to appear in the forthwith coming supplementary examinations of 2<sup>nd</sup> / 3<sup>rd</sup> years Professional MBBS Examinations, which are scheduled to be held in the months of March and May 2023. We while appreciating clause.5 of the Regulations quoted above are of the view that a student who fails in both annual and supplementary examinations in any of the subject of Professional Examination shall not be promoted to the next higher class. From perusal of the record it is crystal clear that the petitioners have been declared unsuccessful in annual as well as supplementary examinations of the 1<sup>st</sup> / 2<sup>nd</sup> year Professional Examinations, therefore, they in view of clause-5 of the Regulations, in no event are entitled to be promoted to the next higher classes without completing their academic years of the 2<sup>nd</sup> / 3<sup>rd</sup> Professional. If the petitioners have been allowed by their respective colleges to attend the



classes of 2<sup>nd</sup> / 3<sup>rd</sup> Professional MBBS during the period when they were preparing for clearing the subjects of 1<sup>st</sup> / 2<sup>nd</sup> years Professional Examinations while availing 3/4 chances would not furnish them a right to appear in the forthcoming supplementary examinations of 2<sup>nd</sup> / 3<sup>rd</sup> years Professional MBBS since it was not allowed under clause-5 of the Regulations, 2017.

9. Petitioners cannot lay a claim to sit in the supplementary examinations of the 2<sup>nd</sup> / 3<sup>rd</sup> years Professional MBBS without completing the full academic course / year meant for 2<sup>nd</sup> / 3<sup>rd</sup> Professionals MBBS, as it is mandatory that they must complete the minimum threshold / criteria of lectures, demonstrations, tutorials and practical / clinical work, per clause-c of Rule-3 of the aforesaid Regulations. It is ironical that petitioners without appearing in the 2<sup>nd</sup> and 3<sup>rd</sup> Professional MBBS annual examinations after being qualified for the same are laying a claim of having become entitled to appear in supplementary examinations on the basis of so-called attendance of classes of 2<sup>nd</sup> / 3<sup>rd</sup> Professional MBBS. It is well settled that

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supplementary examinations is always taken after the appearance of the students in their annual examinations of course after fulfilling the criteria laid down in this respect in the aforesaid regulations.

10. In the light of above discussion, we are in consonance with the contention of learned counsel appearing on behalf of the respondent-university that the petitioners are having no case for the indulgence of this Court in the matter in hand in view of the Regulations 2017 and ruling of the apex Court laid down in the case of Hamid Ullah and others versus Federation of Pakistan and others, passed in Civil Petition No. 1582 of 2021 dated 08.07.2021.

11. As far as the contention of learned counsel appearing on behalf of the petitioners that petitioners have attended the classes of 2<sup>nd</sup> / 3<sup>rd</sup> Professional MBBS by paying the requisite fee thereof to the respective colleges is concerned, suffice it to say that same was a naked violation of the aforesaid regulations and the principle laid down by the apex court in the above referred case.

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In case the fee have been charged by the respective colleges of petitioners for attending the classes of 2<sup>nd</sup> / 3<sup>rd</sup> Professional MBBS, the same shall be adjusted against their next academic sessions of 2<sup>nd</sup> / 3<sup>rd</sup> Professional MBBS examinations.

12. Before parting with the judgment, we may mention here that if the respective colleges of the petitioners have allowed the petitioners to attend the classes of 2<sup>nd</sup> / 3<sup>rd</sup> Professional MBBS and charged fee thereof in violation of the Regulations, 2017, then the respondent-university is entitled to take a legal action against such colleges, so no college may resort to such illegal act in future.

13. In the light of above, this petition stands dismissed alongwith the captioned CM for impleadment.

Senior Puisne Judge



Judge