

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, C.J.

Mr. Justice Amin-ud-Din Khan

Mr. Justice Athar Minallah

CIVIL PETITION NO.1354, 355 &1447 OF 2020

(Against the judgment dated 12.02.2020 of the High Court of Peshawar respectively passed in Writ Petitions Nos.219-A of 2018, 258-A of 2019 & 1312-P of 2018)

Sundas ... (in CP-1354/20)

Naila Khan ... (in CP-1355/20)

Mst. Reema Naz ... (in CP-1447/20)

Petitioners

Versus

Khyber Medical University thr.
V.C. Peshawar & others ... (in CPs-1354-1355/20)

The V.C. Khyber Medical
University, Peshawar and others ... (in CP-1447/20)

Respondents

For the petitioners: Ms. Shirin Imran, ASC
(in CPs-1354 & 1355 of 2020)

Mr. Amjad Ali, ASC
(in CP-1447 of 2020)

For the respondents: Mr. Abdul Munim Khan, ASC
(in all cases)

Date of hearing: 12.10.2023

JUDGMENT

Athar Minallah, J. In all these petitions the petitioners have sought leave against the consolidated judgment of the High Court, dated 12.02.2020, whereby separate petitions filed by them invoking the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**') were dismissed.

2. The petitioners were registered by the Khyber Medical University ('**University**') as enrolled students of the affiliated medical institutions. The affairs of the medical institutions and eligibility of students relating to pursuing medical studies are regulated by the Pakistan Medical and Dental Council ('**Council**') established under the Pakistan Medical and Dental Council Ordinance, 1962 ('**Ordinance of 1962**'). Pursuant to

powers conferred under section 33 of the Ordinance of 1962, the Council had made the 'Admissions in MBBS/BDS Courses and Conditions for House Job/ Internship/ Foundation Year Regulations, 2013' (**Regulations of 2013**). The Regulations of 2013 had, *inter alia*, explicitly determined the criteria regarding the right to continue medical studies by providing that a student who failed to clear the first professional or the 2nd professional in four chances, availed or un-availed, would no more be eligible to continue medical/dental studies of MBBS or BDS course, as the case may be. It was further provided that such a student would also become ineligible to seek admission as a fresh student. The regulations were binding on all the recognized medical institutions and the University and, therefore, the eligibility criteria was duly incorporated by the latter in its own regulations i.e the Khyber Medical University Examination Regulations, 2008 (**Regulations of 2008**). Admittedly, the petitioners failed to pass the examinations in four chances, availed or un-availed and thus they had become ineligible to continue their medical studies under the Regulations of 2013. Before their respective registrations were revoked by the University, the petitioners chose to invoke the plenary jurisdiction vested in the civil courts by filing separate suits. Injunctive orders, directing the University to allow the petitioners to take the reexaminations, enabled them to pursue their medical studies despite having lost their eligibility in the light of the aforementioned regulations. It was on the basis of such injunctive orders that the petitioners were allowed to pursue their studies in violation of the binding regulations of the regulator. The University subsequently issued notifications whereby the registrations of the petitioners were cancelled in accordance with the Regulations of 2013. The notifications were challenged before the High Court through constitutional petitions and which were dismissed through the consolidated impugned judgment.

3. We have heard the learned counsel for the petitioners. Though they have conceded that the Regulations of 2013 were valid and applicable, they have argued that the petitioners ought to have been allowed to complete their studies because they had passed the 1st and 2nd professional examinations. They have stressed that the petitioners would be exposed to extreme hardship if they were prevented from completing their studies. Ms. Shireen Imran, ASC, has argued that the eligibility condition prescribed under the Regulations of 2013 were subsequently repealed in 2020 and, therefore, it would be unjust and unfair to treat the petitioners differently. The counsels have urged to allow the petitioners to complete their degrees on compassionate grounds.

4. It is not disputed that the petitioners had lost their eligibility to continue their medical studies in accordance with the standards set out under the Regulations of 2013, which were declared by the High Court to be valid and *intra vires* and, subsequently, the judgment was upheld by this Court¹. The regulator i.e the Council had prescribed the conditions relating to eligibility and they were binding on all the medical institutions. The eligibility criteria was prescribed in the context of academic performance of a student and by no stretch of the imagination could it be construed as unreasonable. It is settled law that courts are required to exercise utmost restraint in matters relating to policies, discipline and other academic affairs of educational institutions. Refusing to interfere is a rule and deviation therefrom is an exception which can only be justified on the basis of clear and undisputed violation of the law. The reluctance of the courts to interfere with academic affairs is based on the foundational principle that the academicians and educational institutions are the best judges because formulating policies and eligibility criteria falls within their exclusive domain. The standards

¹ *Sadia Nawaz Khan v. Federation of Pakistan and others (CP 928 of 2017)*

prescribed and set out in the regulations relating to academic bodies, determination of eligibility to pursue studies and other related policies are generally not open to judicial review unless they can be clearly shown to contravene the law or to be shockingly unreasonable or perverse. The courts are not equipped nor have the capacity to deal with academic matters, let alone substituting opinions formed by experts or professionals. This court has rigorously upheld and given effect to the regulations made by the Council under the Ordinance of 1962². The emphasis of the learned counsels regarding extending relief on the basis of compassion and hardship is misconceived. It is the duty of every court to implement the enforced laws and to decide the disputes in accordance therewith, rather than on the basis of compassion. The courts cannot grant any relief in breach of the law nor create a right in favour of a litigant which the latter does not possess by or under the law³. Compassion and hardship cannot be relevant considerations when there is no scope for it in the relevant laws⁴.

5. The petitioners had become ineligible and the right to pursue their studies was lost when they had failed to pass the examinations after four chances, availed or un-availed. The Regulations of 2013 were binding and the courts, by granting injunctive orders, had transgressed their jurisdiction because it had the effect of suspending the regulations which were competently framed under the Ordinance of 1962. The courts had disregarded the principles enunciated by this Court in the aforementioned judgments. The petitioners had chosen at their own risk to continue their studies, knowing that under the binding regulations they were not eligible. The injunctive orders passed by the respective civil

² Muhammad Hamid Shah v. Pakistan Medical & Dental Council and others (1996 SCMR 1101)

² Ms. Asma Ghafoor v. Principal, King Edward Medical College and others (2011 SCMR 1311)

² Munaza Habib and others v. The Vice Chancellor and others (1996 SCMR 1790)

² VC University of Punjab v. Mst. Maria Hidayat Khan and others (2007 SCMR 1231)

³ Director General, National Savings v. Balqees Begum and others (PLD 2013 SC 174)

⁴ Aina Haya v. Principal, Peshawar Model Girls High Court and others (2023 SCMR 198)

courts did not create any right in favour of the petitioners nor were they competent to make them eligible for the purpose of pursuing their medical studies in violation of the standards set out by the regulator in the Regulations of 2013.

6. We would add that every citizen is unquestionably entitled and enjoys a right to choose the pursuit of a profession or trade but such a right is not absolute. The regulating authority may set minimum standards in the context of exercising the right in order to safeguard the interests and welfare of the public. The Ordinance of 1962 and the regulations made pursuant to powers conferred thereunder regulate the medical profession, including the affairs of the medical education and institutions, to promote the interest and wellbeing of the ultimate stakeholders i.e the public who would repose and rely on the knowledge and skill of medical practitioners. They will be placing their lives in the hands of those students who would be graduating from the medical institutions. The standards set by the experts under the Regulations of 2013 regarding the determination of eligibility, including the necessary skills and knowledge required to pursue the medical profession are, therefore, not open to judicial review, nor can the court substitute them with its own.

7. For the foregoing reasons, no case is made out for grant of leave and thus the petitions are dismissed as being without merit.

Chief Justice

Judge

Judge

Islamabad the
12th October 2023
APPROVED FOR REPORTING
(Aamir Sheikh)