

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

11

I.C.A No. 30 /2020

In

Writ Petition No. 251/2020

Reema Shamim daughter of Shamim Jawed Resident of A-606, Al-Habib Pride
Civil Line, Clifton, Karachi.

... Appellant

Versus

1. Pakistan Medical Commission, through its President, 4 Service Road
South, G-10 Mauve Area G 10/4 G-10, Islamabad, Islamabad Capital
Territory.

2. Fatima Jinnah Dental College through its Principal, 100 Foot Road, Azam
Town Adjacent to D.H.A. Phase 1 Defence Housing Authority, Karachi,
Karachi City, Sindh

... Respondents

INTRA COURT APPEAL UNDER SECTION 3(2) OF THE LAW REFORMS

ORDINANCE 1972 AGAINST ORDER DATED 28-01-2020 PASSED IN

WRIT PETITION NO. 251 of 2020

ASSISTANT REGISTRAR
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF SINDH

SUBJECT MATTER OF THE WRIT PETITION

Filed to-Day-After 11:00 A.M.
D No. 2777
18/2/20
Assistant Registrar (JUDL)

1. That without prejudice to the submissions, grounds and prayers
hereinafter, in essence, through this Intra Court Appeal, the Appellant

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Intra Court Appeal No. 30/2020

Reema Shamim

Versus

Pakistan Medical Commission and another.

S.No. of order/proceeding	Date of order/proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(03)	12.01.2021	Ms. Fatima Tu Zara Butt, Advocate for the appellant. Mr. Taimoor Aslam, Advocate for the respondent.

Through the instant Intra Court Appeal, the appellant assailed the order dated 28.01.2020 passed in writ petition No. 251/2020, whereby, the learned single Judge-in-Chambers has dismissed the petition filed by the appellant.

02. Brief facts of the case are that the petitioner was enrolled in Fatima Jinnah Dental College, Karachi for Bachelors in Dental Surgery in the year 2011, she appeared in 1st Professional BDS final exam held in January, 2011, cleared all subjects except two subjects i.e. Bio Chemistry and Anatomy, due to severe illness. The petitioner could not continue her medical studies and missed supplementary chance in year 2011 of her first attempt; that she again appeared in year 2012 in annual and supplementary exams, but she could not clear her two papers. According to the version of the petitioner she could not avail four chances for appearing in exam, whereas she availed only three chances i.e. final year of 1st Professional BDS exam 2011, annual and supplementary exam in the year 2012, so she has requested for provision of one chance to appear

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In the exam according to the Regulation No. 11 of the 2018, which was not allowed, so the petitioner filed W.P No. 251/2020 on 27.01.2020, which was dismissed in *limine* vide impugned order dated 28.01.2020.

03. Learned counsel for the petitioner has contended that according to Regulation No. 11 of the MBBS and BDS (Admission, House Job and Internship) Regulations, 2018 ("the 2018 Regulation), the petitioner was entitled for availing four chances, but she could not appear in supplementary exam of year 2011 due to the fact that she was suffering from severe sickness at that time and the writ petition has wrongly been dismissed by the learned single Judge-in-Chambers. Lastly, learned counsel for petitioner has contended that the petitioner is entitled to avail one more chance for appearing in the final exam of 1st Professional Bachelor of Dental Surgery (BDS).

04. On the other hand, learned counsel for the respondent has argued that it is clearly mentioned in the Regulation No. 11 of 2018 that any student who fails to clear first or second professional exam in four consecutive chances availed or un-availed, will not be eligible for continuation of medical and dental studies of the MBBS and BDS. Learned counsel for the respondent further argued that the petitioner has not filed any application to her college before the supplementary examination in the year 2011, that

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she is suffering from severe sickness and did not get any such permission for non-appearance in the exams and filed writ petition in the year 2020.

05. Arguments heard record perused.

06. The main emphasis of the petitioner is on Regulation No. 11 which is reproduced under:-

(page-14)

"11. Re-admission of students:- Any student who fails to clear first or second professional examination in four consecutive chances availed or un-availed and has been expelled on that account shall not be eligible for continuation of medical and dental studies of the MBBS and BDS in the subsequent professional examination and readmission."

07. Regulation No. 11 of 2018 clearly provides that any student who fails to clear 1st or 2nd professional examination in four consecutive chances availed or un-availed is not eligible for continuation of medical and dental studies of the MBBS and BDS. It is also admitted that the petitioner has not applied to the respondents before the supplementary examination of 2011 that she was suffering from severe sickness and unable to appear in the exam. The petitioner was sending requests to respondent No. 1 for providing her a chance to appear in BDS final examination but since May, 2015 no response from the respondents was given to the petitioner, but surprisingly the petitioner kept silent for a very long period and invoked the constitutional jurisdiction of this Hon'ble Court on 27.01.2020 which is firstly barred by time and hit by the principle of laches.

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08. In the case of "Ahmed and 25 others VS. Ghama and 5 others reported as 2005 SCMR 119", it is held by the Hon'ble Supreme Court of Pakistan that "there is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition". It is further held that "We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case. The same principle is followed in "2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720 and PLD 2016 SC 514".

09. As the petitioner has failed to avail four consecutive chances, so 5th chance cannot be given to her under Regulation No. 11 of the MBBS and BDS (Admission, House Job and Internship) Regulations, 2018, she has approached the Hon'ble Islamabad High Court with undue delay, that too without any justification or explanation for such delay, therefore, the principle of laches disentitles her for relief under Article 199 of Constitution of Pakistan.

10. For what has been discussed above, the instant Intra Court Appeal is not competent and same is hereby dismissed.

(AAMER FAROOQ)
JUDGE

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Approved for reporting.

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Copy of the Judgment
Amended under-87 of
Constitution of Pakistan
Islamabad High Court
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