

Judgment Sheet  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

W.P No. 3775-P/2021 with I.R.

**JUDGMENT**

Date of hearing: 02.11.2021.

Petitioner (s) (Bushra Ali and others)

By Mr. Saifullah Muhib Kaka Khel, Advocate.

**Versus**

Respondent (s) (Government of Pakistan through its Federal Secretary, Government of Khyber Pakhtunkhwa through its Chief Secretary, Khyber Medical University and others)

By M/s. Abdul Munim Khan & Muhammad Sangeen Khan, Advocates.

**S M ATTIQUE SHAH, J:-** Through this single judgment, this Court proposes to dispose of the instant writ petition as well as the connected "*WP No.3977-P/2021 titled "Ghazi Durrani..vs..Government of Pakistan and others"*"; being arising out of one and the same matter and a common relief, as under:

- i. *Declare the impugned KMU Regulations, 2017 as illegal, without jurisdiction, without lawful authority, against the regulations of PMC which is regulatory body and against the basic fundamental rights of the petitioners.*
- ii. *Declare the petitioners entitled to appear in the failed papers by arranging for them re-take examination without detaining them in the professional exam in which they failed.*



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- iii. Declare the petitioners entitled to promotion in next higher class without detention in the professional exam in which the petitioners failed.*
- iv. Direct the respondents to arrange re-take examination of the failed papers and also promote them so that they could continue their medical studies without wasting one precious year.*
- v. Direct the respondents No. 03 to 05 to frame or amend rules / regulations in line with the regulations of regulatory body as well as situations like present Covid-19 pandemic in the best interest of justice.*
- vi. Any other order deemed appropriate in the circumstances of the case may also be passed. The petitioners may be allowed to put forward any other argument/document at the time of hearing of this writ petition."*

2. In essence, the petitioners claim 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. Heard. Record gone through.

4. Record depicts that the petitioners are students of 1<sup>st</sup> and 2<sup>nd</sup> professionals of various Medical Colleges of the Province. The petitioners failed in their respective

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examination and; they also could not pass their failed subjects in the supplementary examination so conducted by respondent No 3. The petitioners attributed their ibid failure in examination to the respondents, as the petitioners obtained online classes and; the respondents also committed online examination; however, the same was conducted by the respondents physically against their commitment and; therefore, the petitioners could not perform well due to fear of contracting Covid-19. Record shows that in the year 2020 in total 2134 students appeared in the examination from throughout the Province; wherein 1995 students successfully passed their examination and; only 39 students failed in different subjects/papers. The overall passing ratio remained 93.486 percent. Therefore, the stance of petitioners qua non-performance in the online examination due to Covid-19 is misconceived. A similar issue came up before the august Apex Court in C. P No.1582 of 2021 in the case titled "*Hamid Ullah and others .vs. Federation of Pakistan and others*", which was dealt with in the following manner;

*"Further the specific issue of Covid-19 Pandemic and its effect on the ability of the students to avail the four chances and*

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*specially the last and final chance was discussed. It was found that the Pandemic did not have any impact on the ability of the students to sit in the examination for their fourth and final chance. We have no reason to second guess or overrule the decision of the BoS which based on discussion, deliberation, considering all aspects and after hearing the point of view of the petitioners. We have not found any bias, malafides or violation of the rules and regulations that may have furnished basis and justification for judicial interference."*

5. Coming to the contention of petitioners qua arranging an additional (re-take) examination to clear their failed subjects. Indeed the ibid contention is not supported by any provision of law. Rather, the Khyber Medical University Examination Regulation, 2017 has specifically provided that:-

*"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".*

Therefore, the ibid stance of petitioners is also without force.

6. So far as the contention of the petitioners qua their promotion to the next higher class and; appearance in the

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next professional examination is concerned, clause 3 of the Regulation, 2017 has clearly provided that *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.* The ibid provision clearly shows that promotion to the next higher class and; appearance in the next professional examination is subject to clearance of all subjects of the previous examination. Hence, the contention of petitioners is misconceived.

6. Moving to the next contention of petitioners qua declaration of impugned KMU Regulations, 2017; as illegal, void ab initio; being in conflict with the PMC's Regulation, 2021. Indeed, the ibid regulation was framed under the provisions of Khyber University Act, 2012 read with the provisions of Pakistan Medical & Dental Ordinance 1962 the then was and; is completely in line with the provisions of Medical & Dental Undergraduate Education (Admission, Curriculum and Conduct) Regulation, 2021. Moreso, the Pakistan Medical Commission Act, 2020 and; regulation framed thereunder did empower the Universities to follow their regulation qua conduct of the examinations; therefore, the ibid

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regulation is in no way in conflict with the Regulation of PMC.

7. Besides, it is settled that Superior Courts are always slow while interfering in the policy matters particularly that of the Educational Institutions; - *V.C University of Punjab v. Maria Hidayat Khan (2007 SCMR 1231)*. *Asif Mushtaq v. District Judge (2006 SCMR 701)* *University of Punjab v. Samea Zafar Cheema (2001 SCMR 1506)* *University of Punjab v. Samea Zafar Cheema (2001 SCMR 1506)* and *Siraj Ahmad v. Controller of Examinations, University of the Punjab (1999 SCMR 1552)*.

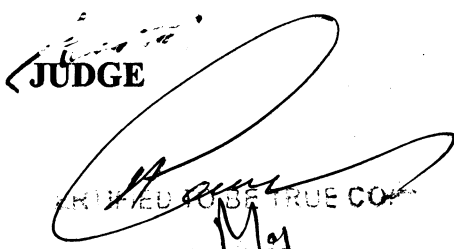
In view of thereof, both the writ petitions are, dismissed; being meritless.

Announced.  
Dated. 02.11.2021.

  
CHIEF JUSTICE



(D.B of)  
Hon'ble Mr. Justice Qaiser Rashid Khan, C.J,  
Hon'ble Mr. Justice S M Attique Shah, J.  
(Kausar Ali C.S)

  
JUDGE

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EXAMINER  
Kashwan, Head, Examinations, Kashwan  
Authorised Officer, Board of Education, Punjab  
The Government of Punjab, Lahore

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