



BEFORE THE DISCIPLINARY COMMITTEE OF PAKISTAN MEDICAL COMMISSION

In the matter of

Complaint No. 8-2064/2021-DC-PMC

Malalai Hayat Khan Vs Women Medical College, Abbottabad

Mr. Ali Raza	Chairman
Dr. Anis-ur-Rehman	Member
Dr. Asif Loya	Member

Present:

Atta Ullah Khan	Counsel for Complainant
Sardar Hussain	Guardian of Malalai Hayat Khan
Dr. Salman Kundi	Principal, Women Medical College, Abbottabad
Waqar Orakzai	Legal Representative WMC
Hearing Date	10-12-2021

I. COMPLAINT

1. A complaint has been filed by Ms. Malalai Hayat Khan before the Disciplinary Committee of the Pakistan Medical Commission titled as "Complaint under Regulation 7 of the Pakistan Medical Commission (Enforcement) Regulations, 2021 along with other enabling laws" pertaining to recovery of PKR 3,300,000/- (Rupees Three Million and Three Hundred Thousand only).



2. Brief facts of the instant case are that the Complainant i.e. Ms. Malalai Hayat Khan enrolled with the Women Medical College (the "College"), Abbottabad for the MBBS program in the year 2010. The College is affiliated with the Khyber Medical University (KMU), Peshawar. Being the affiliating university of the College, every student enrolled with the College was required to be registered with the KMU and Ms. Malalai was duly registered with the KMU vide registration No. 2010/ KMU/ WMC/ 040. Ms. Malalai failed to clear her 1st year MBBS Professional Part-I examination despite four attempts granted to every student to clear their Professional examination. Thereafter, Ms. Malalai filed a Civil Suit bearing no. 128/ 1 of 2013 before the Senior Civil Judge, Peshawar whereby she was allowed to give her 1st Year MBBS professional examination in 5th attempt.
3. Thereafter, Ms. Malalai continued with her studies in the MBBS program until 2017, when KMU vide notification no. CE/KMU/2017/287 dated 02-10-2017 cancelled the registration of students, including Ms. Malalai, who despite having availed 4 chances failed to pass their MBBS Professional examinations. Ms. Malalai challenged the notification dated 02-10-2017 before the Hon'ble Peshawar High Court, Peshawar vide Writ Petition No. 5398-P/ 2019, which was dismissed in limine vide order dated 05-12-2019.
4. Pursuant to dismissal of her petition, Ms. Malalai served a legal notice dated 04-07-2020, through her Counsel, whereby she demanded refund of an amount PKR 3,300,000/- (Pak Rupees Three Million and Three Hundred Thousand only) which she had paid in lieu of tuition fee and other allied fee/ charges up till her 4th Professional year of MBBS program. Upon failure of the College to respond to the legal notice dated 04-07-2020 served by Ms. Malalai, she again filed a Civil Suit before the Court of Senior Civil Judge, Abbottabad for recovery of an amount PKR 3,300,000/- (Pak Rupees Three Million and Three Hundred Thousand only). However, same was returned to the Plaintiff, Ms. Malalai, on the grounds that the Medical Tribunal has been established which has the jurisdiction to hear all such cases, therefore the Plaintiff may seek remedy before the appropriate forum.
5. Thereafter, Ms. Malalai approached the Hon'ble Medical Tribunal for redressal of her grievance. However, the same was disposed-of vide order dated 08-09-2021 on the following grounds:



“... when maintainability of the appeal was questioned in the light of law and Rules, the learned counsel stated at the bar that he is going to revisit the appeal in the light of relevant provisions of Law and Rules, and that he would not press the instant appeal, and would seek remedies available to the appellant in accordance with Law and Rules. ...”

II. HEARING

6. Now Ms. Malalai has filed the instant complaint under Regulation 7 of the Pakistan Medical Commission (Enforcement Regulations), 2021 before the Disciplinary Committee for the recovery of an amount PKR 3,300,000/- (Pak Rupees Three Million and Three Hundred Thousand Only). Accordingly, Ms. Malalai and the College were issued notice of hearing dated 29-11-2021, to appear before the Disciplinary Committee on 10-12-2021.
7. On the said date of hearing Mr. Sardar Hussain (guardian of Ms. Malalai Hayat Khan) appeared along with Counsel Mr. Atta Ullah Khan, Advocate on behalf of Ms. Malalai and Ms. Salma Kundi, Principal Women Medical College appeared along with Counsel Mr. Waqar Orakzai.
8. During the hearing, Counsel for Ms. Malalai reiterated the contents of the complaint and sought an amount PKR 3,300,000/- (Pak Rupees Three Million and Three Hundred Thousand Only) from the College. He confirmed the fact the Civil Suit filed for the recovery of the said amount was returned on the ground that the Medical Tribunal has been established therefore the Plaintiff may seek remedy before the appropriate forum. Ms. Malalai did not impugn the return of plaint by the learned Civil Court and hence in effect accepted the said order and its consequences. He also confirmed that later, he also withdrew the appeal filed before the Hon'ble Medical Tribunal on the grounds that he doesn't want to press the appeal in light of the relevant rules & regulations.
9. During the hearing the College confirmed the fact that upon exhausting 4 chances to clear professional examinations the college did not expel/ cancel the registration of Ms. Malali rather waited for the affiliating university i.e. KMU to notify the same. As a practice the College refrains from expelling students on failure to pass exam on its own accord and takes action on the intervention of the affiliating university in such matters.



III. FINDINGS/CONCLUSION

10. Arguments heard and record perused. It is observed that Ms. Malalai was afforded a fifth opportunity of retake of exam under the interim order dated 18-09-2013 passed by the Learned Civil Court. It is pertinent to highlight that August Supreme Court in its judgement dated 16-09-2019 had settled the principle of four chances for exam retake in terms of regulations of erstwhile PMDC as referred to by the Hon'ble High Court in the case of the Complainant vide its order dated 05-12-2019.
11. The Committee enquired the Counsel for Ms. Malalai as to relevant provision of PMC law under which the complaint has been filed before the Disciplinary Committee for the refund of PKR 3,300,000/-. The Counsel has referred to the Section 32 of the PMC Act. In this regard, it would be relevant to the Section 32 of the PMC Act which states as follows:

"... 32. Disciplinary proceedings, suspension or cancellation of license.- (1) The Council in compliance to directions of the Medical Tribunal or upon a finding pursuant to a disciplinary hearing or upon an inquiry and hearing conducted by the Authority or the Council itself, may temporarily suspend or permanently cancel the license of a practitioner or impose such penalties as may be prescribed for having violated any obligation imposed upon the licensee or for medical or professional negligence or misconduct. ...

... (3) The Commission shall on the complaint of any person or authority or of its own motion on information received, initiate disciplinary proceedings against any full licence holder or any recognized institution in respect of medical negligence, misconduct or violation of any obligation under this Act, or any rules or regulations or directions of the Commission other than offences provided for under sub-sections, (1), (2), (3), (4) and (5) of section 34: ..."

12. The abovementioned provision of the Pakistan Medical Commission Act 2020 empowers the Disciplinary Committee to initiate disciplinary actions against the medical and dental practitioners for their professional negligence and misconduct. Further disciplinary actions can be invoked against a recognized institutions of the Commission for any violation of the Pakistan Medical Commission Act and the regulations framed thereunder. The learned counsel of the Petitioner was repeatedly asked to assist the Committee on the relevant provision which



deals with award of damages or recovery of fees in such cases as that of the Complainant by the Commission as no violation of PMC Act or regulations has been brought forward per se. The learned counsel could not satisfy the Committee as to any violation of the provision of PMC Act or regulations framed thereunder. It was clarified to the representatives of the complainant that the Commission is not the relevant forum for the award of damages and that the Disciplinary Committee takes action only for the violation of the provisions of the Act and the regulations framed thereunder.

13. In addition, Ms. Malalai has sought damages from the College for which the relevant forum is Civil Court. Though the Civil Court passed an order to the effect that an alternative remedy is available in the form of an appeal before the Learned Medical Tribunal, however, the Plaintiff i.e. Ms. Malalai never challenged such order before the relevant forum and has attained the finality. Furthermore, the learned Civil Court with utmost respect cannot vest the Disciplinary Committee or any other forum with jurisdiction which is not vested by law. The PMC does not have the jurisdiction to entertain the claim of damages and refund of fee paid for four years at the college on the basis of on an interim order of the Civil Court. Furthermore, an interim order merges into the final order and upon return of the plaint, the said order stood extinguished and the Complainant hence cannot seek a vested right pursuant to such interim order as having accrued. The Complainant prima facie elected to continue her studies in the college fully aware that the final decision may be against her in terms of her desire to have a fifth chance to qualify her exams contrary to the University policy and the then PMDC regulations restricting it to four chances. Pertinently the Complainant in fact lost her claim to being eligible for a fifth chance when her Petition was dismissed by the Honourable Peshawar High Court and the law as set down by the August Supreme Court of Pakistan on this point. Consequently, the Complainant even otherwise would not be able to sustain a claim for recovery of moneys she paid voluntarily and which resulted in her continuing her studies based on an ineligible status. It is standard law that where the foundation is found to be void the building built thereon would crumble.

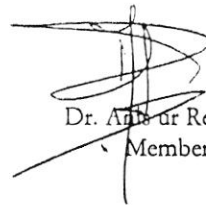
14. However, notwithstanding the above discussion, it is necessary to observe that to avoid such situations in the future the colleges should take immediate action on exhausting the maximum number chances for exam retake rather than expecting the affiliating university to intervene in



the matter or wait for the students to approach the judicial forum to seek interim orders. It is expected that colleges will act with diligence in the interest of all concerned instead of delaying action.

15. In view of the submissions made and relevant provisions of the Act detailed above, the instant complaint does not merit consideration, therefore is dismissed for the reason that this forum is not vested with jurisdiction to grant the relief sought by the Complainant. The Complainant is at liberty to seek any remedy available in accordance with law.


Dr. Asif Loya
Member DC


Dr. Anis ur Rehman
Member DC


Muhammad Ali Raza
Chairman DC

Dated: 25th, January 2022


Certified true copy
ATTESTED
Pakistan Medical
Commission, Islamabad