

PAKISTAN MEDICAL COMMISSION,
G-10/4, MAUVE AREA,
ISLAMABAD



**SPEAKING ORDER IN COMPLIANCE OF COURT ORDER DATED 29-12-2020 IN
W.P.NO. 69287/2020 TITLED FAREEHA ANWAR ETC VS FOP ETC OF THE
LAHORE HIGH COURT, LAHORE**

In compliance with the Order dated 29.12.2020 of the Honourable Lahore High Court in Writ Petition No.69287/2020, a personal hearing of the Petitioner students was held on 14.1.2021 and their grievances and facts noted while relevant record perused.

2. The background facts of the issue at hand is that the Petitioner students are currently enrolled students in different medical colleges in Punjab and studying in different years of the medical programs. All the relevant medical colleges are affiliated with University of Health Sciences, Punjab (UHS). The UHS conducts the annual and final professional examinations of students enrolled in these programs at the end of each year and a student must pass their professional exam to be promoted to the next year.

3. The Petitioner students failed in different subjects of their professional examinations held in October-November 2019. As per standard policy of the University and the regulations of the erstwhile PM&DC, they were permitted to retake a supplementary exam in an attempt to pass the subject for promotion. The supplementary exams are ordinarily scheduled for February-March each year.

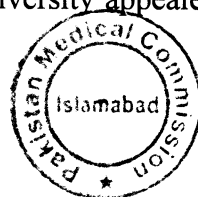
4. Due to the Covid-19 pandemic and lock down of educational institutions and shifting of classes online the usual academic schedule was gravely disturbed. While UHS announced multiple dates for holding the supplementary examinations during 2020, due to the pandemic they were extraordinarily delayed and were finally held in October 2020.

5. During this period between February 2020 and October 2020 to avoid loss of time of all students who had failed in any subject in their professional examinations held in October 2019, they were permitted by their respective colleges to continue their studies in the next year. In essence they were promoted provisionally subject to them passing the supplementary exams.

6. The Petitioner students appeared in the October 2020 however, failed to qualify in one or more of the subjects. As a result in majority of the cases the Petitioner students were directed to be detained whereas a small number were directed to be expelled having ostensibly exhausted four chances to qualify an exam as was mandated under the previous regulations of erstwhile PM&DC.

7. In effect the detained students would have to spend the entire 2021 detained repeating the year and then retake the annual professional examination which would be ordinarily scheduled in October-November 2021. The year of studies spent between February 2020 and November 2020 in the next academic class would also be washed out and be of no consequence.

8. The Petitioner students and apparently other similarly placed students studying at King Edward Medical University and Fatima Jinnah Medical University appealed to the Governor of

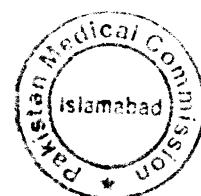


Punjab in his capacity as Chancellor of UHS and the other universities. The Chancellor vide letter dated 16.11.2020 forwarded the grievances of the Petitioner students to Vice Chancellor UHS directing that “the request of the students for one additional examination chance may be considered sympathetically in consultation with Principals of Medical Colleges concerned and relevant statutory bodies at the earliest”. However, the same was not decided upon by UHS consequent to which the Petitioner students approached the Honourable Lahore High Court as the annual exams for 2020 have been rescheduled to be held in February 2021 on a delayed basis and present a practical chance for the Petitioner students to avail one extra opportunity to pass their exams.

9. The primary grievances of the students were;

- a) Due to Covid-19 Pandemic and the academic program was badly affected and the constant change in dates of the supplementary examinations while also studying online in the current years program, it badly affected their ability to perform in the supplementary examination.
- b) Having been allowed to continue their studies during 2020 and now detaining them at this belated stage whereafter, they would have to again repeat the academic year they had just completed, would in essence cause them to loose almost two years rather than one year under normal detention policy.
- c) UHS had no policy at the time of taking the supplementary exam which restricts UHS from offering an extra or specially held Supplementary Exam. In fact in the past precedents exist of such special supplementary exams having been held.
- d) UHS issued a policy in November 2020 under which UHS can arrange a special exam in view of inter alia ‘national calamities’ etc.
- e) Some students also put forth reservations that during the rechecking of their papers requested it was found that questions were not properly marked however, this was not rectified even on rechecking.
- f) One additional grievance is of students expelled that they have been expelled on the basis of the previous regulation of erstwhile PM&DC restricting four chances while ignoring the clarification issued by Pakistan Medical Commission to all concerned that the said restriction no longer exists and it is up to each University to frame necessary rules in this regard if deemed necessary.

10. Taking up the issue of expelled students first; while there existed a regulation of the erstwhile PM&DC restricting chances to four, the said regulations stood repealed as off 24th September 2020 on the promulgation of the Pakistan Medical Commission Act, 2020. Therefore, in October-November 2020 when the Supplementary Exam was conducted there existed no rule of PMC or UHS which restricted the number of chances available to a student for retaking a failed exam. The obligation to frame rules to regulate the number of chances lay solely on the university and in the absence of having framed the same, UHS cannot rely on the repealed regulations or seek to fill the vacuum with an ad hoc decision. Consequently, it is abundantly clear that the decision to expel the students for having failed to qualify the supplementary exam would not be sustainable and the said students would have the right to



another opportunity to retake the failed exam. The Honourable Islamabad High Court in its recent Order dated 31-12-2020 in Writ Petition No.3698/2020 has reiterated the above principle of the four chances restriction not being present and in the absence of the university having framed any pertinent rules to such effect a further chance to be given.

11. Coming to the core issue of allowing the Petitioner students to take a special supplementary exam rather than making them wait till the end of the year and detaining them for an additional year. While it remains a concern that students should ordinarily be passing their exams in maximum two attempts and that too in a highly specialized and competitive program such as the medical program which is taught in spiral structure as per the curriculum and therefore, it is essential that a student has acquired the necessary competencies before moving forward. The current case is one of extraordinary circumstances in light of the Covid-19 Pandemic. A fact recorded both by the Chancellor of the University as well as the UHS itself which in its policy on exams provided for holding a special supplementary exam. The pandemic has played havoc with the regular academic programs world over and concessions have been made across the globe on this account. However, a balance has to be struck between the extraordinary circumstances and the need to ensure that students properly acquire the knowledge and competencies required; which in current situations has been somewhat hampered by the lack of standard teaching methods shifting most students to online formats and lack of clinical exposure in the clinical years of the medical program.

12. In order to find the balance the yardstick which appears to be most pertinent and transparent is that ordinarily a student who fails to qualify an annual exam and the supplementary would suffer a one year detention period and then required to requalify the exam for promotion to the next year. In the current extraordinary circumstances where if the supplementary exam for 2019 had been held as scheduled and the Petitioner students had failed the same they would have spent 2020 detained and retake the exam in October-November 2020. Instead due to the supplementary exam having itself been delayed till October-November 2020 and UHS intending to give them the next chance in October-November 2021, they would stand to loose an additional year and infact be detained retrospectively. This admittedly appears to be an enhanced and harsh penalty being imposed upon the students.

13. It needs to be clarified that a student who was allowed to provisionally sit in the courses for the next year after having failed the annual exam in October-November 2019 did not acquire any vested right to have the said year counted towards the full academic year. In short they must suffer a one year detained period as the standard penalty; however not more. Any additional penalty in the extraordinary circumstances and even otherwise would be unjust.

14. Therefore, while organizing a special supplementary exam at this time, for which there is abundant precedence and provision in the UHS policy, would entail further delay and chaos specially in the continuing restrictive conditions due to the Covid-19 Pandemic, it would be reasonable for UHS to allow the Petitioner students to sit in the upcoming Annual Exams scheduled for February 2021 in the subjects they had failed to qualify previously. The permission to sit in the Annual Exams and their promotion upon qualifying the same would at all




times be subject to a maximum one year detention being suffered by each student. Therefore, a student who having failed to qualify the annual exam held in October-November 2019 repeated the classes of the same year should if qualifies the upcoming exam stand promoted immediately to the next year. Whereas, a student who had even after failing to qualify the annual exam held in October-November 2019 was allowed provisionally to sit in the next academic year classes upon qualifying the upcoming exam would be required to retake the year already done and take the annual exams for the current year at the end of 2021 as per schedule. In effect in all cases a one year maximum detention would be applied to all students irrespective of them being given the chance in the upcoming Annual Exams to qualify their failed subjects. In fact if considered in view of the fact that there are no current restrictions on maximum chances, these students would not be getting any special treatment by being allowed to sit in the upcoming exams to again attempt qualifying rather this is the exam they would be taking in the ordinary course for uncompleted year. The only exception being made would be that they be allowed to sit the exam for the subject they have failed rather than all the subjects again. An allowance which appears justified in the extraordinary circumstances everyone has been confronted with in this last calendar year.

15. For the reasons stated above, the following findings and recommendations are forwarded to UHS;

- i)** A student shall not be expelled on account of having availed all four chances as a result of having failed in the supplementary exam held in October-November 2020. Any such student shall be reinstated and allowed to retake the failed exam.
- ii)** A student who has failed to qualify a subject in the Supplementary Exam held in October-November 2020 be allowed to retake the failed subject in the Annual Exams scheduled for February 2021 and if qualified either promoted to the next academic year or their previous year of studies be counted subject to the student suffering a maximum of one year detention period between October-November 2019 and January-February 2021.
- iii)** Any fee charged by the college during the two years (2020 and 2021) shall be subject to the reduced detained year fees for one of the relevant years.

16. A copy is submitted in compliance to the Deputy Registrar (Judicial) of the Honourable Lahore High Court.


Mr. M. Ali Raza
Vice President, PMC

