

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Civil Appeal No. 68 of 2020

(PLA Filed on 4.11.2019)

1. Secretary Health, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat Muzaffarabad.
2. Principal, Poonch Medical College Rawalakot, Azad Jammu & Kashmir.  
.... APPELLANTS

**VERSUS**

1. Muhammad Latif Butt s/o Muhammad Afzal Butt r/o Manak Payyain, Tehsil and District Muzaffarabad.  
..... RESPONDENTS
2. University of Health Science Lahore, through Vice Chancellor, University of Health Science Lahore, Khayaban-e-Jamia Punjab, Bloc "D" New Muslim Town, Lahore, Punjab 54000.
3. Vice Chancellor of University of Health Sciences, Lahore, Khayaban-e-Jamia Punjab, Block "D" New Muslim Town Lahore, Punjab 54000.
4. Azad Jammu & Kashmir University through vice Chancellor University of Azad Jammu & Kashmir, having his office at Challah Bandi Campus, Muzaffarabad.
5. Registrar, University of Azad Jammu & Kashmir, having his office at Challah Bandi Campus, Muzaffarabad.

6. Pakistan Medical and Dental Council through Registrar, having his office G-10 mauve Area G-10/4 G-10 Islamabad, Capital Territory Islamabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 5.9.2019 in Writ Petition No. 1006 of 2018)

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FOR THE APPELLANTS: Syed Sayyad Hussain  
Gardezi, Advocate.

FOR THE RESPONDENTS: Raja Muhammad Arif  
Rathore, Raja Amjid Ali  
Khan & Ch. Zaffar  
Mehmood, Advocates.

*Date of hearing:* 4.8.2021.

**JUDGMENT:**

***Raza Ali Khan, J.***— The captioned appeal by leave of the Court arises out of the judgment dated 5.9.2019 passed by the High Court of Azad Jammu & Kashmir in writ petition No. 1006 of 2018.

2. The brief facts forming the background of the captioned appeal are that the respondent, herein, filed a writ petition before the High Court of Azad Jammu & Kashmir alleging therein that

he is a regular student of MBBS, Part-II Professional of Azad Jammu & Kashmir Poonch Medical College, Rawalakot. It was stated that earlier Poonch Medical College was affiliated with the University of Azad Jammu & Kashmir and now it is affiliated with the University of Health Sciences, Lahore. It was further stated that the examinations were earlier conducted by the University of Azad Jammu & Kashmir and the respondent, herein, appeared in the first professional examination but could not succeed. It was further stated that the respondent, herein, availed three chances, however, during the fourth chance he became seriously ill and approached the concerned authority for a special chance on medical ground, which was allowed vide order dated 8.3.2016 and in the light of the said order, the respondent appeared in the examination, passed the same and stood promoted in the second professional year. It was alleged that after completion of second professional year, the respondent, herein, also

appeared in the examination but could not succeed despite availing three chances and finally he applied for four chance and also deposited the requisite fee, however, he was informed orally by the College Administrative/appellants, herein, that he is not allowed to participate in the examination held on 7.5.2018. It was further stated that due to this illegal act of the appellants, the respondent could not appear in the examination on 7.5.2018, whereas, after grant for a special chance to the respondent by the relevant authority on medical grounds and having passed the first professional examination, a valuable right has been accrued in favour of the respondent, therefore, he could not be deprived of the same. The respondent, herein, sought a direction to allow him to participate in the third chance of second professional examination of MBBS. The writ petition was contested by the other side by filing written statement, whereby the claim of the appellant-respondent was

refuted. The learned High Court, after necessary proceeding while accepting the writ petition has set aside the order dated 16.10.2018 vide impugned judgment dated 5.9.2019.

3. Syed Sayyad Hussain Gardezi, the learned Advocate appearing for the appellants argued that the impugned judgment of the learned High Court is against the facts, law and the rules on the subject. He argued that the respondent availed four chances in his first professional examination but failed, hence, was not eligible for further medical education because a candidate can only avail four chances in his first or second professional examination as per rules of PMDC (Pakistan Medical & Dental Council). He argued that the University of Azad Jammu & Kashmir extended a special chance to the respondent violating the PMDC regulations, which was later on cancelled by the competent authority vide order dated 16.10.2018. He further argued that the respondent passed his first professional examination in 5<sup>th</sup> attempt;

which is illegal and unlawful, but the learned High Court has not adhered to this aspect of the case while delivering the impugned judgment. Hence, the impugned judgment is not sustainable in the eye of law. The learned Advocate further argued that the order dated 16.10.2018, whereby a special chance was extended in favour of the respondent was cancelled, was neither challenged by the respondent, herein, nor a single word was uttered against it, but the learned High Court has set aside the aforesaid order against the principle of pleadings, as such, the learned High Court has travelled beyond its jurisdiction. Therefore, the impugned judgment merits dismissal on this ground too.

4. Conversely, Raja Muhammad Arif Rathore, the learned Advocate appearing for respondent No.1, has defended the impugned judgment of the learned High Court on all counts. He contended that the respondent availed three chances of first professional year,

however, during the fourth chance he, unfortunately, fell ill, therefore, he missed the fourth and conclusive chance. It was further contended that the respondent approached the concerned authority who granted a special chance to the respondent vide order dated 8.3.2016 in view of the peculiar circumstances, in pursuance of which the respondent appeared and passed the examination and also stood promoted in the next professional year. The learned Advocate further argued that after completion of 2<sup>nd</sup> professional year, the respondent participated in the 2<sup>nd</sup> professional annual examination but could not succeed in first attempt, so he again appeared in supplementary examination and as per rules he can avail four chances. The learned Advocate argued that the learned High Court has handed down the impugned judgment after detail deliberation and examination of the record and has rightly held that after providing a special chance of examination to the respondent, the

University Authorities were not vested with the powers to cancel the same order. The learned Advocate further argued that the appellants have failed to point out any illegality or legal infirmity in the impugned judgment, therefore, the appeal filed by the appellants may be dismissed.

5. Raja Amjid Ali Khan and Ch. Zaffar Mehmood, the learned Advocates appearing for respondents No. 4, 5 & 6 respectively, adopted the arguments advanced by the learned counsel for the appellants stating therein that the learned High Court has travelled beyond the pleadings while setting aside the order, which was not challenged before it, therefore, the impugned judgment is not sustainable in the eye of law, hence, the same is liable to be set aside.

6. We have heard the learned Advocates representing the parties and have gone through the record of the case made available along with the impugned judgment of the High Court. The case of the respondent before the High Court



was that he is a regular student of MBBS part-II professional of Azad Jammu & Kashmir Medical College Rawalakot. It is admitted by the respondent, herein, that he appeared in the 1<sup>st</sup> professional year examination, but despite availing four consecutive chances, he could not pass the said examination and in the last chance, the petitioner fell ill, so he approached the concerned authorities from-where, he was granted a special chance to reappear in the said examination vide order dated 8.3.2016 and while availing the special chance, the appellant participated in the 1<sup>st</sup> professional year examination and passed the same and stood promoted in 2<sup>nd</sup> professional year. The argument of the counsel for the appellants is that according to Pakistan Medical and Dental Council rules, a student who fails to clear 1<sup>st</sup> or 2<sup>nd</sup> professional examination by in four consecutive chances, availed or un-availed is not eligible to pursue his further medical education. The crucial point which needs resolution by this

Court is whether the special chance extended by the University of Azad Jammu & Kashmir, Muzaffarabad in favour of the respondent, herein, was in line with the PMDC regulations. It is admitted and also settled that PMDC rules are applicable to all Medical and Dental Institutions, hospitals and Institutions recognized under the Pakistan Medical and Dental Council Ordinance, 1962. Rule 11 of the said rule, deals with eligibility criteria for promotion of a student in 2<sup>nd</sup> professional Examination, which speaks as under:-

“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 examinations.”

Similarly, according to the notification dated 19.4.2008, issued by the Registrar, University of Health Science Lahore, annexed with the concise statement, the eligibility criteria for a candidate to appear in 1<sup>st</sup> and 2<sup>nd</sup> professional examination

was provided. It is evident from the perusal of this notification that a candidate who fails to pass first professional Part-1 or part-II examination in four consecutive chances, availed or unavailed, shall cease to become eligible to pursue further medical education. Thus, it becomes quite clear that the special chance granted by the University Authority in favour of the respondent, was in contravention of the PMDC rules and regulations, hence, the same was rightly cancelled from the date of issuance by the same authority vide order dated 16.10.2018. The respondent after availing his four consecutive chances to clear his first professional M.B.B.S. examination and failing the same, could not claim any right to continue his studies in view of the abovementioned rule. The same proposition came under consideration of the Supreme Court of Pakistan in the case reported as *Munaza Habib and others vs. The Vice Chancellor and others* (1996 SCMR 1790),

whereby at page 1793 of the cited case, it was held as under:-

“It is true, as not contravened by learned counsel for petitioners that as the time of petitioners’ admission in the M.B.B.S. Class the College Prospectus did contain an instruction for information of the students that they were required to qualify First M.B.B.S. Professional Examination in four chances, failing which they would cease to be eligible to pursue their studies in Medical/Dental Education in Pakistan. The petitioners were offered four chances to qualify the First Professional M.B.B.S. Examination and having remained unsuccessful, cannot legally compel the University Authorities to provide them further chance.”

The learned Advocate for respondent No. 1 is unable to show that the above-mentioned rule contravened or came in conflict with the provision of law made applicable to the appellant’s institution. The learned Advocate for respondent No.1, is also unable to demonstrate that the above rules contravened any of the fundamental rights guaranteed under the Constitution. The right to seek admission in an educational institution and to continue studies therein is always subject to the rules of discipline prescribed by the Institution,

therefore, a student who intends to pursue his studies in the Institution is bound by such rules.

7. From the perusal of the file, it also reveals that the Principal Medical College Rawalakot vide letter dated 9.5.2018 wrote a letter to the Registrar PMDC for seeking advice for removal of respondent, herein, from the College roll on the basis of availing five chances and also rusticated the respondent from the college roll w.e.f. 1.5.2018. The respondent does not appear to have directly challenged the vires of the order dated 16.10.2018 as well as the letter dated 9.5.2018 before the learned High Court through writ petition which was filed on 21.5.2018. The order dated 16.10.2018 and the letter dated 9.5.2018 seem to have been annexed with the comments/objections filed by the respondents, before the learned High Court. We have no cavil with the observation made in the impugned judgment by the learned High Court that whether order dated 8.3.2016

whereby the respondent was granted special chance was legal or illegal, but when the respondent in compliance of the said order passed the examination, a valuable right stood accrued in his favour, which cannot be snatched on any pretext, is correct, but in our estimation when through another order dated 16.10.2018 the order dated 8.3.2016 was cancelled from the date of issuance, the structure built up on the basis of the order dated 8.3.2016 has ipso-facto fallen on the ground. Therefore, it was imperative for the respondent to challenge the validity of the same if he felt himself aggrieved. This Court in a number of cases has held that even a void order must be challenged if it is intended to get rid of its effects. In the case reported as *Shafqat Hayat vs. Muhammad Shahid Ashraf & 18 others* (2005 SCR 57), in para 17 of the referred judgment, it was held by this Court as under:-

“17. In the same way we have noticed that regular order of promotion of Shafqat Hussain issued on the recommendations of the Selection

Committee on 22.10.1995 was not challenged. His order of appointment against the post of Senior Teacher in his own pay and scale dated 22.12.1994 was challenged. It means that regular promotion order was not challenged. The order which was challenged was arrangement of posting. If his regular promotion was void, even that should have been challenged before the Court of law as was held by this Court in a case titled *Mirza Lal Hussain vs. Custodian of Evacuee Property and others* [1992 SCR 2014}. In this case it was laid down that if a person is affected by a void order but he does not challenge it within a reasonable time, later on the Court may refuse to ignore it on the ground of laches. The same view was again repeated in case titled *Muhammad Ilyas Khan and 5 others vs. Sardar Muhammad Hafeez Khan and 4 others* [2002 SCR 170] in which it was held that even a void order adversely affecting the interests of a person should be challenged within a reasonable time.

Same view was reiterated by this court in the case reported as *Azad Government of the State of Jammu & Kashmir through Secretary Elementary and Secondary Education, Muzaffarabad and 3 others vs. Mukhtar Ahmed and 12 others* (2019 YLR 2111), whereby at page 2114 of the cited case it has been held as under:-

“...For the sake of arguments, if the version of the petitioners is accepted even then they cannot succeed because it is a settled principle of law that a void order which adversely affects the rights of a party must be challenged within a reasonable time...”

8. From the perusal of the impugned judgment of the learned High Court, it reveals that the learned High Court while accepting the writ petition has set aside the order dated 16.10.2018, despite the fact that the same not challenged before it. It is a well settled principle of law that a point which is not taken in the pleadings by a party cannot be made basis for giving him the relief. It is also well settled that a judgment has to be based on pleadings of the parties and a Court cannot travel beyond pleadings. This proposition finds support from judgment of this Court reported as *Muhammad Hussain vs. Abdul Majid and others* (1993 SCR 319). Thus, we have no hesitation in holding that the High Court was not justified to cancel the order dated 16.10.2018, which was never challenged in the writ petition.



The result of the above discussion is that the appellants have succeeded in making out a case, the appeal is, therefore, accepted. Resultantly, the writ petition filed by respondent No.1, herein, before the High Court is dismissed. No order as to costs.

JUDGE

Muzaffarabad.  
16.8.2021

JUDGE.

Secretary Health **vs.** M. Latif Butt & others.

**ORDER:**

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

JUDGE

Muzaffarabad  
16.8.2021

JUDGE