

Jay Harmesh @ Jay Harmesh Gandharv vs State Of U.P. Thru. Prin. Secy. (Medical ... on 30 April, 2025

Author: Jaspreet Singh

Bench: Jaspreet Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:24889

Court No. - 8

Case :- WRIT - C No. - 4222 of 2025

Petitioner :- Jay Harmesh @ Jay Harmesh Gandharv

Respondent :- State Of U.P. Thru. Prin. Secy. (Medical Education And Training), Lko. An

Counsel for Petitioner :- Pradeep Kumar,Adarsh Tripathi,Prabhat Kumar Mishra

Counsel for Respondent :- C.S.C.,Shubham Tripathi

Hon'ble Jaspreet Singh,J.

Heard Sri Pradeep Kumar learned counsel for the petitioner who had made a mention in the morning that he has filed a petition in the registry of the Court which is of an urgent nature. Since, the petitioner who is slated to give examination which is to commence on 05.05.2025, he has not been issued any admit card nor he was able to download the same from the official website of the University and in such circumstances, if the matter is not taken up the petitioner would suffer irreparable loss.

Considering the aforesaid, the Court had granted permission that the matter be taken up today. In the aforesaid backdrop the petition has been placed before this Court.

Sri Pankaj Srivastava learned Additional Chief Standing counsel has accepted notice on behalf of respondent nos.1 and 2 whereas Sri Shubham Tripathi learned counsel has accepted notice on behalf of respondent nos.3, 4 and 5.

At the outset, the counsel for the University has raised a preliminary objection regarding maintainability of the petition. It is urged that the petitioner is pursuing his M.B.B.S course from King George's Medical University since, 2006. He has a history of bad academic record. Since, he was unable to clear the aforesaid course, hence, his candidature/admission was cancelled by the University. This prompted the petitioner to assail the same in Writ C no.8720 of 2023 wherein noticing peculiar facts and circumstances a coordinate Bench of this Court by means of the order dated 08.08.2024 had permitted the petitioner to take his examination and further it was directed in case if he was unable to clear the exam then neither the petitioner will ask for another chance nor the same would be granted.

It is urged that after the intervention made by the Court vide order dated 08.08.2024, a letter was issued to the petitioner on 09.09.2024 permitting him to take admission as directed by the High Court and it was further indicated that in case, if he failed the examination, his name would be struck off from University rolls immediately and no further opportunity for re-examination will be granted.

It is urged that the said order has not been placed on record and in light of the earlier order dated 08.08.2024, the instant petition is not maintainable as it amounts to review of the earlier order dated 08.08.2024.

Learned counsel for the petitioner while refuting the aforesaid submissions has urged that the earlier order passed by the Court on 08.08.2024 was relating to the regular examination whereas the petitioner is seeking the right to appear in supplementary examination.

It is urged that the results were declared on 29.03.2025 and the petitioner had also deposited the fee for the supplementary examination and in such circumstances, the petitioner may not be debarred from taking the examination and in such circumstances the respondent University be directed to upload the admit card so that he can appear in the examination stated to commence on 05.05.2025.

The Court has heard learned counsel for the parties and also perused the material on record.

At the outset, as per the admitted facts, a coordinate Bench of this Court in Writ C no.8720 of 2022 dated 08.08.2024 had passed an order, a copy of which has been brought on record as Annexure no.6. Paragraphs-6 to 9 of the said order is reproduced for the ease of reference:

"6. This Court has pondered over the contentions raised by the petitioner and also considered the arguments of the respondents.

7. We have already observed the academic profile of the petitioner and have noticed that he is pursuing his MBBS Programme since 2006 and in each year of his MBBS

Programme he has spent substantial number of years before he could succeed and lastly, he is studying in the 4th year since 2017. Though this Court was reluctant initially in giving the petitioner any further chance, in view of the fact that the petitioner has already spent a substantial number of times pursuing the said course but considering the fact that at the time of the admission of the petitioner, there were no regulations prescribing the maximum period of studying for the said course and also considering that the respondent medical University has already shown mercy, the benefit of which was taken by the petitioner and still he could succeed in one subject i.e. Gynaecology and only one subject remains to be cleared for awarding him MBBS Degree.

8. It is in the aforesaid circumstances, this Court had asked the petitioner to submit an Affidavit of undertaking that in case, one attempt is granted to him, he shall not approach any authority or forum seeking any additional chances to clear his MBBS Programme, which has been filed stating that in case, he is allowed to appear in the forthcoming MBBS Final Professional Part -II Examination, then it will be treated to be his last opportunity for clearing the examination.

9. In light of the above, this Court is of the view that the petitioner should be given one last opportunity to clear his Surgery paper considering the fact that he is pursuing the course for last 18 years and only one paper remains to be cleared and accordingly, impugned order dated 14.08.2023 is set aside with regard to the petitioner only to the extent that the petitioner shall be entitled to appear in the examination of Surgery scheduled for sometime in the month of February, 2025. It is also made clear that the petitioner shall neither seek nor he may be entitled to ask for any further chance to clear his MBBS Programme. This order has been passed in the peculiar circumstances of the case and it shall not be treated to be a precedent. "

Learned counsel for the petitioner could not dispute the fact that it is in furtherance of the order dated 08.08.2024 the letter dated 09.09.2024 was issued by the University and putting him to notice that the indulgence granted to him to appear as a last chance in the examination was on account of indulgence granted by the High Court and in case if he failed, his name would be struck off without being put to further notice. The said order dated 09.09.2024 has been provided by Sri Tripathi learned counsel for the University for perusal of the Court and it is taken on the record.

It is not disputed that the petitioner did not receive the said order dated 09.09.2024. However, neither there is any challenge to the same nor any explanation has been given as to why the said order was not brought on record.

Be that as it may, since the earlier order dated 08.08.2024 was an extraordinary indulgence which was granted by the Court and as also noticed in the order itself which as indicated states that it is not to be treated as a precedent. Hence, in the given circumstances, this Court finds that the instant petition at the behest of the petitioner is not maintainable as the relief which is now sought to be claimed would run contrary to the observations of this Court in Writ C no.8720 of 2023 and that too

without there being any challenge to the order dated 09.09.2024. Moreover, entertaining the instant petition would amount to rejecting order passed by the Court on 08.08.2024. Even otherwise, this Court in the facts and circumstances does not find the instant case to be fit enough for this Court to exercise its discretionary jurisdiction in favour of the petitioners.

Accordingly, this Court finds that the petition is misconceived and, hence, dismissed. Costs are made easy.

Order Date :- 30.4.2025 Harshita