

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Umar Ata Bandial
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan

Civil Petition No.2824 of 2019.

(Against the judgment dated 18.06.2019 of the Peshawar High Court, Peshawar passed in W.P No.1447-P of 2019)

Aina Haya

.....Petitioner

Versus

Principal Peshawar Model Girls High School-I, Peshawar, etc

.....Respondents

For the petitioner: Mr. Muhammad Amjad Khan, AOR.
a/w Amina Rafique, mother of petitioner.
(through video-link from Peshawar)

For respondent No.1: Mr. Mansoor Tariq, ASC. (through video-link)

For respondents No.3-4: Mr. Nazirullah Khan,
Chairman Peshawar Board

Date of hearing: 20.01.2022

ORDER

Syed Mansoor Ali Shah, J. – Brief facts of the case are that petitioner was a student of Peshawar Girls Model High School No.1, Warsak Road, Peshawar and after passing her 9th class, she started her 10th class. In the new academic year,¹ as the petitioner remained absent for a fortnight from 05.11.2018, she was expelled from school vide letter dated 23.11.2018. The Letter stated two grounds for her expulsion: (i) non-payment of fee since June, 2018 and (ii) for being continuously absent from school w.e.f 5th November, 2018. The petitioner did not attend the classes for the remaining academic year. Subsequently, the request of the petitioner to send her name for the final examination of the 10th class was refused by the school. Aggrieved, the petitioner challenged the said refusal before the Peshawar High Court through a constitutional petition. Initially interim relief was granted to the petitioner and she sat the examination, which she subsequently passed. Later on the constitutional petition was dismissed by the High Court on the

¹ From April 2018 to March 2019.

ground that petitioner failed to meet the requirement of 66% attendance required by a female student to qualify to sit the examination.

2. We have heard the learned counsel for the parties and have gone through the case record. According to the learned counsel for the school, as well as, the representative of the Board of Intermediate and Secondary Education, Peshawar ("**Board**"), the attendance of a female student must be 66% to be allowed to sit the examination as per Explanation (a) to Rule-2 of Chapter-IV of the Calendar of the Board of Intermediate and Secondary Education NWFP, 1995. In the case of the petitioner her attendance during the academic year was 45% as per the record. Learned counsel for the petitioner vehemently agitated that the petitioner got married during the academic year and hence missed some of her classes and asserted that the petitioner still had an attendance of 67.46%. In support of this he referred to letter dated 16.12.2021 issued by the Principal of the school. He also urged the Court to examine the case of the petitioner on humanitarian grounds. Learned counsel representing the school submitted that the letter dated 16.12.2021 is not in accordance with the record and also seriously disputed the veracity of the said document. We have gone through the attendance sheets placed on the record by the petitioner, which support the contention of the learned counsel for the school. There is nothing on the record that the petitioner wanted to resume her classes after 5th November, 2018 and she was not allowed to do so by the school. The rule regarding 66% attendance for female students under the Calendar of the Board of Intermediate and Secondary Education NWFP, 1995 is clear and carries no ambiguity.

3. Courts must sparingly interfere in the affairs of academic institutions². Hamoodur Rahman, J. speaking for this Court in *Zakir Ahmed* case³ held that "...we are not unmindful of the necessity of maintaining discipline in educational institutions... where the maintenance of discipline is essential for the orderly conduct of the institution...nor are we unmindful of the fact that persons in charge particularly of educational institutions must be given the fullest authority to correct those placed in their charge in the same manner

² Khyber Medical College v. Raza Hassan 1999 SCMR 965; Muhammad Ilyas v. Bahauddin Zakariya University 2005 SCMR 961; Muhammad Arif v. University of Balochistan, PLD 2006 SC 564; Secretary Economic Affairs Division, v. Anwarul Haq Ahmed 2013 SCMR 1687.

³ University of Dacca v Zakir Ahmed, PLD 1965 SC 90 (5 member bench)

as a parent or guardian would be able to do." It is, therefore, best to leave the disciplinary, administrative and policy matters of educational institutions to the professional expertise of the people running them, unless ofcourse there is a blatant violation of any of the fundamental rights or the law.

4. Learned counsel for the petitioner, as an alternate plea, urged before us that the petitioner be treated on humanitarian grounds with compassion. No humanitarian ground has been urged before us except that the petitioner was married off during the academic year and that she passed the final examination under the interim order passed by the High Court, therefore her result of the 10th class be accepted. It is important to highlight that judges are to decide disputes before them in accordance with the Constitution and the law and not on the basis of their whims, likes and dislikes or personal feelings or mere humanitarian grounds. While justice is tempered with mercy but not at the expense of overriding the clear letter of the law. Compassion and hardship, therefore, may be considered by courts for providing relief to an aggrieved person, but only when there is scope in the relevant law to do so, not in breach of the law⁴. The requirement of 66% attendance of classes to be entitled to sit for the final examination under the Calendar of the Board is a requirement of law which does not provide any margin of relaxation. Therefore, no court enjoys the power or jurisdiction to ignore or sidetrack the clear letter of the law at the altar of compassion.

5. For the above reasons, we see no reasons to interfere with the impugned order of the High Court. Leave is, therefore, refused and this petition is dismissed.

Judge

Judge

Islamabad,
20th January, 2022.
Not approved for reporting.

Judge

﴿مذاق﴾

⁴ D.G., National Savings v. Balqees Begum PLD 2013 SC 174.