

removed, so his removal from that office would not entail automatic removal from the membership of the Committee. There cannot be any dispute with the proposition that an order removing a President of the Municipal Committee on ground on which a member cannot be removed would not automatically entail the removal of the person from the membership of the Municipal Committee nor would it entail automatic disqualification of such person from being member of the Municipal Committee. But removal of a President on a ground on which if he had been member of the Municipal Committee, he could have been removed, then it cannot be urged in view of the Full Bench decision aforementioned that he could only have been removed from the Presidentship and not from Membership. If such a contention is accepted, then the order removing a President could be nullified by the members of the Committee by electing him again as the President of the Municipal Committee, for our attention has not been drawn to any provision in the Act envisaging disqualifying the President after his removal, from becoming President of Municipal Committee for any period. Such provision exists in sections 16(2) and 16(3) of the Act only in regard to the person who has been removed from the Membership of the Municipal Committee.

(6) For the reasons aforementioned, there is no merit in the petition and we dismiss the same *in limine*.

H. S. B.

Before D. S. Tewatia & J. V. Gupta, JJ.

RAJEEV JOHAR,—Petitioner.

versus

THE PRINCIPAL, GOVERNMENT MEDICAL COLLEGE, ROHTAK
AND ANOTHER,—Respondents.

Civil Writ Petition No. 3370 of 1983.

April 23, 1985.

Kurukshetra University Calender—Ordinance relating to Bachelor of Medicine and Bachelor of Surgery—Clause 2.2—Student failing in all subjects in First Professional examination held in December—Such student allowed to join Second Professional class

Rajeev Johar v. The Principal, Government Medical College, Rohtak and another (J. V. Gupta, J.)

in terms of clause 2.2—Said student passing two subjects and securing 're-appear' in one in First Professional examination held in April—Said student—Whether can be allowed to continue in Second Professional course—Meaning of the word 'fails' in clause 2.2.—Explained.

Held, that reading of clause 2.2 of the Ordinance relating to Bachelor of Medicine and Bachelor of Surgery (MBBS) of the Kurukshetra University Calender, the term 'fails' has to be given its ordinary meaning as it is understood in common parlance. It would thus mean and refer to one who has not passed. It has to be so, because it has to be read with the first clause which provides that only a person who has passed in First Professional examination shall be eligible to join Second M.B.B.S. class and a candidate who fails in the First M.B.B.S. examination in December in the First Professional examination may be allowed to attend the next higher class until April next. This concession is available to a candidate only upto April as the intention has been made more clear by the last line of clause 2.2 of the Ordinance which is of a peremptory nature. It is thus clear that this concession shall not be given to a candidate who fails in April. It has been further stipulated in the aforesaid clause 2.2 that if the student fails in the First Professional examination in December, he can join the Second Professional and can clear the First professional till April. Where, however, the student has failed to clear the First Professional in April by getting re-appear in one paper, the concession of joining the Second Professional class is lost to the student in view of the clear and unambiguous intention as has been revealed in clause 2.2. 'Re-appear' has the attributes of 'failure' more than that of a 'pass' as the student who has got re-appear in second paper which is deemed to be amongst the failures. As such, the student who has failed to clear the First Professional examination held in April will not be entitled to continue in the second Professional course.

(Paras 3 and 4).

This case was referred to Division Bench by Hon'ble Mr. Justice D. S. Tewatia on 15th February, 1985 for decision of a question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice J. V. Gupta finally decided the case on 23rd April, 1985.

Petition under Article 226/227 of the Constitution of India praying that:—

- (a) *the action of the Respondents is not allowing the petitioner to continue his studies in the Second Professional classes of M.B.B.S. course in the Medical College Rohtak is wrong and arbitrary and be quashed and they be*

directed to allow the petitioner to continue his classes in the Second Professional M.B.B.S. course;

- (b) any other writ, direction or order may also be issued to the respondents to which the petitioner may be found entitled under the circumstances of the case;*
- (c) issuance of advance notices to the respondents may be dispensed as there is no time for the petitioner to serve the same.*
- (d) costs of the petition be also allowed to the petitioner.*

It is further prayed that during the pendency of the present writ petition, the petitioner may be allowed to continue his studies in the Second Professional M.B.B.S. classes in the Government Medical College, Rohtak.

R. S. Mongia, Advocate, for the Petitioner.

J. L. Gupta, Senior Advocate, (Rajiv Atma Ram and Rakesh Khanna, Advocates with him, for the Respondent.

R. C. Setia Advocate, for the State of Haryana.

JUDGMENT

J. V. Gupta, J.

(1) The petitioner is a medical student of the Government Medical College, Rohtak, affiliated to Maharishi Dayanand University, Rohtak. He joined the M.B.B.S. course in August, 1981. He appeared in the examination for the First Professional held in December, 1982 but failed in all the three subjects. However, he was permitted to join the next higher class in terms of clause 2.2. of the Ordinance relating to Bachelor of Medicine and Bachelor of Surgery (MBBS) of the Kurukshetra University Calender as the M. D. University has adopted the regulations of that University. In April, 1983 he again took First Professional examination and passed in two out of the three subjects and got 're-appear' in the third subject viz. that of Anatomy. Since he could not pass in all the subjects in April, he was not permitted to continue to attend the next higher class of Second Professional in view of the bar created under clause 2.2 of the Ordinance.

Rajeev Johar v. The Principal, Government Medical College, Rohtak
and another (J. V. Gupta, J.)

(2) The petitioner has filed the present writ petition in this Court since he was not permitted to attend the classes for the Second Professional. *Vide* this Court's order dated 26th July, 1983, at the time of motion hearing, the petitioner was allowed to continue to attend the Second Professional classes at his own risk and the writ petition was directed to be set down for hearing within three months. When the writ petition came up for hearing before my learned brother D. S. Tewatia, J., he expressed certain reservations as to correctness of the law laid down in *Rajinder Khandpur and others v. The Director-Principal, Medical College, Rohtak and another*, (1) and referred the case to a larger Bench. It is how this case has come up before this Bench.

(3) The sole question that arises for consideration in this case is as to whether the petitioner could be allowed to attend the next higher class of 2nd Professional when he could not pass in the examination held in April, 1983. According to the learned counsel for the petitioner, since he had passed in two papers and in the third paper he was required to 're-appear', he could not be said to have failed in the First Professional examination within the meaning of clause 2.2. of the Ordinance. It would be profitable to reproduce clause 2.2 here. It reads:

"2.2. A person who has passed the First M.B.B.S. Examination of the Kurukshetra University shall be eligible to join the Second M.B.B.S. Class. However, a candidate who fails in the First M.B.B.S. in December Examination for the first time may be allowed to attend the next higher class until April next. This concession shall not be given to a candidate who fails in April or a subsequent examination."

According to the learned counsel, the aforesaid clause only disentitles such a candidate who has failed in April or in the subsequent examination from continuing in the Second Professional and since the petitioner has passed in two papers and got 're-appear' in the third paper, he could not be said to have failed. On the other hand, learned counsel for the respondent-University, submitted that for the purposes of clause 2.2 "fail" has to be read in contradistinction to the word "pass" and would mean and refer to the one who has not passed and since the petitioner had failed to pass

(1) A.I.R. 1976 Punjab and Haryana 295.

the examination in April, the concession allowed to him ceases and it was no more available to him to continue in Second Professional as contemplated under clause 2.2. It was further contended that similar clause has already been interpreted by this Court in *Rajinder Khandpur's case* (supra) and since it has stood the test of time the same interpretation may be applied to this case also. Failing that, he has submitted, that in any case, if two interpretations are possible, this Court should be reluctant to interfere in writ jurisdiction.

(4) After hearing the learned counsel for the parties, we are of the considered view that for the purposes of interpreting clause 2.2, the term "fails" has to be given its ordinary meaning as it is understood in common parlance. It would thus mean and refer to one who has not passed. It has to be so, because it has to be read with the first clause which provides that only a person who has passed in First Professional Examination shall be eligible to join Second M.B.B.S. class and a candidate who fails in the First M.B.B.S. Examination in December in the First Professional Examination may be allowed to attend the next higher class until April next. This concession is available to a candidate only upto April as the intention has been made more than clear by the last line of clause 2.2. of the Ordinance which is of a peremptory nature. It is thus clear that this concession shall not be given to a candidate who fails in April. Thus it is quite clear that a candidate who has not passed was not entitled to this concession. In these circumstances, the question that arises is as to whether the petitioner who has got "re-appear" in the third paper could be said to have passed the examination held in April, 1983. To support his contention the learned counsel for the petitioner has drawn our attention to the proforma of the result card in which mention has been made as "For Failed/Re-appear candidates". From that he intends to infer that failed and re-appear are two distinct categories and therefore re-appear candidates cannot be equated with failed candidates and once that is so the petitioner cannot be said to have failed in April. Otherwise also his submission is that "re-appear" has to be given some logical meaning different than that of failed. We are afraid we are unable to find any force in his submission. There is no doubt that in the examination the net result always is that the candidate either passes the examination or he fails in it. It is by way of concession that the University has provided some intermediate stages, also by way of compartment or 're-appear' but the result of all that is that once the 'compartment' or 're-appear' is

Rajeev Johar v. The Principal, Government Medical College, Rohtak and another (J. V. Gupta, J.)

not cleared within the chances stipulated, one remains a failed candidate. Similar is the position in the present case. It has been stipulated in the aforesaid clause 2.2. that if one fails in the First Professional in December, he can join the Second Professional and can clear the First Professional till April. The petitioner has failed to clear the First Professional in April and by getting 're-appear' in the third paper, he though may clear the First Professional by 're-appearing' in the third paper only in the subsequent examination, but the concession of joining the 2nd Professional class is lost to him in view of the very clear and unambiguous intention of the University as has been revealed in clause 2.2 of the Ordinance. In the present case 're-appear' has the attributes of 'failure' more than that of a 'pass' as the petitioner who got 're-appear' in the third paper is deemed to be amongst the failures till he passes in that paper and that would obviously be after April, 1983. For April 1983, he would never be considered as one amongst the 'pass' candidates.

(5) Though initially there were some reservations about the view taken in *Rajinder Khandpur's case* (Supra) but finally we are inclined to take the same view and are supported by the following observations made therein:—

"What is provided by Regular No. 12, is that if a student of First Professional class fails for the first time in the annual examination to be held in December, he may be allowed to attend the Second Professional class till April next, and that would be a sort of concession which shall not be available to him if he again fails in the Supplementary Examination to be held in April, or in any other such examination to be held subsequently in the subject (s) of the First Professional examination. The first sentence of the aforesaid Regulation reads consistent with the ordinary rule, stated above, and provides clearly that a student of First Professional class shall not be promoted to the Second Professional class unless he passes the First Professional examination. It clearly directs that promotion to the second Professional class can be claimed by a student of First Professional class only when he passes the First Professional Examination. The second sentence of Regulation No. 12 however, provides that a student of First professional

class failing for the first time in the annual examination held in December may be allowed to attend the Second Professional class. That is a mere concession, and that too is not unrestrained. It is available to him only till the month of April when the First Professional examination (Supplementary) is held. If he again fails to clear in all the subjects in the said First Professional examination (Supplementary) held in April, or in any month subsequent thereto, the said concession would lapse and the same would no longer be available to him, and he has to go back to the First Professional class. This, is, what is evident from the last sentence of the aforesaid Regulation. So, the proper analysis of Regulation No. 12 points out unmistakably that even a student of First Professional class if he fails to clear in all the subjects in the annual examination held in December for that class is not entitled to promotion to the Second Professional class; he is merely allowed by way of concession only, to attend the Second Professional class till the Supplementary Examination to be held in April next, or in any month subsequent thereto, but if he again fails to clear in all the subjects of the First Professional class in the Supplementary Examination, the said concession would not be available to him and he will have to appear with the junior class in the annual examination in the subjects which he could not clear in the annual examination held in December, and also in the Supplementary Examination held either in the month of April, or in any other month subsequent thereto."

It may be mentioned here that therein it was Regulation No. 12 of the Panjab University Calendar which was being interpreted which is *para materia* clause 2.2. of the present ordinance. Thus the argument raised on behalf of the petitioner that he could not be said to have failed in the examination because he had passed in two papers and got 're-appear' in the third paper, is devoid of force as no meaningful distinction could be pointed out by him.

(6) There is another aspect of the matter also. In *Varganasava Sanskrit Vishwavidyalaya and another vs. Dr. Raikishore Tripathi and other*, (2) while dealing with the matter touching either the

Parminder Singh Dhillon v. State of Punjab (M. M. Punchhi, J.)

discipline or the administration of the internal affairs of University, the Supreme Court observed as under:—

“We would also like to observe that, in a matter touching either the discipline or the administration of the internal affairs of a University, Courts should be most reluctant to interfere. They should refuse to grant an injunction unless a fairly good *Prima facie* case is made out for interference with the internal affairs of Educational Institutions’.

On that principle also we are reluctant to interfere in this matter as there is no flagrant violation of the rules nor the interpretation put by the University can be said to be absurd or unreasonable.

(7) In this view of the matter, that the writ petition fails and is dismissed with no order as to costs.

(8) During the pendency of this writ petition,—*vide* this Court's order dated 17th September, 1984, the petitioner was also allowed to sit in the remaining papers of the Second Professional examination of the M.B.B.S. which commenced on 12th September, 1984. It has been stated at the Bar and not denied that the petitioner appeared but his result is not being declared by the University because of the pendency of this writ petition. In these circumstances, it is expected that the University will take into consideration the subsequent events and will pass appropriate orders in the case of the petitioner. However, any orders passed will not set any precedent for others.

H. S. B.

Before M. M. Punchhi, J.

PARMINDER SINGH DHILLON,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 2166-M of 1985

April 24, 1985.

Terrorist Affected Areas (Special Courts) Act (LXI of 1984)—Section 15(4)—Code of Criminal Procedure (II of 1974)—Sections 438 and 439—Arms Act (XI of 1878)—Sections 3 and 25—Offence under Arms Act allegedly committed—Such offence made exclusively triable by a Special Court—Accused seeking anticipatory bail—Application for such bail—Whether maintainable—Accused