

section 20 of that Act means a statement on a question of fact and not a decision of any kind. If the parties agreed to abide by the statement of a referee then the latter merely makes a statement according to his knowledge or belief on a question of fact and this statement is deemed to be the admission of the party or parties, who made the reference under section 20 of the Evidence Act and the Court decides the case and pronounces the judgment on the basis of such a statement and passes decree thereon. A referee is not entitled to make enquiries and take evidence and then pronounce the decision on the basis of such evidence.

(15) However, the essence of arbitration is that the arbitrator decides the case and the parties can file objections and challenge the validity of his award, and the award, if upheld, is in the nature of a judgment which is later on incorporated into a decree of the Court. The arbitrator can either proceed in the basis of his own knowledge or make enquiries and record evidence and then give his decision on such evidence.

(16) For the reasons given above, this revision petition is accepted and the order dated October 9, 1974, of the Additional District Judge, Gurgaon, is set aside and the order dated November 28, 1973, of the Senior Sub-Judge, Gurgaon, is restored. The parties are directed through their counsel to appear in the Court of the Senior Sub-Judge, Gurgaon, on November 14, 1975, who will then proceed to try and decide the suit on merits. In view of the point of law involved, there will be no order as to costs.

N.K.S.

CIVIL MISCELLANEOUS

Before Muni Lal Verma, J.

RAJINDER KHANDPUR ETC.,—Petitioners.

versus

THE DIRECTOR-PRINCIPAL, MEDICAL COLLEGE, ROHTAK  
and another,—Respondents.

Civil Writ No. 1 of 1975

October 23, 1975.

*Punjab University Calendar Volume II 1971—Regulation 12—  
Students of M.B.B.S. Course failing to clear in all subjects of Second*

Rajinder Khandpur etc. v. The Director-Principal, Medical College, Rohtak, etc. (Muni Lal Verma, J.)

*Professional examination—Whether entitled to join higher class after the examination.*

Held that the ordinary rule is that no student is entitled to promotion to higher class unless he passes the junior class. The students of M.B.B.S. Class cannot claim exception to the said rule unless otherwise provided for in the rules and regulations governing them. Regulation 12 of the Punjab University Calendar Volume II 1971 which governs the M.B.B.S. Students provides that the students of the First Professional class even if they fail to clear in all the subjects in the annual examination held in December for the first time, can attend the higher class till the month of April next. What is provided by this regulation is that even a student of the 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 subject 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 in 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. No such provision as contained in Regulation 12 meant for the First Professional class, has been made in the Calendar for a student of the Second Professional class. Therefore, students of Second Professional class cannot possibly claim any concession, what to say of right to promotion to the Final Professional class on their failure to pass the Second Professional examination held in the month of April on the analogy of Regulation 12. Thus the students of M.B.B.S. course who fail to clear in all the subjects of the Second Professional examination are not entitled to attend the higher class after the examination.

(Paras 3 and 4).

*Petition under Article 226 of the Constitution of India praying that :*

- (a) *The impugned order dated 18th December, 1974 (Annexure P. 1) be quashed by a writ in the nature of certiorari.*
- (b) *The petitioners be exempted from filing certified copies of the documents (Annexures P. 1 to P. 4) as the same cannot be readily available.*
- (c) *In view of the urgency of the matter necessitating prayer for ex parte interim relief, issue and service of advance*

*notice of motion of the petition on the respondents be dispensed with ;*

- (d) *The operation of the impugned order be stayed ex parte and the petitioners be allowed to attend the final professional M.B.B.S. Class (year of admission 1971), subject to the result of the writ petition.*
- (e) *Respondent No. 1 be directed to arrange for special classes for the petitioners in the subjects in which they are required to re-appear in the second professional examination as contemplated by the regulations.*

G. C. Garg, Advocate, for the Petitioners.

C. D. Dewan, Additional Advocate-General (Haryana), for the Respondents.

#### JUDGMENT

*M. L. Verma, J.—*(1) The material facts which led to this writ petition as well as Writ Petition No. 2 of 1975 are, that the petitioners as well as Sarvshri Ashok Sharma, Chhaju Ram and Ramesh Gupta who are petitioners in Writ Petition No. 2 of 1975 (hereinafter called the second petitioners) joined the Medical College, Rohtak as M.B.B.S. students in the year 1971. The said college was then affiliated to the Panjab University and the Regulations governing the class joined by them, were contained in the Panjab University Calendar 1971. According to the said Regulations, the course of instructions for M.B.B.S. including the internship extended to a period of five and a half years, and examination for the degree of Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.) consisted of three parts, viz. First, Second and Final Professional examinations. The First Professional examination (Annual) was held in December, 1972, and the petitioners as well as the second petitioners took the said examination, but they could not clear in all the papers. They, however, continued to attend the next higher class, i.e. Second Professional which commenced from January, 1973. They re-appeared in the papers wherein they had failed earlier, in the Supplementary Examination held in April, 1973, and were declared successful. So, they continued attending the Second Professional class and the petitioners appeared in the Second Professional examination (Annual) held in May, 1974. This time again they could not clear in all the subjects

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They, however, attended the next higher class, i.e. Final Professional commencing from July, 1974. They re-appeared in the Second Professional examination (Supplementary) held in September, 1974, but could not succeed in clearing in all the subjects. The second petitioners could not appear in the Second Professional examination (Annual) because of short of lectures in certain subjects. So, they appeared in the Second Professional examination (Supplementary) held in September, 1974, but they could not clear in all the subjects. They had, however, joined the higher class, i.e. Final Professional from October, 1974. On December 18, 1974, the Director-Principal (Respondent No. 1) passed the order (Copy Annexure 'P-1' and marked 'P-2' in Civil Writ 2 of 1975, hereinafter called the impugned order), directing the petitioners and the second petitioners to attend the Second Professional M.B.B.S. class on the ground that they had failed to clear in all the subjects in the Second Professional examination (Supplementary) held in September, 1974. The said order was displayed on the Notice Board on December 19, 1974. The petitioners as well as the second petitioners took the said order as their demotion to a junior class. Therefore, they approached the Director-Principal and also the Vice-Chancellor of the Kurukshetra University to which the Medical College had been affiliated by that time. They also served a notice on the Director-Principal requesting him to withdraw the aforesaid order. When they did not get any favourable response, they filed the writ petitions, referred to above challenging the validity of the impugned order on the grounds: (i) that the M.B.B.S. course was integrated one consisting of three parts, i.e. First, Second and Final Professional examinations, to be held at intervals; (ii) that the Panjab University Calendar 1971 governing them contained no provision barring their promotion to the Final Professional class even if they had failed to clear in all the subjects of the Second Professional examination; (iii) that when they had already been promoted to the Final Professional class, they could not be demoted to the Second Professional class; (iv) that earlier, the students who had not been able to clear in all the subjects of the Second Professional examination had been allowed to continue in the Final Professional class and were further permitted to appear in the Final Professional examination, and (v) that it (the impugned order) was not a speaking one. Hence, a writ of *certiorari* was prayed for to quash the impugned order.

2. In the return which had been filed on behalf of the Director-Principal (Respondent No. 1), the broad facts were admitted. The validity of the impugned order was, however, defended and the writ petitions were resisted with the pleas that the petitioners or the second petitioners were never promoted to the Final Professional class; and no such promotion to a student who had not cleared in all the subjects of Second Professional examination to the Final Professional class was either contemplated or permissible by the Regulations contained in the Panjab University Calendar 1971 (hereinafter referred to as the Calendar); and it was due to irregular and illegal practice that students who did not clear in all the subjects of Second Professional examination had been allowed in the past to join the Final Professional class; and it was on account of the said irregular and illegal practice that the petitioners and the second petitioners had been permitted to attend the Final Professional class, and the said permission was withdrawn since it was not warranted by the Rules or Regulations; and the said withdrawal of the permission did not tantamount to demotion of the petitioners or of the second petitioners to the second Professional class.

3. The principal contentions raised by Shri G. C. Garg appearing for the petitioners and the second petitioners are three. First, that the M.B.B.S. course joined by them was integrated one extending to three examinations, the First, Second and Final Professional, to be held at intervals and, as such, they were entitled to join higher class after annual examination of the class which they had attended during the academic year irrespective of their failure to clear in all the subjects of that examination. Second, that once they had been allowed to attend the Final Professional class, though they had been unable to clear in all the subjects of the Second Professional examination, they could not be demoted, or asked to attend the Second Professional class which pertained to the batch of students who had joined the M.B.B.S. course one year later, i.e. in 1972; and third, that in the past students who had not cleared in all the subjects of the Second Professional examination were being allowed to attend the Final Professional class and therefore, the withdrawal and withholding permission to attend to Final Professional class from them led to inequality and discrimination. None of these contentions, in my opinion, is well-founded. The ordinary rule, and just as well as equitable, seems to be that no student is entitled to promotion to higher class unless he passes the junior class. The students of

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M.B.B.S. class cannot claim exception to the said rule unless otherwise provided for in the Rules and Regulations governing them. Regulation No. 12 of the Faculty of Medical Sciences of the Calendar (hereinafter referred to as Regulation No. 12) which is mainstay of the arguments advanced by the learned counsel for the petitioners and second petitioners reads thus :

*“A candidate shall not be promoted to the next higher class unless he has passed the First Professional examination. However, candidates failing in the December examination for the first time may be allowed to attend the next higher class till April next. This concession will not be given to the candidates failing in April or any subsequent examination.”*

(4) This Regulation, therefore, provides only one exception to the said rule, and, that is, that the students of the First Professional class even if they fail in the annual examination held in December for the first time, can attend the higher class till the month of April next. What is provided by Regulation 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 the 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. No such provision as contained in Regulation No. 12 meant for the First Professional class, has been made in the Calendar for a student of the Second Professional class. Therefore, the petitioners who were students of Second Professional class, could not possibly claim any concession, what to say of right to promotion to the Final Professional class, on their failure to pass the Second Professional examination (Annual) held in the month of April 1974, on the analogy of Regulation No. 12 which, as indicated above, was for the benefit of the students of First Professional class only. It is pertinent to note that the petitioners as well as the second petitioners could not clear in all the subjects even in the Second Professional examination (Supplementary) which was held in September, 1974. The second petitioners could not appear in the Second Professional examination (Annual) held in May, 1974 because of shortage of lecturers. Therefore, even if it is claimed, though remotely on the analogy of Regulation 12 not admitted and conceded for the sake of arguments only—they (the petitioners) were not entitled to the said concession to attend the Final class after September, 1974 because they had failed to clear in all the subjects in the examination (Annual) held in April, 1974 as well as in the Supplementary Examination held in September 1974, and the second petitioners could not take the Second Professional class (Annual) held in May, 1974 and they too failed to clear in all the subjects in the Supplementary Examination held in 1974. It, thus, follows that the case may be

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viewed from any angle, neither the petitioners nor the second petitioners were entitled to any right of promotion to, nor even the concession to attend the First Professional class since they failed to pass in all the subjects of the Second Professional examination and, as such, the first contention, raised on behalf of the petitioners and the second petitioners, is devoid of any force.

(5) As discussed above, the students of First Professional class including the petitioners and the second petitioners who had failed in the First Professional examination (Annual) held in December, 1972 were never promoted to the Second Professional class. It was under Regulation No. 12 that they were simply allowed, and that too, by way of concession to attend the Second Professional class till April, 1973, and that is not equivalent to promotion to higher class. In the absence of any provision akin to Regulation No. 12 affording any such benefit to the students of the Second Professional class, the permission given to the petitioners who had failed to pass in the Second Professional examination (Annual) held in April 1974, and then again could not clear in all the subjects of that class in the Supplementary Examination held in September 1974, or allowed to the second petitioners who did not appear in the aforesaid annual examination held in May 1974 and failed to pass in all the subjects in the Second Professional examination (Supplementary) held in September 1974, to attend the Final Professional class was misconceived and illegal, for the obvious reason that the same was not warranted or permissible by any Rule or Regulation contained in the Calendar. Thus, the practice obtaining in the past allowing the students who had failed in the Second Professional examination to attend the Final Professional class was irregular and illegal. The same, when came to light, had to be corrected rather than perpetuated, and this is what appears to have been done by passing the impugned order by the Director-Principal (Respondent No. 1). In that view of the matter, it cannot be claimed by the petitioners or the second petitioners that they had ever been promoted to the Final Professional class. When they were never promoted to the said class, the question of their demotion from that class does not arise. As such, the impugned order cannot be censured as directing their demotion from the Final Professional class to the Second Professional class. The benefit, if derived by any student situated like the petitioners and the second petitioners in the past on account



of the irregular and illegal practice obtaining then, cannot, in my opinion, earn any right of promotion or the like to the petitioners or the second petitioners to attend the Final Professional class without passing the Second Professional class. Therefore, neither the second contention nor the third one, raised on behalf of the petitioners and the second petitioners, is tenable.

(6) The impugned order mentions the names of the petitioners and the second petitioners, and directs them to attend the Second Professional class and further contains that the said direction was grounded on their failure to pass the Second Professional examination (Supplementary) held in September 1974. Therefore, the impugned order is well informative, and does not suffer from any lack or ambiguity. As such, there is no justification in criticising the same as non-speaking order.

(7) In the last, Mr. Garg, submitted that the petitioners except Shri Rajinder Khandpur (Petitioner No. 1), and Shri Chhaju Ram out of the second petitioners had cleared in all the subjects of the Second Professional examination held in May, 1975, i.e., during the pendency of the writ petitions; and, relying on Regulation Nos. 20 and 21 of the Faculty of Medical Sciences of the Calendar, urged that they should be allowed to appear in the Final Professional examination to be held in April 1976. The said contention is apparently beyond the scope of the writ petitions. The subject of attack in the writ petitions was the impugned order and the question as to whether the petitioners other than Shri Rajinder Khandpur or Shri Chhaju Ram out of the second petitioners are entitled to appear in the Final Professional examination to be held in April 1976, because they had appeared in all the subjects in the Second Professional examination held in May 1974, needs no answer being extraneous to the matter which was subject of controversy in the writ petitions. Anyhow, the aforesaid Regulations are examined simply because solace was solicited from the provisions contained therein. Regulation No. 20 only directs the University to hold Final Professional examination twice a year in the months of December and April, at least sixteen months after the completion of the annual Second Professional examination, or on such other dates as may be fixed by the Syndicate. So, it is of no avail and does not afford any benefit to the petitioners or Shri Chhaju Ram who had passed the Second Professional examination held in May 1975. Two of the

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conditions provided in Regulation No. 21 required to be fulfilled by a student for taking Final Professional examination are (i) that he has been enrolled during the year preceding the said examination; and (ii) that he has passed Second Professional examination not less than eleven months previously. Despite my asking pointedly and repeatedly, the learned counsel appearing for both the parties were unable to furnish any information about the period which would make 'the year' as mentioned in clause (i) of Regulation No. 21. Does it mean twelve months, sixteen months or eleven months? Both the learned counsel showed their inability to throw light on that matter. Therefore, the said question cannot be answered, much less with accuracy, at this stage. Anyhow, since it appears that the petitioners other than Shri Rajinder Khandpur and Shri Chhaju Ram out of the second petitioners would be fulfilling the second condition provided in clause (ii) of Regulation No. 21 requiring them that they should have passed the Second Professional examination not less than eleven months before taking the Final Professional examination to be held in April 1976, the Director-Principal (Respondent No. 1) may be good enough to consider their case sympathetically, if I may say favourably so as to allow them the advantage of appearing in the said Final Professional examination to be held in April 1976, provided in doing so no illegality or violation of Rules and Regulations is committed, so that they may take the benefit of saving some months, may be eight, of their academic career. I leave the said matter to the good sense and sound discretion of the Director-Principal.

(8) Lest there be any misunderstanding, I make it clear that whatever has been said above, would not be taken as expression of my views on merits of the claim now made by the petitioners except Rajinder Khandpur (Petitioner No. 1), and Chajju Ram out of the second petitioners for appearing in the Final Professional examination to be held in the month of April 1976, on the ground that they had cleared in all the subjects of the Second Professional examination held in the month of May 1975.

(9) It, thus, follows from the discussion above, that the impugned order does not suffer from any infirmity, and it has not infringed any right, much less legal, possessed by the petitioners or the second petitioners and, therefore, I find unhesitatingly that both the petitions are bereft of any merit.

(10) For the foregoing reasons, I dismiss this writ petition as well as Writ Petition No. 2 of 1975. Having regard to the peculiar circumstances of the case, especially that the wrong practice obtaining in the past could have encouraged the petitioners and the second petitioners to file the writ petitions against the impugned order, I leave the parties to bear their own costs.

H. S. B.

LETTERS PATENT APPEAL

*Before Prem Chand Jain and Surinder Singh, JJ.*

RIKHI RAM ETC.—Appellants

*versus*

THE STATE OF HARYANA *and another*,—Respondents.

*Letters Patent Appeal No. 178 of 1974.*

October 29, 1975.

*Essential Commodities Act (X of 1955)—Section 3—Constitution of India 1950—Article 19(1)(g)—Haryana Wheat (Restriction on Stock by Producers) Order 1973—Whether violative of Article 19(1)(g).*

*Held* that merely because in compliance with the Haryana Wheat (Restriction on Stock by Producers) Order 1973, the producer is called upon to dispose of all his stock of wheat in excess of the prescribed limit, to the Government within a short time and a continuous flow of stock will not be available to the dealers for running their trade effectively throughout the year, the provisions of Article 19(1)(g) of the Constitution of India 1950 are not violated. The apprehension of the traders that they shall be eliminated from their trade on account of the non-availability of wheat and the restriction placed upon the maximum limit of wheat that they can possess at a time is wholly ill-founded. The traders can always replenish their stocks by purchasing wheat from other dealers. The demand for ensuring a continuous flow of wheat for running their trade, is also unreasonable. The constitutional guarantees can only protect the right of a citizen to carry on a trade or business but there is no guarantee available that the citizen will be ensured any profits in his trade or business throughout the year. Fluctuation in season, production, economic conditions and many other factors can always affect a trade or a business and it is for a person carrying on such a trade or a business to see if the same is profitable to him or not and whether he