

07.04.2026
Court No. 12
Item No. 02
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 775 of 2024
IA No : CAN 1 of 2024
CAN 2 of 2024

Md. Moniruzzaman
-Versus-

The Government of West Bengal & Ors.

Mr. Rudranil De,
Mr. Ziaul Haque
.....for the appellant
Mr. Sk. Md. Galib, Sr. Govt. Adv.,
Mr. Abu Siddique Mallik
....for the State.
Mr. Robiul Islam,
Mr. Masooq Rahman
....for the proforma respondent
/petitioner no. 1.

Re : **CAN 2 of 2024**

- 1) CAN 2 of 2024 is an application for condonation of delay in filing MAT 775 of 2024.
- 2) Considering the averments in Paragraphs 5 to 8 of the said application, we are satisfied that the delay in filing the appeal has been sufficiently explained. The delay of 79 days in filing the appeal is condoned.
- 3) CAN 2 of 2024 is allowed.
- 4) The appeal is regularized.

Re : **MAT 775 of 2024**

- 5) The appellant is aggrieved by the judgment and order dated January 30, 2022 passed in W.P.A. 29174 of 2023. By the order impugned, the learned single Judge rejected the writ petition on the ground that the prayers

were barred by the principle of res judicata and that the appellant at the very first instance did not have the requisite qualification to be admitted to the course of DHMS.

6) The writ petition was filed for a direction upon the West Bengal Council of Homeopathic Medicine (hereinafter referred to as the council) to grant registration to the appellant in order to enable him to practice as a Homeopathy doctor.

7) Mr. De, learned advocate for the appellant submits that the learned Judge misdirected himself by relying on the order of the Division Bench of the High Court. His Lordship was of the view that the Division Bench had decided against issuance of such registration by the Council. Thus, the prayer of the appellant was barred by the principle of res judicata.

8) According to Mr. De, the decision of the Division Bench was not rendered in any appeal preferred by the appellant. The decision of the Division Bench could not be binding on the appellant. The appellant did not have any knowledge about the order of the Division Bench, but relied on an order passed by another single Judge in W.P. 13258 (W) of 2007.

9) In the said order, the learned single Judge had clarified that, chemistry was not a compulsory subject under the Homeopathy (Degree Course) Regulations, 1983 (hereinafter referred to as the Regulation) and as such, even if the appellant has failed in chemistry in Higher Secondary Examination, the same should be treated as an optional subject and not a compulsory subject. Such interchange of subjects were permitted by the West Bengal

Higher Secondary Council and the appellant was a successful examinee in the Higher Secondary Examination. Once the appellant was successful in passing the Higher Secondary Examination with Physics, Chemistry and Biology as his subjects, the requisite criteria for admission to the course (DHMS) was fulfilled.

10) The requirement under the Regulations of 1983 was that a candidate desirous to undertake the DHMS Course, should have passed the intermediate science or equivalent examination with physics, chemistry and biology as their subjects.

11) A learned single Judge in the order in W.P. 13258 (W) of 2007 was of the opinion that as long as a candidate passed the Higher Secondary Examination with those subjects the eligibility criteria would be deemed to be fulfilled, irrespective of whether the candidate had failed in any one of those subjects or not.

12) Thus, the direction was issued by the learned Judge upon the council to supply the mark-sheet to the appellant after the appellant had undergone the entire course. However, the said order does not reflect that His Lordship had directed further consequences would follow that is, the appellant would be entitled to pursue the internship and ultimately be granted registration to practice as a Homeopathy Doctor.

13) Such reliefs although, were available to the appellant, they were not prayed for and in our view the issue is barred by the principle of constructive res judicata.

14) The Homeopathy Council's objection was specifically recorded in the order that, as the appellant failed in chemistry, he did not qualify to be admitted to the course, not having passed one of the three subjects which were to be treated as compulsory subjects in the Class – XII Examination.

15) Next we find that in a similar situation the matter went up before a Division Bench and the Division Bench had held that in order to be declared successful at the examination under Regulation 9 of the West Bengal Council for Higher Secondary Education (Examination) Regulations, 1982, a candidate would be required to obtain in a laboratory based subject 30% marks, that is, 48 marks in theoretical paper taken together and also 30% marks that is 12 marks in the practical paper of a particular subject.

16) Admittedly, the appellant did not obtain the marks necessary. In terms of Regulation 11 as mentioned by the Division Bench, the policy to treat chemistry (in which the appellant had failed) as an optional subject by the Higher Secondary Education Regulations could not be extended in respect of the Council, thereby, diluting the eligibility criteria under the Regulations of 1983.

17) A similar issue had also cropped up in another appeal being MAT 2712 of 2007. The Division Bench held as follows :-

“On a reading of the Regulation 4 of Homeopathy Regulation, 1983 as quoted above it appears that it starts with the word ‘no’ with subsequent word ‘shall’ so far as admission rule is

concerned in the said course. Hence, the said provision under Regulation 4, in our view, is a mandatory provision irrespective of the fact that there is no such clause by which an admission could be cancelled in the event of non-compliance of Regulation 4 aforesaid.

Further from Sub-clause (a) of Regulation it appears that for admission to the said Diploma Course of Homeopathy Medicine, a candidate must have passed Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as subjects. Said Regulation accordingly speaks that even if for equivalent examination a candidate must have passed in the subjects Physics, chemistry and Biology, which is mandatory provision.”

18) Regulation 4 was interpreted by the Division Bench to be mandatory in nature, that is, the candidate shall not be admitted to the course unless the criteria were satisfied. The specific criteria was, passing the Intermediate or equivalent examination with physics, chemistry, biology as their subjects.

19) In the instant case, it is not in dispute that chemistry was a compulsory subject, but was interchanged with mathematics thereby making chemistry an optional subject because the appellant failed in chemistry.

20) This was done only in the final marksheet.

21) Whereas, Regulation 4 specifically provides that admission shall not be granted unless the candidate had passed intermediate

or the equivalent examination with physics, chemistry and biology as their subjects. The requirement to pass such subjects, as compulsory subjects, was the very intention of such regulations. If it was the intention of the regulation making body that either physics or chemistry or biology could be treated as optional subjects as long as the subjects had been studied at the Higher Secondary level in that event the council would have specified that all persons who had studied in the science stream and passed the Higher Secondary examination or equivalent examination with science would be entitled to be admitted to the DHMS course. As the subject physics, chemistry and biology had been specifically mentioned, the intention was that these subjects would be treated as compulsory and ought to have been studied and passed. Interchanging the subjects to prevent a candidate from failing, thereby making the main subject an optional one at the time of the publication of the result, is a policy of the West Bengal Higher Secondary Council. This policy cannot be imposed on the Homeopathic Council. Secondly, two Division Benches have already held that chemistry was a compulsory subject as per Regulation 4 and such regulation was mandatory. The said regulation is quoted below:-

“Part III: Admission to Course

Regulation 4: Minimum qualification specifies that a candidate shall not be admitted to the B.H.M.S. (Degree) Course unless they have met specific criteria:

Passed the Intermediate Science or an equivalent examination with Physics, Chemistry, and Biology as their subjects.

Attained the age of 17 years on or before the 31st December of the year of their admission to the first year of the course.”

22) Under such circumstances, we are not inclined to render a different view and we have given our reasons for the same. The learned Judge rightly rejected the writ petition. Even if the appellant was not a party to the appeal, the decision of the Division Bench on the interpretation of the regulation appears to be reasonable and logical. Moreover, the internship certificate is also not valid.

23) Accordingly, the appeal and the connected application are dismissed.

24) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)