

*Before T.S. Thakur, C.J., Jashir Singh and Augustine George
Masih, JJ.*

PRABHNOOR SINGH HAYER AND OTHERS,—Petitioners

versus

**BABA FARID UNIVERSITY OF HEALTH SCIENCES,
FARIDKOT AND ANOTHER,—Respondents**

C.W.P. No. 17820 of 2008

30th January, 2009

Constitution of India, 1950—Art. 226—Medical Council of India Regulations—Reg. 7.7—Note (a) of Reg. 7.8 requiring 18 months study between date on which candidates passed their first professional examination and date they appear in second professional examination—Whether requirement of passing first professional examination before being admitted to Phase II of professional examination mandatory in character—Held, yes—Petitions dismissed.

Held, that we have no hesitation in repelling the contention urged on behalf of the petitioners that Note (a) of Regulation 7.8 of the Regulations is in conflict with Regulation 7.7 of the Regulations. We have similarly no hesitation in holding that the requirement of passing the first MBBS professional examination before being admitted to Phase II of the MBBS professional examination is mandatory in character and that the view taken by the Division Bench of this Court in **Salil Uppal and others versus Baba Farid University of Health Sciences, Faridkot and others**, CWP No. 13580 of 2003 and connected matters disposed of on 5th December, 2003 correctly interprets the provisions of Note (a) of Regulation 7.8 and rightly repels the contention that there is any conflict between Regulation 7.7 on the one hand and Regulation 7(3) and Note (a) of Regulation 7.8 on the other hand.

(Para 14)

Further held, Regulation 7.7 simply entitles the students who have passed in the supplementary examination to join the main batch and no more. The said Regulation does not go further to entitle those

who have passed the supplementary examination and joined the main batch to necessarily appear in the second professional examination also. We say so because Regulation 7.7 does not regulate eligibility to appear in the second professional examination. Even when a candidate who has passed the supplementary examination, joins the main batch of students, he may still remain ineligible to appear in the examination if he does not satisfy other conditions for such appearance.

(Para 15)

Further held, that those who passed the first professional examination held in June, 2007 result whereof was declared in August, 2007 would as per the Regulations go to Phase II of the training programme commencing with semester-III of the study and must have completed semester III study spreading over six months by the time the petitioners qualified in the supplementary examination held in November, 2007 result thereof was declared on 20th December, 2007. In December, 2007 when the petitioners became eligible to join the main batch, the said batch has already proceeded to the fourth semester if not beyond. Declaring such students eligible to appear in the second professional examination simply because they were able to join the main batch in its fourth semester study would mean that students who have not studied the course in the third semester even for a single day, would be declared eligible to appear in the examination. That is not the object and purpose underlying the Regulations even when Regulation 7.7 is giving the widest interpretation. We cannot overlook the fact that the scheme of the Regulation requires studies to be undertaken by the candidates in a systematic and methodical manner giving proper attention to each subject taught in each semester including all aspects of the training programme other than lecture studies.

Rajiv Atma Ram, Advocate, *for the petitioners*.

Anupam Gupta, Advocate, for respondent-University.

Gurminder Singh, Advocate, for the Medical Council of India.

T.S. THAKUR, C.J.

(1) A Division Bench of this Court has referred all these petitions to a Full Bench to resolve a conflict in the views taken in two earlier Division Bench decisions of this Court in Civil Writ Petition No. 13580 of 2003 (Salil Uppal and others versus Baba Farid University

of Health Sciences and others) decided on 5th December, 2003 and Civil Writ Petition No. 17134 of 2007 (Ajay Prem Salhotra and others versus Baba Farid University of Health Science, Faridkot decided on 19th November, 2007. Both the orders in the said two cases interpret the MCI Regulations and the Regulations framed by the Affiliating University in so far as the same relate to the eligibility of candidates to appear in the MBBS second professional examination is concerned. Before we advert to the precise issues that fall for determination, we need to briefly refer to the backdrop in which the controversy arises.

(2) In Civil Writ Petition No. 17820 of 2008 filed by 90 students undergoing M.B.B.S. Course in different Medical Colleges in the State of Punjab, all of which are affiliated to Baba Farid University of Health Sciences and in Civil Writ Petition No. 18792 of 2008 the question that falls for determination is whether the requirement of 18 months of academic study stipulated by Regulation 7.3 and Note (a) appearing below Regulation 8 of the Medical Council of India Regulations, is mandatory in character. The petitioners argue that the said requirement is directory in nature and once a candidate has successfully passed the first professional examination, he is entitled to join the main batch and appear in the second professional examination. The respondent-University and the Medical Council of India (hereinafter referred to as the "M.C.I.") on the contrary argue that the requirement of 18 months study between the date on which the candidates passed their first professional examination and the date they appear in the second professional examination is an inflexible statutory requirement. According to the respondents, since the petitioners do not satisfy the said requirement they are not entitled to appear in the second professional examination scheduled to be held from 11th November, 2008 onwards.

(3) In CWP No. 18206 and 18846 and 19120 of 2008, the petitioners, who have appeared in the first professional examination held in May-June, 2008 have been declared unsuccessful in the examination in September 2008. The Colleges and the University have declined permission to admit the petitioners in the said petitions to the second professional course as they are not, according to the University, the M.C.I. and the colleges, eligible for such admissions. Aggrieved by the refusal of the Colleges and the University to permit them to join

the second professional course, the petitioners have filed the said petition seeking a mandamus directing the respondents to grant them admissions and to permit them to attend the second professional course.

(4) When Civil Writ Petition No. 17820 of 2008 came up for hearing before a Division Bench comprising of Hemant Gupta and Nawab Singh, JJ., the petitioners relied upon the decisions of the Division Benches of this Court in **Ajay Prem Salhotra and others versus Baba Farid University of Health Sciences and others** (CWP No. 17134 of 2007 decided on 19th November, 2007) and **Ankush Malhotra and others versus Baba Farid University of Health Sciences and others** (Civil Writ Petition No. 1192 of 2008 decided on 22nd September, 2008) to argue that they were entitled to appear in the second professional examination no matter they had not undergone 18 months of study for having the first professional examination. The respondents on the other hand relied upon the Division Bench decisions of this Court in **Jyotis Cherian Johan and others versus Baba Farid University of Health Sciences and others (1)**, **Salil Uppal and others versus Baba Farid University of Health Sciences and others** (CWP NO. 13580 of 2003 decided on 5th December, 2003); **Amarbir Singh and others versus Baba Farid University of Health sciences and others** (CWP No. 17899 of 2004 decided on 29th March, 2005) and **Salil Sharma versus Baba Farid University of Health Sciences and others** (CWP No. 18162 of 2004 decided on 29th March, 2005). Reliance was also placed by the respondents upon the decisions of the Supreme Court in **Council of Homeopathic System of Medicine, Punjab and others versus Suchintan and others, (2)** and **Medical Council of India versus Sarang, (3)**. The respondents appear to have argued on the authority of the above decisions that the statutory requirement of 18 months academic studies after qualifying the first professional examination was an essential requirement and that a candidate who did not satisfy the said requirement was not entitled to appear in the second professional examination. Expressing reservations about the correctness of the view taken in **Ajay Prem Salhotra's case (supra)**, the Division Bench was of the opinion that the judgments

(1) 2004 (1) SLR 753

(2) 1993 Supp. (3) S.C.C. 99

(3) 2001 (8) S.C.C. 427

delivered by the Supreme Court in **Suchintan and others and Sarang's cases** (*supra*) were attracted to the facts of the present case and that the conflict arising from the decisions rendered by Division Benches of this Court deserved to be resolved by a larger bench. That is precisely how the present writ petitions are before the Larger Bench.

(5) Appearing for the petitioners in CWP No. 17820 of 2008, Mr. Rajiv Atma Ram contended that the requirement of 18 months academic studies after qualifying in the first professional examination as a condition precedent for appearance in the second professional examination was not a mandatory requirement. In support of that submission he placed reliance upon regulation 7(7) of MCI Regulations which *inter-alia* provides that a supplementary examination may be conducted within six months of the annual examination so that students who pass in the same can join the main batch. He urged that the provisions of Regulation 7(7) and note (a) appearing under regulation 8 of the said Regulations had to be harmoniously construed to give effect and meaning to the provisions of Regulation 7(7) inasmuch as the same provides for the holding of a supplementary examination with a view to enabling those who have failed in the annual examination to join the second professional examination after they are declared successful. It was argued by Mr. Rajiv Atma Ram that the decisions of this court in **Jyotis Cherian John's, Salil Uppal's and Amarbir Singh's cases** (*supra*) relied upon by the respondents did not take note of the provision of Regulation 7(7) and can not therefore, be taken as having been correctly decided. The decision in **Ajay Prem Salhotra's case** (*supra*) on the contrary took note of the said provision and rightly declared the same to be directory in nature. It was also contended by the learned counsel that the second professional examination scheduled to be held on 11th November, 2008 was being held within a period of 18 months from the date on which result of first professional examination was declared on 22nd August, 2007. This, according to him, implied that stipulation of 18 months of academic study and the regulations framed by the MCI were only directory in nature. So long the candidates had undergone the requisite 120 days of study for each semester and had the necessary attendance as stipulated in the regulations, the mere fact that a period of 18 months had not elapsed between the date on which they qualified

the first professional examination and the date on which they were scheduled to appear in the second professional examination, did not make any material difference. It was also contended that the decision in **Jyotis Cherian John's case** (*supra*) was distinguishable on facts inasmuch as that case related to candidates who had without passing the first semester examination sought admission to the second professional course with the intervention of the court. Petitioners in CWP No. 17820 of 2008 had, however, already qualified and had been admitted to the second professional course by the institutes concerned. This was according to Mr. Rajiv Atma Ram a material difference between the situation dealt with by this court in **Jyotis Cherian John's case** (*supra*) and that arising for consideration in the cases at hand.

(6) On behalf of the respondents it was per-contra argued by Mr. Anupam Gupta that the legal position as regards the regulations framed by the MCI being mandatory and directory in nature stood settled by a long line of decisions of the Supreme Court and those delivered by this Court in the cases referred to earlier. It was contended that the law having been authoritatively settled by the said decisions, there was no room for any forensic debate at this stage especially since the same had been uniformly applied for a long time in the past. 'The decision rendered in **Ajay Prem Salhotra's case** (*supra*) was, according to Mr. Gupta, clearly distinguishable on facts as the candidates in that case were said to have completed the requisite studies to be eligible to appear in the second professional course, which was not the position in the case at hand. The petitioners in CWP No. 17820 of 2008 did not, according to the learned counsel have the opportunity to attend any classes in the third semester as by the time they passed the first professional examination, the instructions in the third semester had already been completed. At any rate, the view taken in **Ajay Prem Salhotra's case** (*supra*) was legally incorrect in the light of the pronouncements of the Supreme Court and the decisions rendered by the earlier Division Benches of this Court in **Jyotis Cherian John and Amerbir Singh's cases** (*supra*).

(7) Section 33 of the Indian Medical Council Act, 1956 empowers the Medical Council of India to make regulations to further the objects underlying the Act. Clause (j) of Section 33 of the Act

empowers the Council to make regulation for the course and the period of study. Similarly Section 19-A of the Act empowers the Council to lay down minimum standards of education. In exercise of the powers so vested in it, the Council has framed what are known as Medical Council of India Regulations on Graduate Medical Education, 1997 which cover a large number of subjects including matters of fundamental importance like the teaching approach and objectives of medical graduate training programme dealt with in Chapter-I of the said Regulations. Chapter-II of the Regulations deals with Admission/Selection, Migration and Training of the candidates. Chapter-III deals with the Curriculum, which it is not worthy is prescribed subject-wise. Chapter-IV deals with Examination Regulations, Attendance, Internal Assessment etc., while Chapter-V deals with Internship.

(8) A reading of Chapter-I of the Regulation would show that Graduate Medical Curriculum is oriented towards training students to undertake responsibilities of a physician, capable of looking after preventive, promotive, curative and rehabilitative aspects of medicine. The Regulations make it abundantly clear that lectures alone are not adequate as a method of training. They are poor means of transferring/acquiring information and even less effective at skill development and in developing the right kind of attitudes. Regulations in Chapter-II lay emphasis on integrated teaching subjects like using problem based learning approach starting with practicals, clinicals and pre-clinical disciplines in understanding and resolving the problems. Regulations 4, 5 and 6 Chapter-II deal with admission, selection of students and migration and are not immediately relevant for our purposes. What is relevant and indeed critical for determination of the issues in the present petitions is Regulation-7 of the aforementioned Regulations which may be extracted in extenso for facility of reference :—

“7. Training Period and Time Distribution

- (1) Every student shall undergo a period of certified study extending over 4½ academic years divided into 9 semesters, (i.e. of 6 months each) from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of

examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of a hours each college working time, including one hour of lunch.

(2) The period of 4 1½ years is divided into three phases as follows :—

(a) **Phase-1** (two semesters)-consisting of Pre-clinical subjects (Human Anatomy, Physiology including Bio-Physics, Biochemistry and introduction to Community Medicine including Humanities). Besides 60 hours for introduction to Community Medicine including Humanities, rest of the time shall be somewhat equally divided between Anatomy and Physiology plus Biochemistry combined (Physiology 2/3 and Biochemistry 1/3)

(b) **Phase-II** (3 semester) -consisting of para clinical/clinical subjects.

During this phase teaching of para-clinical and clinical subjects shall be done concurrently.

The para-clinical subjects shall consist of Pathology, Pharmacology, Microbiology, Forensic Medicine including Toxicology and part of Community Medicine.

The clinical subjects shall consist of all these detailed below in Phase III.

Out of the time for Para-clinical teaching approximately equal time be allotted to Pathology, Pharmacology, Microbiology and Forensic Medicine and Community Medicine combined (1/3 Forensic Medicine and 2/3 Community Medicine).

(c) **Phase-III** (continuation of study of clinical subjects for seven semesters after passing Phase-1)

The clinical subjects to be taught during Phase II and III are Medicine and its allied specialties, Surgery and its allied specialties, Obstetrics and Gynaecology and Community Medicine.

Besides clinical posting as per schedule mentioned herewith, rest of the teaching hours be divided for didactic lectures, demonstrations, seminars, group discussions, etc. in various subjects. The time distribution shall be as per Appendix-C.

The Medicine and its allied specialties training will include General Medicine, Pediatrics, Tuberculosis and Chest, Skin and Sexually Transmitted Diseases, Psychiatry, Radio-diagnosis, Infectious diseases etc. The Surgery and its allied specialties training will include General Surgery, Orthopedics Surgery including Physiotherapy and Rehabilitation, Ophthalmology, Otorhinolaryngology, Anesthesia, Dentistry, Radio-therapy etc. The Obstetrics and Gynecology training will include family medicine, family welfare planning etc.

- (3) The first 2 semester (approximately 240 teaching days) shall be occupied in the Phase I (pre-clinical) subjects and introduction to a broader understanding of the perspectives of medical education leading to delivery of health care. No student shall be permitted to join the Phase II (Pare-clinical/clinical) group of subjects until he has passed in all the Phase I (Pre-clinical) subjects for which he will be permitted not more than four chances (actual examination), provided four chances are completed in three years from the date of enrollment.
- (4) After passing pre-clinical subjects, 1½ year (3 semesters) shall be devoted to para-clinical subjects. Phase II will be devoted to para-clinical and clinical subjects, along with clinical posting. During clinical

phase (Phase III) pre-clinical and para clinical teaching will be integrated in to the teaching of clinical subjects where relevant.

- (5) Didactic lectures should not exceed one third of the time schedule ; two third schedule should include practical, clinical or/and group discussions. Learning process should include living experiences, problem oriented approach, case studies and community health care activities.
- (6) Universities shall organize admission timings and admission process in such a way that teaching in first semester starts by 1st of August each year.
- (7) Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year.”

(9) Also significant are the model timetables prescribed in Appendix C to the Regulations from which it is evident that the MCI has in minute details dealt with matters relating to the contents of the training programme and the time that ought to be devoted to different subjects for the entire course. We may also refer at this stage to Regulations 12 appearing in Chapter-IV which deals with examination and stipulates essentialities for qualifying to appear in the same. Regulation -12(1) stipulates 75% attendance in a subject as an essential requirement for appearing in the examination apart from the requirement of the 80% attendance in non-lecture teaching. Regulation-12 to the extent it is relevant for our purposes may be reproduced at this stage :—

12. EXAMINATION REGULATIONS

Essentialities for qualifying to appear in professional examinations.

The performance in essential components of training are to be assessed, based on :

(1) Attendance

75% of attendance in a subject for appearing in the examination is compulsory provided he/she has 80%

attendance in non lecture teaching, i.e. seminars, group discussions, tutorials, demonstrations, practicals, Hospital (Tertiary, Secondary, Primary) postings and bed side clinics, etc.

(2) Internal Assessment :

- (i) It shall be based on day to day assessment (see note), evaluation of student assignment, preparation for seminar, clinical case presentation etc. :
- (ii) Regular periodical examinations shall be conducted throughout the course. The questions of number of examinations is left to the institution:
- (iii) Day to day records should be given importance during internal assessment :
- (iv) Weightage for the internal assessment shall be 20% of the total marks in each subject :
- (v) Student must secure at least 35% marks of the total marks fixed for internal assessment in a particular subject in order to be eligible to appear in final university examination of that subject.

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There shall be one main examination in year and a supplementary to be held not later than 6 months after the publication of its results.”

(10) From a careful reading of Regulation 7 in particular Regulation 7.7 and Regulation 12(3) (*supra*), the following can be deduced as the very essence of the said two provisions :

- (i) The Candidates must undergo certified study extending over 4½ years divided into 9 semesters of 6 months each from the date of commencement of the study to the date of completion of examination followed by 1 years compulsory internship.

- (ii) Each semester of study to consist 120 teaching days of 8 hours each college working time including 1 hour of lunch.
- (iii) Period of 4½ years of certified study to be divided into three phases :—
 - (a) Phase-I comprising of semesters during which period pre-clinical subjects are studied by the candidates.
 - (b) Phase-II of three semesters consisting of para-clinical/clinical subjects to be undertaken concurrently.
 - (c) Phase-III comprising continuation of study of clinical subjects for seven semesters after passing phase-I during which medicines and its allied specialties, surgery and its allied specialties Obstetrics and Gynaecology and Community Medicine would be taught.
 - (iv) No student shall be permitted to join Phase-II (para-clinical/clinical) group of subjects until he has passed in all the pre-clinical subjects for which he will be permitted not more than four chances within a period of three years from the date of enrollment.
 - (v) Supplementary examination may be conducted by the University so that the students who pass can join the main batch and the failed students may join in the subsequent year.
 - (vi) Passing in first professional examination is compulsory before proceeding to phase-II training in terms of note (a) of Regulation 7.8 of the Regulations.

(11) It was argued on behalf of the petitioners that while passing in first professional examination is made compulsory before proceeding to Phase-II training in terms of note(a) to Regulation 7.8, once a candidate passes the first professional examination, he is entitled

to join the main batch as envisaged by Regulation 7.7. This would, according to the petitioners imply that they can appear in the second professional examination alongwith the said batch. That is, according to the petitioner, the only way in which Regulation 7.7 can be interpreted to avoid the said Regulation being rendered redundant and a mere surplus-age. It was contended that the obligation cast upon the University to hold an examination within 6 months both in terms of Regulation 7.7 and Regulation 12.3 (*supra*) was intended to ensure that such of the candidates as pass the supplementary examination held within 6 months are able to join the main batch and do not loose valuable time in completing the course within the outer limit of 4½ years stipulated under the Regulations. We have carefully considered that line of reasoning but regret our inability to accept the same. Note (a) of Regulation 7.8 of the Regulations does not, in our opinion, admit of any interpretation other than what is evident from a plain reading of the same. Passing of the first professional examination is made compulsory by the Regulations before a candidate can go to Phase II of the training programme. It is manifest from a plain reading of the provisions that no candidate, who does not fulfil that requirement can claim the right to join Phase II of the training programme. We may at this stage straightway mention that the petitioners in Civil Writ Petitions No. 18206, 18846 and 19120 of 2008 squarely fall within the mischief of that note as they have not admittedly passed the first professional examination, which is a sine qua non for proceeding to Phase II of the training programme. Their attempt to get into the Phase II of the Training Programme files in the face of the statutory provisions mentioned above and cannot, therefore, succeed.

(12) The question whether the regulations framed by the MCI are mandatory is no longer *res integra*, the same having been authoritatively answered by the Supreme Court in **Medical Council of India versus State of Karnataka (4)**. While dealing with the directory and/or mandatory nature of the Regulations framed by the MCI, the Court observed :—

“Regulations framed under Section 33 of the Medical Council Act with the previous sanctions of the Central

(4) J.T. 1998 (5) S.C. 40

Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. **If a regulation falls within the purposes referred under Section 33 of the Medical Council Act, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 with effect from August 27, 1992) and Clauses (j), (k) and (l) of Section 33.**" (emphasis supplied).

(13) The above position was reiterated by a Constitution Bench of the Supreme Court in **Dr. Preeti Srviastava versus State of M.P. and others (5)**. Interpreting Entry 66 of List I and Entry 25 of List III of the Seventh Schedule to the Constitution and the provisions of Medical Council of India Act, 1956, the Court declared that prescribing norms for admissions had a direct bearing upon the standards of education and that the admissions must be made on a basis that is consistent with the standards laid down by a statute or regulation framed by the Central Government in exercise of its powers under Entry 66 List I. To the same effect are the decisions of the Supreme Court in **State of Madhya Pradesh and others versus Gopal D. Tirthani and others, (6)** and **Harish Verma and others versus Ajay Srivastava and another (7)**, Reference may also be made at this stage to the decisions of the Supreme Court in **University of Mysore versus C.D. Govinda Rao (8)** **State of Kerala versus Kumari T.P. Roshana (9)**, and **Shirish Govind Prabhudesai versus State of Maharashtra (10)**, where their Lordship's have ruled that in the matters of academic standards, the Court should not ordinarily interfere and should leave the matters to the experts in the field.

(14) In the light of above authoritative pronouncements, we have no hesitation in repelling the contention urged on behalf of the

(5) (1999) 7 S.C.C. 120

(6) J.T. 2003 (6) S.C. 204

(7) J.T. 2003 (Supp. 1) S.C. 322

(8) AIR 1965 S.C. 491

(9) (1979) 1 S.C.C. 572

(10) (1993) 1 S.C.C. 211

petitioners that Note (a) of Regulation 7.8 of the Regulations is in conflict with Regulation 7.7 of the Regulations. We have similarly no hesitation in holding that the requirement of passing the first MBBS professional examination before being admitted to Phase II of the MBBS professional examination is mandatory in character and that the view taken by the Division Bench of this Court in **Salil Uppal and others versus Baba Farid University of Health Sciences, Faridkot and others**, Civil Writ Petition No. 13580 of 2003 and connected matters disposed of on 5th March, 2003 correctly interprets the provisions of Note (a) of Regulation 7.8 and rightly repels the contention that there is any conflict between Regulation 7.7 on the one hand and Regulation 7(3) and Note (a) of Regulation 7.8 on the other hand.

(15) That brings us to the question whether candidates, who have passed the first professional supplementary examination held in November, 2007 result whereof was declared in December, 2007 could be permitted to appear in the second professional examination scheduled to be held with effect from 12th November, 2008. We need in this connection to mention at the threshold that Regulation 7.7 shall have to be harmoniously construed with Note (a) to Regulation 7.8 and the general scheme of Regulations which are intended to maintain academic standards and promote completion of the course by ensuring thorough, satisfactory and proper attention to details as stipulated in the said Regulations. Regulation 7.7, in our opinion, simply entitles the students who have passed in the supplementary examination to join the main batch and no more. The said Regulation does not go further to entitle those who have passed the supplementary examination and joined the main batch to necessarily appear in the second professional examination also. We say so because Regulation 7.7 does not regulate eligibility to appear in the second professional examination. Even when a candidate who has passed the supplementary examination, joins the main batch of students, he may still remain ineligible to appear in the examination if he does not satisfy other conditions for such appearance. We may illustrate the point by reference to the batch that passed the first professional examination held in June, 2007. Those who passed the said examination result whereof was declared in August, 2007 would as per the Regulations go to Phase-II of the training programme commencing

with semester-III of the study and must have completed semester-III study spreading over six months by the time the petitioners in Civil Writ Petitions No. 17820 and 18792 of 2008 qualified in the supplementary examination held in November, 2007 result thereof was declared on 20th December, 2007. In December, 2007 when the petitioners became eligible to join the main batch, the said batch had already proceeded to the fourth semester if not beyond. Declaring such students eligible to appear in the second professional examination simply because they were able to join the main batch in its fourth semester study would mean that students who have not studied the course in the third semester even for a single day, would be declared eligible to appear in the examination. That is not, in our opinion the object and purpose underlying the Regulations even when Regulation 7.7 is giving the widest interpretation. We cannot overlook the fact that the scheme of the Regulation requires studies to be undertaken by the candidates in a systematic and methodical manner giving proper attention to each subject taught in each semester including all aspects of the training programme other than lecture studies.

(16) Super added to the above is the requirement of Ordinance-VII framed by Baba Farid University of Health Sciences to which the institutions in question are affiliated. The said Ordinance reads as under :—

“The Second Professional Examination shall be held during the Fifth Semester in the month of November/December or on such other dates as may be fixed by the Vice-Chancellor; and shall be open to a person who after having passed the First Professional Examination, remained on the rolls of an affiliated college for one and a half academic year preceding the examination, and has his name submitted to the Registrar through the Head of the College/Institute alongwith the certificates as required by Clause (2) of Ord. 6 supra.”

A plain reading of the above shows that the second professional examination held during fifth semester in the month of November/December, or on such other dates as may be fixed by the University

is open to a person who has remained on the rolls of the affiliated college for 1½ academic year preceding the second professional examination and has his name submitted to the Registrar through the Head of the College/Institute alongwith certificates as required under Clause 2 of Ordinance 6. The petitioners do not satisfy the said requirement. They have not been on the rolls of an affiliated college for 1½ academic year preceding examination. That is so because they could not be admitted to Phase-II of the training programme commencing with the third semester anytime before 20th December, 2007 when the result of First Professional Supplementary Examination was announced declaring the petitioner successful. The statutory requirement of 1½ year academic study is a condition of eligibility for appearing in the second professional examination, which the petitioners in Civil Writ Petitions No. 18206, 18846 and 19120 of 2008 do not satisfy.

(17) The contention urged by Mr. Rajiv Atma Ram that the requirement of Ordinance 7 is not satisfied even by those who had passed the first professional examination in the first attempt in June/August, 2007 as the second professional examination scheduled to be held with effect from 12th November, 2008 fell within the period of 18 months reckoned by the calendar has not impressed us. A careful reading of Ordinance 7 extracted above shows that the second professional examination is to be held “during the fifth semester”. This implies that examination is not necessarily after the completion of fifth semester. The period of 1½ year comprising Phase-II of training programme includes the time taken by the University in holding the second professional examination. It is not therefore, as though the period of 1½ academic year referred to in Ordinate 7 is to be interpreted literally to mean 1½ year before the actual conduct of examination. On a plain reading of Ordinance 7, the said period has to be inclusive of the time which the University would take in holding the examination during the fifth semester. So interpreted, candidates who had been declared successful in the first attempt held in June, 2007 had completed the requisite study prescribed for Phase-II of the training programme comprising 3rd, 4th and 5th semesters by November, 2008 when the second professional examination was scheduled to be held.

(18) Time now to refer to a few decisions that lend support to the view, we have expressed. In **Council of Homoeopathic System of Medicine, Punjab and Others versus Suchintan and others (11)**, the Supreme Court was interpreting the provisions of Homoeopathic Central Council Act, 1973 and Homoeopathy Diploma Course Regulations, 1983 in so far as Regulation 9 of the said Regulations *inter alia* stipulated that no candidate shall be admitted to Second Year D.H.M.S. examination unless he had passed the first year D.H.M.S. examination at the end of one year previously and unless he had regularly attended both theoretical and practical courses of instructions in the subject of examination for a period of at least one year subsequent to his passing first D.H.M.S. examination from a recognised College. The question that fell for consideration before their Lordships was whether the requirement of undergoing instructions both theoretical and practical for a period of at least one year subsequent to the passing of first D.H.M.S. examination and before admission to the second D.H.M.S. examination was mandatory. Answering the question in the affirmative, the Court held that the requirement was mandatory and that if the Regulation prescribed a scheme of examination, the same had to be strictly enforced. The Court observed :—

“24. As regards the Second D.H.M.S. examination, Regulation 9 takes care. That states in Clause (i) :

“No candidate shall be admitted to the Second D.H.M.S. examination unless :

- (a) he has passed First D.H.M.S. examination at the end of one year previously ; and
- (b) he has regularly attended the following courses of instruction both theoretical and practical in the subjects of examination for a period of at least one year subsequent to his passing First D.H.M.S. examination from a recognised Homeopathic College to the satisfaction of the head of the College.”

25. Here again, eligibility for admission to Second D.H.M.S. examination is based on two conditions :
- (i) A student has passed his First D.H.M.S. examination at the end of one year previously. This means one year must elapse between the passing of the First Year examination and taking of Second Year examination.
 - (ii) Subsequent to the passing the First Year ;
 - (a) he must have regularly attended the courses both theoretical and practical ;
 - (b) for a period of at least one year ;
 - (c) to the satisfaction of the head of the College.
26. Thus, unless and until, these two conditions are satisfied, a student is ineligible for admission to the Second D.H.M.S. examination.”

The Court also rejected the contention that once a candidate passed in the supplementary examination, the result must relate back to the date when he had first appeared in the first examination and failed. The Court observed :—

“Supposing he passes in that subject or subjects in the supplementary examination, he is declared to have passed at the examination as a whole. This should obviously be so, because once he completes all the subject, he has to necessarily be declared to have passed. Merely on this language, “declared to have passed at the examination as a whole”, we are unable to understand as to how the “doctrine of relation back” could ever be invoked. The invocation of such a doctrine leads to strange results. When a candidate completes the subjects only in the supplementary examination, then alone, he passes the examination. It is that pass which is declared. If the “doctrine of relation back” is applied, it would have the effect of deeming to have passed

in the annual examination, held at the end of 12 months, which on the fact of it is untrue.”

(19) In **Medical Council of India versus Sarang and others**, (12), the Apex Court was interpreting Regulation 6(5) of the M.C.I. Regulations on Graduate Medical Education, 1997, which stipulated that on migration, a student should complete 18 months of study in transfer college after the date of migration before appearing for second year MBBS examination. On behalf of the students, it was argued that the Regulations can be interpreted in a manner that could give benefit to the students studying in a college where he was transferred on migration. That contention was accepted by the High Court but repelled by the Supreme Court. Their Lordship’s held that the strained meaning given by the High Court to Regulation 6(5) of the Regulations actually re-wrote the Regulation itself, which was not permissible. The Court also held that in academic matters, the Court should not normally interfere and interpret the Rules and should leave the matters to experts in the field and observed :—

“In matters of academic standards, Court should not normally interfere or interpret the rules and such matters should be left to the experts in the field. This position has been made clear by this Court in *University of Mysore V. C.D. Govinda Rao*, (1964) 4 SCR 575 ; *State of Kerala versus Kumari T.P. Roshana*, (1979)2 SCR 974 ; (AIR 1979) SC 765 and *Shirish Govind Prabhudesai versus State of Maharashtra*, (1998) 1 SCC 211. The object of the said regulation appears to be that although the course of study leading to IInd professional examination is common to all medical colleges, the sequence of coverage of subjects varies from college to college. Therefore, the requirement of 18 months of study in the college from which the student wants to appear in the examination is appropriately insisted upon. Migration is not normally allowed and has got to be given in exceptional

circumstances. In the absence of such a stipulation as contained in Regulation 6(5). It is clear that the migrated student is likely to miss instruction and study in some of the subjects, which will ultimately affect his academic attainments. Therefore, the strained meaning given by the High Court, which actually changes the language of Regulation 6(5), is not permissible. Thus, we disagree with the view taken by the High Court and state that the correct interpretation is as given by the Medical Council of India set forth above by us.”

(20) In Jyotis Cherian’s case (*supra*), the Division Bench of this Court had an occasion to examine the very same question as falls for our consideration in the present petitions. Relying upon the decision of the Supreme Court in Suchintan’s case (*supra*), the Court held that there was no conflict or inconsistency in Regulation 7 and Regulation 8 of the Regulations framed by the M.C.I. on one hand and the Ordinance issued by Baba Farid University of Health Sciences on the other hand stipulating 18 months study as an essential condition of eligibility for taking the second professional examination. Speaking for the Court, G.S. Singhvi, J., as his Lordship then was, observed :

“A conjoint reading of the provisions reproduced above shows that there is no conflict between the Regulations framed by the Council and the Ordinances framed by the University on the issue of eligibility of a candidate to be admitted to the Second prof. Course without passing first Professional Examination in all the subjects. Rather Note (a) of Paragraph 11 of the University Ordinances is wholly consistent with the second part of Regulation 7(3) and Regulations 8(a) of Regulations framed by the Council which makes the passing of First Professional compulsory before a student can be permitted to join Phase II of the Course. Likewise, there is inconsistency in the Regulations and the Ordinances on the requirement of 18 months study

which a student of Second Professional MBBS Course must undertake before he can be allowed to appear in the Second Professional examination.”

(21) To the same effect is the decision of another Division Bench of this Court in Amarbir Singh’s case (*supra*) in which relying upon the ratio of the decision of this Court in Salil Uppal’s case (*supra*), the Division Bench held that requirement of 18 months study after qualifying in the first professional examination was an essential condition of eligibility for appearance in the second professional examination. The Court held that the second professional MBBS curriculum attended by the petitioners either on account of the admission granted to them by the institutions where they were pursuing their education or by interim orders passed by this Court, prior to having qualified the first professional examination could not be recognised for the purpose of declaring the candidates eligible for appearing in the second profession examination. The Court observed :—

“By an interim order passed by this Court, the petitioners were allowed to appear in the second professional MBBS examination provisionally in November/December, 2004. Since the petitioners would acquire eligibility to appear in the second professional MBBS examination only in May/June, 2005, it is obvious that the petitioners were not entitled to take the second professional MBBS examination when they were provisionally permitted to do so by this Court. We accordingly, hereby direct the University not to declare the result of the petitioners of the second professional MBBS examination which they took in November, 2004. The petitioners shall be permitted to appear in the second professional MBBS examination in May/June, 2005, in accordance with the Regulations of the Medical Council of India.”

(22) Contrary to the above decisions, another Division Bench of this Court in Ajay Prem Salhotra’s case (*supra*) appears to be taking different view in as much as the Court in that case held that once the students passing supplementary examination are allowed to join the

main batch and complete the requisite study, they could not be debarred from appearing in the second professional examination along with the main batch. The Court also noticed that the period of 18 months study was not being enforced rigidly as the main examination was being held within 18 months of study. The Court observed :—

“We are of the view that once the students passing supplementary examination are allowed to join the main batch and complete the requisite period of study, they could not be debarred from appearing in the main examination for second professional along with the main batch. Even the University is not taking the period of 18 months as rigid as the examinations for the main batch are being held before 18 months of commencement of study. From August, 2006 to November, 2007, period is 15 months. Only difference in the students who join the main batch after supplementary examination and the students who join the main batch from the beginning is a period of 2-3 months and if the students joining the main batch later have been allowed to complete the said studies, as per the certificate, issued by the College, they should not be debarred from appearing in the main examination of the second professional with the main batch itself.”

(23) The Court held that the Regulation laying down the period of studies has to be substantially complied with and that the decision of the Supreme Court in Suchintan’s case (*Supra*) was distinguishable as there was no question of relating back to supplementary examination to the main batch. We regret our inability to accept that point of view. In our opinion, the correct legal position is the one stated in Jyotis Cherian’s and Salil Uppal’s cases’ (*supra*), which we hereby approve.

(24) In the result, these writ petitions fail and are hereby dismissed but in the circumstances, the parties are left to bear their own costs.