

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 10298/2019

Fauran Singh Son Of Shri Naval Singh, Aged About 27 Years,
Resident Of Plot No. 38, Shri Laxmi Nagar, Paladi Meena,
Agra Road, Near Golden Park, District Jaipur (Rajasthan)

----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Jaipur
Through Its Registrar
2. Nimt College Of Nursing, Nh-11, Bagrana, Agra Road,
Jaipur, Rajasthan 303012 Through Principal.

----Respondents

Connected With

1. S.B. Civil Writ Petition No. 25935/2018

1. Tarachand Son Of Shri Devi Lal, Aged About 26 Years,
Resident Of D-5, U.i.t. Colony, Masuriya, Jodhpur At
Present F-201, Lal Kothi Scheme, Tonk Road, Jaipur,
Rajasthan.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Jaipur
Through Its Registrar.
2. Udaipur College Of Nursing, Umarda, Udaipur
Through Principal.

----Respondents

2. S.B. Civil Writ Petition No. 10239/2019

Hansraj Mohanpuriya S/o Shri Govind Ram Mohanpuriya,
Aged About 27 Years, R/o Village And Post Jahota, Tehsil
Amer, District Jaipur, Rajasthan.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences (Ruhs),
Pratap Nagar Sanganer, Jaipur Through Its Registrar.
2. Controller Of Examination, Rajasthan University Of
Health Sciences (Ruhs), Pratap Nagar Sanganer,
Jaipur.

3. Principal, Mahatma Jyotirao Phule College Of Nursing,
District Jaipur.

-----Respondents

3. S.B. Civil Writ Petition No. 10241/2019

1. Sunil Kumar Singh S/o Shri Indraaj Singh, Aged About
30 Years, R/o Khetri Nagar, District Jhunjhunu.
2. Devendra Mirdha S/o Shri Surja Ram, Aged About 25
Years, R/o Plot No. 147, Bismilla Colony, Jhotwara
Jaipur.

-----Petitioners

Versus

1. Rajasthan University Of Health Sciences, Through Its
Vice Chancellor, Sector 18 Pratap Nagar, Jaipur.
2. Controller Of Examinations, Rajasthan University Of
Health Sciences, Sector 18, Pratap Nagar, Jaipur.

-----Respondents

4. S.B. Civil Writ Petition No. 10275/2019

Hemant Kumar Verma S/o Sh. Durga Lal Verma, Aged About
26 Years, R/o Regaro Ka Mohalla, Rajpura, District Tonk
(Rajasthan)

-----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Jaipur,
Rajasthan Through Its Registrar, Sector-18, Kumbha
Marg, Pratap Nagar, Tonk Road, Jaipur-302033.
2. The Principal, Jai Durga College Of Nursing, Khasra
Number 432/1, Tara Nagar-D, 80 Feet Road, Khirni
Phatak, Jhotwara, Jaipur.

-----Respondents

5. S.B. Civil Writ Petition No. 10300/2019

Akshat Tiwari Son Of Shri Pramod Tiwari, Aged About 27
Years, Resident Of 81, Ashok Nagar, Vatika Road, Shri Ram
Ki Nangal, District Jaipur (Rajasthan).

-----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Jaipur
Through Its Registrar

2. Jaipur Hospital College Of Nursing And Medical Training Centre, Shipra Path, Adjoining Technology Park, Mansarovar, Jaipur, Rajasthan 302020 Through Principal.

-----Respondents

6. S.B. Civil Writ Petition No. 10301/2019

1. Naresh Kumar Son Of Shri Vijaypal Singh, Aged About 28 Years, Resident Of 16, Indira Colony, Kaman, District Bharatpur (Raj.)
2. Rahul Tanwar Son Of Shri Koshal Kishor Saini, Aged About 25 Years, Resident Of 21, Chilwali Dhani, Tehsil Shrimadhapur Mahroli, District Sikar (Raj.)
3. Jaisingh Rawat, Son Of Shri Kansingh Rawat, Aged About 25 Years, Resident Of- Village And Post - Kayad Via Gagwana, District- Ajmer (Raj.)

-----Petitioners

Versus

1. Rajasthan University Of Health Science, Kumbha Marg, Pratap Nagar, Sanganer, Jaipur (Raj.) Through Its Vice Chancellor.
2. Controller Of Examination, Rajasthan University Of Health Science, Kumbha Marg, Pratap Nagar, Sanganer, Jaipur (Raj.)

-----Respondents

7. S.B. Civil Writ Petition No. 10305/2019

Govind Ram Meghwal Son Of Shri Ramdev Meghwal, Aged About 27 Years, Resident Of Village And Post- Lampolai, Tehsil Riyanbadi, District- Nagaur (Raj.)

-----Petitioner

Versus

1. Rajasthan University Of Health Science, Kumbha Marg, Pratap Nagar, Sanganer, Jaipur (Raj.) Through Its Vice Chancellor.
2. Controller Of Examination, Rajasthan University Of Health Science, Kumbha Marg, Pratap Nagar, Sanganer, Jaipur (Raj.)

-----Respondents

8. S.B. Civil Writ Petition No. 10386/2019

Sonu Kumar Son Of Shri Lakhi Chand, Aged About 28 Years,
(Student Of B.sc. Nursing Part Iv Enrolment No. 2010/n-
1509), Resident Of Plot No. 06, Balaji Nagar, Shiwar Mode,
Bindayka Jaipur (Rajasthan)

-----Petitioner

Versus

Rajasthan University Of Health Sciences, Jaipur, Sector-18,
Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur Through Its
Registrar.

-----Respondent

9. S.B. Civil Writ Petition No. 10387/2019

Rajesh Kumar S/o Shri Jagdish Prasad, Aged About 26 Years,
R/o House No. 377, Barkat Nagar Gali No. 10 Tonk Phatak,
Jaipur.

-----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Through Its
Vice Chancellor, Sector 18, Pratap Nagar, Jaipur.
2. Controller Of Examinations, Rajasthan University Of
Health Sciences, Sector 18, Pratap Nagar, Jaipur.

-----Respondents

10. S.B. Civil Writ Petition No. 10437/2019

Krishan Kumar Raigar S/o Shri Banwari Lal Raigar, Aged
About 27 Years, R/o Nadi Bazar, Khandela, Tehsil Khandela,
District Sikar.

-----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Sector-18,
Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur
Through Its Registrar.
2. Controller Of Examinations, Rajasthan University Of
Health Sciences, Sector-18, Kumbha Marg, Pratap
Nagar, Tonk Road, Jaipur
3. Mahatma Gandhi College Of Nursing, Sikar Through
Director.

-----Respondents

11. S.B. Civil Writ Petition No. 10439/2019

Dilip Kumar Dabaria S/o Shri Chhigan Lal Dabaria, Aged About 29 Years, R/o A-37, Shyam Mitra Mandal Nagar, V.k.i. Area, Road No. 5, Jaipur.

----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur Through Its Registrar.
2. Controller Of Examinations, Rajasthan University Of Health Sciences, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur
3. Jaipur Nursing College Dhand, Amer Jaipur Through Director

----Respondents

12. S.B. Civil Writ Petition No. 10643/2019

Jitendra Sharma S/o Shri Kailash Gautam, Aged About 28 Years, R/o 1808, Kunhari Kota, Near Bijasan Mata Mandir, Kunhadi, Thermal Colony, Kota, Rajasthan.

----Petitioner

Versus

1. Rajasthan University Of Health Science, Through Its Vice Chancellor, Sector 18, Pratap Nagar, Jaipur.
2. Controller Of Examination, Rajasthan University Of Health Science, Sector 18, Pratap Nagar, Jaipur.

----Respondents

13. S.B. Civil Writ Petition No. 10644/2019

Rajesh Kumar Mewara S/o Shri Dharam Chand Mewara, Aged About 29 Years, R/o Near, Government School, Saroli, Juniya, Tehsil Devli, Tonk, Rajasthan.

----Petitioner

Versus

1. Rajasthan University Of Health Science, Through Its Vice Chancellor, Sector 18, Pratap Nagar, Jaipur.
2. Controller Of Examination, Rajasthan University Of Health Science, Sector 18, Pratap Nagar, Jaipur.

----Respondents

14. S.B. Civil Writ Petition No. 10671/2019

Abhay Raj Meena Son Of Shri Kaluram Meena, Aged About 27 Years, (Student Of B.sc. Nursing Part-Iv Enrolment No. 2010/n-3453), R/o Mandkalan, Post Pipaliya, Tehsil Dhariyawad, District Pratapgarh (Raj.)

-----Petitioner

Versus

Rajasthan University Of Health Sciences, Jaipur, Sector-18, Kumbha Marg, Pratap Nagar, Tonk Road, Jaipur Through Its Registrar.

-----Respondent

For Petitioner(s)	:	Mr. Bhrigu Sharma Ms. Suman Choudhary Mr. Arnav Singh Mr. Brijesh Kumar Bhardwaj Mr. Deepak Gupta on behalf of Mr. Yogesh Kumar Gupta Mrs. Sudesh Kasana Mr. Umashanker Pandey Mr. Arpan Kumar Sharma
For Respondent(s)	:	Mr. M.A. Khan Mr. Anoop Pareek Mr. Ravi Chirania Mr. Ashish Kumar Singh

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Judgment/ Order

31/07/2020

1. All the petitioners, in the aforesaid bunch of writ petitions, are the candidates, who are aspirants seeking liberty of this Court to write the examination of B.Sc. Nursing Part-IV by interim orders passed in 2019. The petitioners were directed to be allowed to participate in the examination of Part-IV B.Sc. Nursing in the subject wherein they had not been able to clear in earlier attempts.

2. Learned counsel for the respondent - University has put in appearance and reply has been filed in each of the writ petitions and the reason for not allowing the petitioners to appear in the B.Sc. Nursing Part-IV examination was on account of the fact that they had already put in 8 years of study, but had not been able to clear the examinations.

3. Learned counsel for the petitioners submitted that the petitioners are students, who had joined the course in 2010, however, the First Examination of B.Sc. Nursing Part-I was conducted in November, 2011 and the result of the said examination was declared on 3rd October, 2012. In this regard copy of the mark-sheet issued to petitioner - Fauran Singh has been placed on record.

4. Learned counsel further submitted that in view of the delay in conducting the first year examination, the period of 8 years ought to be extended accordingly and they cannot be non-suited on the said count. In support of the submissions, learned counsel relied on judgments passed in case of **Jitendra Gothwal Vs Rajasthan University of Health Sciences and Anr., S.B.Civil Writ Petition No. 2629/2017** decided on 21.02.2017, **Pramod Ashiya Vs Rajasthan University of Health Sciences, Jaipur and Anr. S.B. Civil Writ Petition No. 857/2017** decided on 06.07.2017, **Manoj Meghvanshi Vs Rajasthan University of Health Sciences, Jaipur and Anr. S.B. Civil Writ Petition No. 1001/2018** decided on 19.01.2018 passed by Coordinate Bench. Learned counsel also relies on earlier judgment passed in case of **Kalpna Patidar V/s Rajasthan**

University of Health Sciences, Jaipur and Ors. S.B.Civil Writ Petition No. 3127/2016 decided on 02.03.2016.

5. *Per contra*, learned counsel appearing for the respondent – University submits that the petitioner - Fauran Singh has already had attempted 14 times during his 4 year course and had failed in several parts of B.Sc. Papers-I, II, III and IV and therefore, he cannot be given benefit. Similarly, other candidates have also attempted 14 to 15 times during the last 8 years of their studies, but they have been unable to clear the B.Sc Nursing Course and therefore, they have not been allowed another attempt. Learned counsel has relied on the Ordinance promulgated in this regard by the Rajasthan University of Health Sciences. Learned counsel has also relied on judgment passed by this Court in case of **Prakash Singh Poonia Vs Rajasthan University of Health Sciences and Ors.** dated **24.11.2017** to submit that there cannot be any departure from the Ordinance. Learned counsel also relies on the judgment in **A.P. Christians Medical Education Society V/s Government of Andhra Pradesh and Anr. : 1986 (2) SCC 667** to submit that no direction can be issued to the University to disobey the statute.

6. I have considered the submissions as above.

7. For adjudication of the issue, it would be appropriate to consider the University Ordinance, which governs the examinations. The relevant Ordinance 299-V-4 and Ordinance 299-V-10 reads as under:-

"299-V-4 *There shall be annual examinations and a second examination for the remanded candidates*

within a period of 4 to 6 months after the declaration of result."

"299-V-10 *Maximum number of attempts permitted for each paper will be three including the first attempt. Maximum period to complete the course successfully should not exceed eight years."*

8. It appears that aforesaid Ordinance was amended by the Rajasthan University of Health Sciences vide Notification dated 28th November, 2017 and in place of above provision, following provisions were replaced in Ordinance 299(V)4 and 299(V)10, which reads as under:-

"299-V-4 *There shall be two examinations in a year – One Main Examination after regular study of 11th months of the session and the Second Examination (Remanded Exam. or Supplementary Exam.) for those candidates who have failed in the main exam. The Remanded Supplementary examination shall be conducted within a period of 4-6 months after the main examination conducted.*

299-V-10 *A candidate can avail any number of attempts for each paper with the condition that maximum period for passing B.Sc. Nursing course is not more than eight (8) years. If he/she fails to clear all previous year due papers within eight (8) years for such candidate the enrollment will be cancelled automatically and he/she have to leave/discontinue the course. (There shall be no ceiling of number of attempts in failing subjects. However, a candidate is required to pass all subjects of B.Sc. Nursing with in a period of eight years from the date of admission, failing which candidate shall deemed to be discharged from the course automatically."*

9. In the opinion of this Court as the Ordinance has been amended only in 2017 and the petitioners had joined in 2010,

the University Ordinance as quoted earlier part shall have an application for the present purposes.

10. As per the said Ordinance, the respondents were required to conduct annual examination each year and second examination for the remanded candidates within a period of 4 to 6 months after the declaration of the result. Admittedly, for the B.Sc. Part-I Exam, the candidates who were admitted in 2010 appeared in the examination only in November, 2011 for the first time and thereafter, have appeared in the remanded examination in November, 2012. The Session of First Year, therefore, seems to have been extended almost for a period of 2 years.

11. From the careful reading of Ordinance 299-V-10 as it existed earlier, this Court finds that the Ordinance has two parts. The first part relates to maximum number of attempts permitted for each paper as three including the first attempt and the second part is with regard to the maximum period to complete the course successfully which should not exceed eight years while in the new Ordinance, the language is changed and a candidate is entitled to avail any number of attempt, however, the maximum period for passing B.Sc. (Nursing) Course is not more than eight years. Thus, while in the previous Ordinance the word "should complete course in eight years" was mentioned which is to be treated as directory and not mandatory; in the new Ordinance, the language is in a mandatory form stating the words "not more than eight years".

12. This Court has already held that since the students were admitted in the year 2010, the Ordinance applicable on them

would be the previous Ordinance and the new Ordinance, which has come into force from 2017, will not apply as all the present petitioners are students who were admitted in 2010-2011.

13. On noticing the judgments cited by learned counsel for the petitioners (supra), this Court finds that the Coordinate Bench has taken a view that if a student has been deprived of yearly examination and there has been a delay in conducting of examinations by the University, he cannot be made to suffer and on the basis of equity, orders have been passed allowing them to appear in the examination.

14. On the other hand, in the judgments cited by learned counsel for the respondents (supra), the Coordinate Bench has taken a view that equity cannot play a role.

15. However, in both types of judgments, as noticed above, the provisions have not been examined. This Court, therefore, deems it appropriate to examine the case in the light of the Ordinance and interpretation thereto.

16. In view of the interpretation of Ordinance, referred herein above, this Court finds that the University was required to conduct main examinations each year and also the supplementary examination within four to six months after declaration of the result in terms of the Ordinance 299-V-4. As per Ordinance 299-V-10, the unsuccessful candidates would be entitled to be allowed maximum number of attempts as provided therein but if the maximum number of attempts could not be completed within eight years, a student cannot be ousted from completing the number of attempts on the ground that the total number of eight years are over as this

Court has already held that the words "eight years" cannot be treated to be mandatory in the Ordinance as it existed earlier.

17. Accordingly, these writ petitions deserve to be allowed.

18. As noticed, the petitioners were allowed to participate and appear in the examination by interim orders passed from time to time in the individual writ petitions.

19. In view of the interpretation as taken above, these writ petitions are allowed and the respondent-University is now directed to declare result of the petitioners. If the petitioners are found to be successful in the examination, they shall be declared pass and their marks-sheet and degree be accordingly issued. The exercise shall be conducted within a period of three months from today. All pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA),J

SAURABH/Nitin/12,14,21 to 25,27,30 to ,32,34,37,38,40

