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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment dated 03.12.2012**

+ *W.P.(C) 7503/2012 & CM.19106/2012*
+ *W.P.(C) 7504/2012 & CM.19107/2012*
+ *W.P.(C) 7505/2012 & CM.19108/2012*
+ *W.P.(C) 7506/2012 & CM.19109/2012*
+ *W.P.(C) 7507/2012 & CM.19110/2012*
+ *W.P.(C) 7508/2012 & CM.19111/2012*
+ *W.P.(C) 7509/2012 & CM.19112/2012*
+ *W.P.(C) 7510/2012 & CM.19113/2012*
+ *W.P.(C) 7511/2012 & CM.19114/2012*

ARPIT ARORA & ORS	 Petitioner
MANOJ KUMAR & ORS	 Petitioner
MANPREET SINGH	 Petitioner
AKSHIT SHARMA & ORS	 Petitioner
JAISHREE MEENA & ORS	 Petitioner
RUPESH KUMAR	 Petitioner
ESHANT SHARMA	 Petitioner
KAMAL KANT SAINI	 Petitioner
NEHA KARKI & ORS	 Petitioner

Through: Mr.Malaya Chand and Mr.S.P.Mitra, Advs

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS Respondents

Through: Mr.Mukul Talwar and Mr.Sradhananda Mohapatra,
Advocates for the respondent –GGSIPU
Ms.Vasundhra Rastogi, Adv. for R-2 in W.P.(C)7503/12

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. In all the above said writ petitions, petitioners have challenged the notice dated 30.08.2012 and are also aggrieved by the subsequent notification dated 04.10.2010 with respect to the Supplementary Examinations for Non-promoted students.

2. Issue notice to show cause as to why the petitions, be not admitted. Mr.Talwar, counsel for respondent, university enters appearance on an advance copy.
3. For the sake of convenience, facts of the case [WP(C)No.7503/2012] are being noticed. The petitioners are aggrieved by the notice dated 30.08.2012 which according to the petitioner was not within their knowledge as the said notice was never affixed on the notice board, consequent to which the petitioner could not protest against the said notice immediately, which has led to passing of the notification dated 04.10.2012. The petitioners in the aforesaid writ petitions are the students of third year / fourth year Bachelor of Journalism in Mass Communication (B.J.M.C.) and had taken admission in the respondent, college, in the academic year 2009-10 and 2010-11. The petitioners appeared for the supplementary examination. The result of the supplementary examination was published on 20.11.2012 on the basis of which respondent no.2, institute prepared the registration chart, excluding the name of the petitioners, on the basis of notification dated 04.10.2012. On an enquiry being made, the petitioners were informed that their names were not published in the registration chart for the current year, as they did not clear the supplementary examination and their names did not figure in the recently published result of supplementary exam conducted on the basis of back for previous semester. It is further the case of the petitioners that they had taken admission on the basis of brochure of the year 2009-10 and 2010-11. Attention of the court is drawn to the relevant portion of the brochure, which reads as under:

“The University follows credit based evaluation. The overall weightage of a course in the Sullabi and Scheme of Examination in terms of credits assigned to the course. Obtaining a minimum of 50% marks in aggregate in each course including the semester-end/

year-end examination and the teacher's continuous evaluation is essential to earn the assigned credits. A candidate who secures less than 50% of marks in a course is, therefore, deemed to have failed in that course. A student is eligible for the award of the University degree, if he/she has registered himself/herself, undergone the regular course of studies, completed the project report/ dissertation specified in the curriculum of his/ her programme within the stipulated time, and has secured the minimum credits prescribed for the award of the concerned degree."

4. The case of the petitioners is that they have been taken by surprise by the notice of 30.08.2012, which led to the passing of notification of 04.10.2012. The petitioners are aggrieved by the notification, wherein it was decided by the Board of Management of Guru Gobindsingh Indraprastha University during the meeting held on 27.09.2012 that students who have not acquired 90% of the total credits of the previous year, excluding the credit of the academic year from which the promotion to the next academic year is being sought, subject to 50% credit acquisition in the year from which the promotion is being sought, the University is considering to conduct a supplementary examinations for the End Term Examinations.
5. It is submitted by counsel for the petitioners that in view of notification of 04.10.2012 the students have not been able to clear their supplementary examinations and hence they have been denied promotion to the next academic session. It is submitted that in case the notification qua 90% credits is struck down then they would get automatic promotion to the next academic session.
6. Mr. Talwar, counsel for respondent, university submits that there was no procedure for holding supplementary examination. He also submits that the notification which has given rise to the subsequent notification of 20.10.2009 was challenged by some of the students by filing a writ

petition No.5744/2010 and the applicability of the notification was challenged. The writ petition was allowed by an order dated 14.09.2010 on the ground that the said notification could not have been applied retrospectively to the current batch of students (2009-10). It is further submitted that the aforesaid judgment was assailed by filing LPA No.677/2010 which was disposed of by order dated 21.09.2010. Operative portion of the order dated 21.09.2010 reads as under:

“It is clarified that the students who have taken admission in 2009-2010 and subsequent batches shall be governed by the amended ordinances from the academic year 2010-2011 onwards. The directions issued by the learned Single judge in paragraph 24 of the impugned order are maintained.

Needless to say, when an order of this nature has been passed on the consent of the university, the university shall extend the said benefit to the students of the entire batch, namely, the batch of 2009-2010.”

7. Mr.Talwar submits that in the order of the LPA it was clarified that the students, who have taken admission in 2009-10 and subsequent batches would be governed by the amended ordinances from the academic year 2010-11 onwards. The directions issued by the learned Single Judge in the impugned order were maintained. As per the consent order it was made clear that this notification would be applicable from the academic year 2010-11 onwards.
8. Mr.Talwar, further points out that the vires of this notification was initially challenged but later the writ petition [WP(C)No.4839/2010] was withdrawn and subsequently another batch of students challenged the vires of the said notification by filing the Writ Petition No.7610/2011.

The aforesaid writ petition was also dismissed by an order dated 02.12.2011.

9. It is submitted that the notification which is sought to be challenged by the petitioners is already part of the Ordinances of respondent no.1. Ordinance 11 and the amendments to Ordinance 11 which have been indicated in bold letters, read as under:

11.0 CRITERIA FOR PASSING COURSES, MARKS AND DIVISIONS

- 11.1 (i) Obtaining a minimum of 50% marks in aggregate in each course including the semester-end examination and the teacher's continuous evaluation shall be essential for passing the course and earning its assigned credits. A candidate, who secures less than 50% of marks in a course, shall be deemed to have failed in that course.

(ii) A student may apply, within two weeks from the date of the declaration of the result, for re-checking of the examination script(s) of a specific course(s) on the payment of prescribed fees. Rechecking shall mean verifying whether all the questions and their parts have been duly marked as per the question paper, and the totalling of marks. In the event of a discrepancy being found, the same shall be rectified through appropriate changes in both the result as well as marks-sheet of the concerned semester-end examination.

- 11.2(i) A student obtaining less than 50% of maximum marks (including semester end examination and Teacher's Continuous Evaluation) assigned to a course and failing in the course shall be allowed to re-appear in a semester end examination of the course in a subsequent semester(s) when the course is offered, subject to maximum permissible period of (n+4) semesters as mentioned in clause 4.3. The re-appearing students who secured less than 50% marks in the teacher's continuous evaluation have the option to repeat and improve the two class tests performance with the next batch of students, in such cases the student will request for such improvement in the beginning of the said semester to the Dean / Director**

of the School / Institute and the improved internal marks, if received from the school/institution concerned at least 7 days before the commencement of semester end-term examination shall be considered, otherwise the previous internal marks already obtained by the student shall be taken into account without any modification. In such cases where the students opt to improve the two class tests performance with the next batch of students, the marks obtained in two class tests will be proportionately increased to include the component of assignment / group discussion / viva voce/additional test/quizzes etc.

No extra fee shall be charged from the students in this regard.

(ii) A student who has to reappear in a semester end-term examination in terms of clause 11.2 (i) above shall be examined as per the syllabus which will be in operation during the subsequent semester(s). However, in case the student(s) claimed that there are major modifications in the syllabus which is in operation as compared to the syllabus which was applicable at the time of his/her joining the concerned programme and the Dean of the School/Chairman/Co-ordinator of the Programme Committee so certifies, the examination may be held in accordance with the old syllabus, provided such request shall be received to Controller of Examination at least 3 weeks prior to commencement of semester end-term examination.

Students who are eligible to reappear in an examination shall have to apply to the Controller of Examinations through the School / Institution concerned to be allowed to reappear in an examination and pay the fees prescribed by the University.

iii. A student will be promoted to the next academic year only if such student has obtained at least,

A. 50%, (accurate upto two decimal digits) of the total credits of the ensuing academic year from which the promotion to next academic year is being sought, and

B. 90%, (accurate upto two decimal digits & rounding of thereafter to full digits) of the total credits of all previous

years excluding the credits of the ensuing academic year from which the promotion to next academic year is being sought.

All such students who fail to get promoted to next academic year for the reason of deficiency in required credits as stated here in above will automatically be declared to have taken academic break to reappear in such examinations of previous semesters in which the student has failed, so as to obtain sufficient credits to be promoted to the next academic year.

Only two academic breaks are permissible for a student for the completion of the academic programme/course. In no situation a student will be allowed to take more than two academic breaks, for any reason whatsoever, including for the reasons of detention for shortage of attendance or deficiency of credits during the whole term of completion of the course/programme. A student who has exhausted two academic breaks and a further occasion arises for him or her to take academic break because of non promotion or detention, in such cases the admission of such student would automatically stand cancelled right at the time such an occasion of more than two academic breaks arise.

11.3 A candidate who has earned the minimum number of credits prescribed in the concerned Scheme of Teaching & Examination and Syllabi, either entirely from the concerned University School of Studies/ Affiliated Institute/ Centre for Learning & Education or including those credits which have been transferred after earning them for one semester/ semesters from any other University operating in and outside India and with which MoU has been done by the GGS Indraprastha University, shall be declared to have passed the programme, and shall be eligible for the award of the relevant degree or diploma. The Scheme of Teaching & Examination and Syllabi shall clearly specify the minimum credits to be earned to qualify for a degree or diploma. The credits included in the Scheme of Teaching & Examination and Syllabi of a programme shall generally be 5-10% more

than such minimum specified credits subject to prescribed guidelines of the concerned statutory or regulatory authority, if any.

Further, the successful candidates will be placed in Divisions as below:

- Second Division : A candidate obtaining a Cumulative Performance Index (CPI) at the end of the programme of 50 and above but below 60, shall be placed in Second Division.
- First Division: A candidate obtaining a CPI at the end of the programme of 60 and above but below 75 shall be placed in the First Division
- First Division with Distinction: A candidate obtaining a CPI at the end of the programme of 75 and above shall be placed in First Division with Distinction, provided, the candidate has passed all the courses for which he has earned credits, in the first attempt. Further, a candidate obtaining a CPI of 90 and above shall be deemed to have passed the programme with exemplary performance provided he/she has passed all the courses for which he has earned the credits, in the first attempt. Such candidates will be awarded a special University Certificate to this effect.
- For the above, Cumulative Performance Index (CPI) shall be calculated as in Clause 14 and shall be based only on marks obtained in courses for which credits have been earned.”

10. It is also submitted by Mr.Talwar, that the ordinances and the notification are available on the website of the University as well, thus, it cannot be said that the petitioners were taken by surprise.
11. I have heard learned counsel for the parties. The notification, subject matter of challenge in the present writ petition, is a consequence of amendment to the Ordinance 11, vires of which was challenged and the amendment was upheld. The notification sought to be challenged now was issued to accommodate such students who had not acquired the required credits as per the amended ordinance and since the vires of the

amendment of the ordinance has been upheld, no relief can be granted to the petitioners. Even otherwise, there is no reasonable explanation as to why the petitioners have approached this Court at such an stage when the examinations in some of the courses have already commenced and for the remaining courses the examinations are scheduled from 4.12.2012.

12. In the case of **Sanchit Bansal Vs. Joint Admission Board & Ors.** (2012) 1 SCC 157 and **All India Council for Technical Education Vs. Surinder Kumar Dhawan** (2009) 11 SCC 726 the Apex Court has observed that the courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. Accordingly, all the above said writ petitions and applications stand dismissed.
13. At this stage, counsel for the petitioners seeks liberty that the petitioners may be permitted to make a representation individually to the Vice-Chancellor on the facts of their individual cases and also to seek grace marks. The prayer of the petitioners is allowed. In case representation(s) is/are made by any of the petitioner(s) before the Vice-Chancellor, the Vice-Chancellor shall consider the same sympathetically and expeditiously in accordance with law.

G.S.SISTANI, J

DECEMBER 03, 2012 ssn