

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1657 of 2015

1. Vikas Kumar (Mechanical Engineering) S/O Shri Anandi Paswan, Aged About 28 Years R/O C-65, Devendra Nagar, Sector II, District Raipur, Chhattisgarh, India
2. Harshit Pendre, (Chemical Engineering Student) S/O Shri Chain Singh Pandre, Aged About 29 Years R/O B-183, Ram Krishna Paramhans Nagar, Housing Board Colony, Kota, District Raipur, Chhattisgarh, India
3. Ram Kishore Bodh, (Mining Engineering Student), S/O Shri Late Atma Ram Bodh, Aged About 30 Years R/O Kota Masjid Road, Soni Hospital, District Raipur, Chhattisgarh, India
4. Raju Ram Salam, (Electrical Engineering Student) S/O Shri Mankur Salam, Aged About 33 Years R/O Kota, Near Mahadev Mandir, District Raipur, Chhattisgarh, India
5. Arun Kumar Durgam, (Mining Engineering Student), S/O Shri Durgam Mallaiyya, Aged About 25 Years R/O 256 M I G-II, Sector I, Devendra Nagar, District Raipur, Chhattisgarh, India

---- Petitioners

Versus

1. National Institute Of Technology, Raipur Through Its Registrar, G. E. Road, Raipur-492010, Chhattisgarh, India
2. Dean (A C A D E M I C) National Institute Of Technology, Raipur, G.E. Road, Raipur -492010, Chhattisgarh, India
3. Chairman, National Institute Of Technology, Raipur, G. E. Road, Raipur- 492010, Chhattisgarh, India
4. Director, National Institute Of Technology, Raipur, G. E. Road, Raipur- 492010, Chhattisgarh, India

---- Respondents

Smt. Fouzia Mirza, counsel for the petitioner/s.
Shri Prateek Sharma, counsel for the respondents.
Shri Ajaii Sharma, Dy.Registrar (Admin), NIT, Raipur is also present.

SB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/10/2015

With the consent of the parties, the matter is heard finally.

This petition, under Article 226 of the Constitution of India, has been

preferred by failed students pursuing their Engineering Courses in National Institute of Technology (NIT) at Raipur, aggrieved by communication dated 24/08/2015 (Annexure P/1), denying the petitioners benefit of one time opportunity to clear subjects / semesters by appearing in forthcoming examination.

2. Petitioners were admitted to B.Tech course in the respondent / NIT in different years. While petitioner No.4 was admitted to B.Tech course in the year 2000, petitioners 1, 2, 3 and 5 were admitted to B.Tech course in the year 2008, 2005, 2005 and 2008 respectively. As the benefit of policy was not extended to them by granting them opportunity to appear in the forthcoming examination, the petitioners claiming entitlement to benefit of the circular of the respondent have filed this petition.

3. As far as petitioner no.4 is concerned, he has cleared 1st, 2nd, 3rd and 4th semester. According to learned counsel for the petitioner, this student could not get minimum required aggregate marks in 5th and 6th semester, but he has cleared 7th and 8th semester, so he would be entitled as a candidate entitled to benefit of Clause 2 (a). It is submitted that as this student has attended classes and awarded sessional marks upto 8th semester, he would be entitled to one opportunity to appear in few examinations of 5th and 6th semester to get an opportunity to achieve minimum aggregate marks to clear in these two semesters i.e. 5th semester and 6th semester.

4. Learned counsel for the respondent, on the other hand, submits that new policy under the circular is intended to benefit only those students who will be clearing the examination and obtain degree by appearing in few papers and not many papers. He further submits that one additional attempt of examination only means that the benefit is available to those, who would be able to obtain degree by appearing in any one paper.

Upon close analysis of the submission of learned counsel for the parties as far as petitioner No.4 is concerned, it appears that he has been wrongly denied the benefit. Petitioner No.4 admittedly is a candidate who has attended classes and awarded sessional marks upto 8th Semester. He was admitted in 8th semester. Though he was stated to have cleared 1st, 2nd, 3rd, 4th, 7th and 8th semester, he could not clear 5th and 6th semester as the aggregate is below prescribed minimum marks. That means, if this candidate is given an opportunity to appear in few subjects of 5th as well as 6th semester as one opportunity, he, in the event of getting higher marks, would be succeeding the hurdle of aggregate marks and 5th and 6th Semester and

thereby obtaining degree.

Use of words 'few papers' in clause (a) is clouded by vagueness. There is no specific figure provided under circular as to what is meant by few papers. However, submission of learned counsel for the respondent is that 'few papers' must take its colour from the provisions contained in Ordinance particularly Ordinance no.18.4 which provides to the effect that in order to pass the semester i.e. to satisfy the criteria given in clause 8.2, he / she has to appear in one or two subjects. At the same time, learned counsel for the petitioner submits that candidates namely Ramakant Sidar, Rahul Raj, Teekam Singh Thakur, Poonam Khaperde and many others have been granted one more opportunity to appear in three subjects.

Taking into consideration that under circular dated 24/08/15 itself, candidates have been allowed to appear in atleast three subjects by respondents themselves, the word 'few papers' occurring in clause 2 (a) of the circular should mean atleast three papers if not more.

Therefore, the conclusion is that petitioner No.4 is entitled to be given one opportunity to appear in atleast three papers of the two semesters in which, he failed to obtain aggregate marks by allowing him to appear in the examination as and when conducted by the respondents. It has to be noted herein, this particular petitioner, though by the interim order did not seek any relief and did not submit his examination form, therefore, it is held that he is entitled to benefit of circular (Annexure P/1). No direction can be issued to allow him to appear in the examination which is probably going to be held on 05/10/15. However, in the ensuing examination and as and when it is held, petitioner No.4 shall be allowed only one attempt in few subjects of 5th Semester and 6th semester so that he may get opportunity to obtain degree.

5. As far as petitioners 1, 2, 3 and 5 are concerned, submission of learned counsel for the petitioners is that these petitioners are entitled to benefit of relaxation under clause 2 (b) of circular (Annexure P/1). It is submitted that these petitioners have been appearing in various semester examinations though they could not reach upto 8th semester. It is submitted that even if period of 7 years, in respect of each of these petitioners have been completed, they are entitled to one time relaxation and opportunity to appear in subjects in which they have failed or in those subjects, where they have failed to get minimum aggregate marks. It is submitted that while candidates covered by clause (a) are being benefited even though they have completed more than seven years only on the ground that these petitioners have completed seven years, they are deprived of one additional

opportunity.

The second limb of argument on the ground of discrimination is based on benefits given to those who have not completed seven years and thereby entitled to one opportunity under Clause (b). Submission of learned counsel for the petitioner is that they are also students who could not clear various semester examinations yet they all have been granted benefits merely because the total period of seven years in their cases has not completed.

6. It is therefore contended that in both the cases, whether it would be a case covered under clause (a) or case covered under clause (b), the petitioners have been excluded because they are not those who have been admitted in 8th semester or because they have completed seven years. This according to learned counsel for the petitioner is a case of unreasonable classification having no nexus and therefore, violation of Article 14 of the Constitution of India .

It is submitted that the very object to grant one more opportunity to those who could not clear earlier examination have been one way or the other violated. If the object sought to be achieved classification either on the ground that they have admitted upto 8th or because they have not completed 7th semester should pale into insignificance.

7. On the other hand, learned counsel for the respondent submitted that the petitioners cannot complaint of discrimination under any circumstances, whether it be a case covered under clause (a) or clause (b). The classification is based on rational integra and not irrational criteria. The benefits under clause (a) is confined to the students who attended classes and awarded sessional marks upto 8th semester. Petitioners No.1 to 3 and 5 could not secure admission upto 8th semester. This, obviously for the reason that they could not clear upto 8th semester. Therefore, classification is based on an objective criteria i.e. merit of the candidate in as much as those who have been granted admission in 8th semester and they attended the class and awarded sessional marks upto 8th semester, benefit has been extended to them as one time measure in clause (a).

Students covered by clause (b) apparently are those, who have not completed 7th semester. This class of students are those, who were admitted in the session 2010-11 and thereafter, in respect of students prior to them who have completed seven years by now, benefit has not been extended because under the Ordinance, the maximum period is seven years and this has been clarified in clause 1 of circular dated 24/08/15.

8. After hearing learned counsel for the parties, I have no hesitation to hold that as far as petitioners 1, 2, 3 and 5 are concerned, they are not entitled to any benefit either under clause (a) or clause (b) of the circular. They cannot complain of discrimination because classification is based on a rational criteria in both the cases. When benefit under clause (a) is available to those students who have been benefited 8th semester, attended class and awarded sessional marks when these petitioners are not, benefit under clause (b) are given to those students whose total period of seven years has not been completed. Both the criteria can neither be said to be extraneous or irrelevant. The argument that as the classification is based on humanitarian ground, students who have failed in the past should be allowed atleast one opportunity irrespective of number of years which have been elapsed, has to be rejected because it is essentially a matter of policy to be determined by the respondents and not by the Court. Though it was open for the respondents to collect names of students of these categories, but the respondents have not chose to do it.

9. The jurisdiction of this Court is only to examine whether the petitioners are entitled to benefit as provided under Clause (a) and (b) or whether they have been subjected to hostile discrimination, not based on any rational integra so as to stand on the touchstone of Article 14 of the Constitution of India and nothing more.

In view of above, as far as petitioner No.4 is concerned, petitioner is allowed in the manner and to the extent as indicated above. Petition of petitioners 1, 2, 3 and 5 are dismissed.

10. Before parting with the case, I should make it clear that if the petitioners have filed application praying authorities to lay a policy to benefit students of their category, this order shall not come in the way of the respondents to consider their cases favourably and it shall always be open for the authorities to take their own policy decisions.

Sd/-
(Manindra Mohan Shrivastava)
Judge