

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12336 of 2015
Date of decision: 05.10.2015

Neha Katoch & others

....Petitioner(s)

Versus

Guru Ravidas Ayurved University & others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Padamkant Dwivedi, Advocate, for the petitioners.

Mr. T.S.Chauhan, Advocate
and Mr. Satnam Chauhan, Advocate, for respondent No.1.

G.S.SANDHAWALIA, J.

The petitioners, who are students of the 1st Prof. of BAMS course, seek quashing of the letters dated 13.05.2015 (Annexure P3 Colly.) wherein their applications for appearing in the examination, scheduled to begin in July, 2015, have been rejected on the ground that they have reappear in two subjects.

It is the case of petitioners No.1 to 4 that they are students of respondent No.2-College whereas petitioner No.5 is a student of respondent No.3-College. The said colleges are affiliated with respondent No.1-University. The petitioners were admitted in the BAMS course in the year 2012 and had appeared in the annual examinations in which they had to clear 5 subjects. They could not clear 2 subjects each, respectively and had requested to the University on 01.05.2013 (Annexure P2 Colly.) to give them a mercy chance to clear the balance 2 subjects of which there was a provision in the University since they had already studied in the 2nd Prof. classes and would be adversely affected. The said request had been rejected on account of the fact that they had reappear in 2 subjects and

the writ petition has, thus, been filed that they would be affected in all these 3 years of studies. Reference has been made to information sought from the University whereby similarly situated students have been granted the said benefit.

It is pertinent to mention that vide interim order dated 22.06.2015, the petitioners were permitted to appear in the 1st Prof. examination, commencing w.e.f. 03.07.2015, on the ground that their case was covered by the earlier Ordinance which had no restriction on the discretion of the Vice Chancellor, to grant mercy chance in the case of reappear in more than one subject and also on the judgment of this Court in CWP No.25175 of 2014 titled *Rajdeep Singh Vs. Guru Ravidas Ayurved University, Jodhamal Road, Hoshiarpur, through its Registrar & another*, decided on 19.12.2014.

Respondent No.1-University has taken the plea that the petitioners have availed all the 4 chances to clear the 1st Prof. examination, conducted from May, 2013 till December, 2014, twice in both the years. The requests have been rejected after full application of mind since the Ordinance provides that the mercy chance is to be allowed at the discretion of the Vice-Chancellor and is a mere concession and cannot be claimed as a matter of right. The said Ordinance has been amended by the Board of Management. As per the Ordinance, students having reappear in more than one subject were not to be considered for mercy chance by the Vice-Chancellor. The persons who had been granted the earlier benefit were differently placed as one was a polio affected person and depending upon other persons for normal routine activities and relaxation had been exercised. The other case was of the other University, i.e., Baba Farid University of Health Sciences, Faridkot, which had exercised its discretion and therefore, the impugned decision was justified. The relevant portion of the Ordinance, both amended and unamended, read as under:

<i>Present Ordinances (As per BFUHS Ordinances)</i>	<i>Proposed Ordinances</i>
Any candidate who fails to clear all the subjects of First Professional in four consecutive attempts including the first attempt in which he/she was eligible to appear shall not be allowed to continue his/her studies in BAMS course. However, a mercy chance may be allowed by the Vice-Chancellor at his discretion.	Any candidate who fails to clear all the subjects of BAMS First Professional in four consecutive attempts including the first attempt in which he/she was eligible to appear shall not be allowed to continue his/her studies in BAMS course. However, a mercy chance may be allowed on genuine ground(s) by the Vice-Chancellor subject to the following conditions:- a) He/she has reappear only in one subject. b) No second mercy chance in the First professional will be allowed. c) No mercy chance shall be allowed in BAMS Second, Third or Fourth Professional.

The proposed Ordinance, wherein the condition of reappear of only one subject has been incorporated, come into force as per decision dated 27.03.2015, wherein the University decided to make the amended Ordinance effective for the examination from May/June, 2015. The decision dated 27.03.2015 (Annexure P8) reads as under:

“After detailed deliberations, it was RESOLVED; that a mercy chance may be allowed by the Vice-Chancellor at his discretion on genuine grounds only in one subject, once in full BAMS course. For example, a student may apply for a mercy chance only in one professional i.e. First, Second, Third or Fourth professional of BAMS course provided further that he/she has reappear only in one subject.

It was further RESOLVED; That Principals of the Ayurvedic Colleges be directed by the University that they would not recommend the request of any student or second mercy chance in full BAMS course or of the student who has reappear in above than one subjects.

That above amended ordinances will be made applicable from May/June, 2015 Examinations.”

It is, thus, apparent that the exercise of discretion by the Vice-Chancellor would be restricted only on the enforcement of the amendment which

was to come into force at a subsequent point of time, when the examinations were to be held. At the time of the decision making on 13.05.2015, the said amendment had not been given effect to and it was only with prospective effect. Thus, on 13.05.2015, there was no bar, as such, on the Vice-Chancellor to grant the mercy chance, on account of the fact that the petitioners had reappears in more than one subject. The exercise of discretion has been discussed by the Division Bench of this Court in LPA No.100 of 2014 titled *Rahul Kapoor Vs. Guru Ravidas Ayurved University & another*, decided on 11.03.2014, wherein also, keeping in view Clause 9(b) of the Ordinance, as reproduced above, it has been held that the discretion has to be exercised reasonably and without discrimination. In the present case, the students have already appeared in the said examination in view of the interim order dated 22.06.2015, passed by this Court and in case they pass in the examinations, they should be granted the benefit of the unamended provisions.

A Division Bench of this Court in *Ashu Singla Vs. Punjabi University, Patiala and another 2004 (2) RSJ 720*, has noticed that when the provisional admission had been given, the benefit of regularization of the result should be given to the candidate. In similar situation, in CWP No.10369 of 2014 titled *Gurmeet Singh Vs. Guru Ravidas Ayurved University, Hoshiarpur & another*, decided on 12.11.2014 (Annexure P7), it was held that once interim order had been passed, the students should be given the benefit of the interim order. In the case of Rajdeep Singh(supra), it was held that there should be no limitation read into the unamended Ordinance which provided the Vice-Chancellor to grant a mercy chance at his discretion and should not be restricted to one subject. Once such a provision is there in the statute book, the same could not have been denied by resorting to the amended provisions, which, as noticed, could not have been taken into consideration, with retrospective effect, at the time of decision making.

Resultantly, the present writ petition is allowed. The result of the petitioners shall be declared for the examinations in which they appeared, in view of the interim order dated 22.06.2015. In case the petitioners have been successful, the said chance will be treated as a mercy chance. In case they have not passed the said examinations, they will not be eligible for any other subsequent mercy chance.

05.10.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE