

CWP No.4749 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.4749 of 2015
Date of decision:01.04.2015**

Saksham Malhotra

...Petitioner

Versus

Panjab University and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Dinesh Kumar Malhotra, Advocate,
for the petitioner.

Mr. Wasu Gambhir, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner is the student of B.A.LL.B. (Hons.) 5 years Integrated Course of the University Institute of Legal Studies (here-in-after referred to as the "UILS"), Punjab University, Chandigarh since July-August, 2013. The B.A.LL.B. (Hons) 5 years Integrated Course is designed on semester system in which there are two semesters in each year. A student in the 1st year has to study 12 subjects i.e. 6 subjects in each semester to become eligible for promotion to 2nd year i.e. 3rd/4th semesters, and is required to clear at least 50% of the 12 papers of the 1st year. Meaning thereby, if a student clears 2 papers of 1st semester and 4 papers of the 2nd semester, then he would be entitled to be promoted to the 2nd year i.e. 3rd/4th semesters.

The petitioner got admission in the UILS in July, 2013 in terms

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of the Rules contained in the Hand Book of Information-2013. The result of the petitioner of the 1st semester was declared in November, 2013 in which he got reappear in five papers (Theory P1a, P2a, P4, P5 & P6) out of the total six papers. He applied for re-evaluation of his papers and its result was declared on 24.07.2014 in which he still had reappear in four theory papers [P1a, P4, P5 & P6]. He appeared in the 2nd semester in April, 2014 and got reappear in five theory papers (P2a, P3, P5, P6 & P1a or P4) out of total six papers. He applied for re-evaluation of the papers of the 2nd semester and according to the respondent, he still got reappear in five theory papers (P2a, P3, P5, P6 & P1a or P4) out of total six papers.

According to the petitioner, he got the following marks as per the re-evaluated result of the 2nd semester:-

Sr. No.	Subjects	Marks Obtained (Theory)*	Internal Assessment Marks	Total
1	Pol. Sci.-II [P1a]	33	14	47
2	History-II [P2a]	29	15	44
3	English[P3]	29	15	44
4	SLR [P4]	31	17	48
5	Jurisprudence [P5]	29	12	41
6	Special Contract [P6]	19	9	28

Counsel for the petitioner has submitted that since the petitioner has cleared two papers in the first semester and if he is awarded 6 grace marks, being 1% of the total aggregate marks, as per Regulation No.28.1(a) of the Panjab University Calendar-Vol.II, 2007, he would clear History-II [P2a] and English [P3] because he requires one mark each in these papers to score 45% qualifying marks. In this manner, he would clear 50% papers (6 papers) in the 1st year i.e. 2 papers in the 1st semester and 4

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papers in the 2nd semester. It is further submitted that earlier the Regulation for admission and promotion to B.A.LL.B. (Hons.) 5 years Integrated Course mentioned in the Hand Book of Information-2013 was requiring a student to secure 45% marks in theory and internal assessment separately but the said Rule has been amended by the Syndicate on 18.05.2014 and as per the amended Rule, 45% marks are required to be secured in the theory and internal assessment jointly.

It is further argued that as per Section 20(5) of the Panjab University Act, 1947, the Syndicate of the University functions as its Executive Government which may make such rules, not inconsistent with the provisions of the Act and regulation, for the purpose of carrying on the Executive Government of the University and as per Rule 8 contained in the Calendar Vol.III of 2009, the re-evaluation has to be done under the Rules framed by the Syndicate from time to time.

For better understanding of the arguments raised by learned counsel for the petitioner, it would be relevant to refer to Rule 28.1.(a) of the Panjab University Calendar Vol.II 2007, Section 20(5) of the Panjab University Act, 1947, Rule 8 contained in the Calendar Vol.III of 2009 and the amended/replaced Explanation to Rule 3 of the Regulations of the Hand Book of Information-2013, which are reproduced here-as-under:-

Rule 28.1.(a) of the Panjab University Calendar Vol.II 2007

“28.1.(a) A candidate who appears in all subjects of an examination and who fails in one or more subjects (written, practical, sessional or viva voce) and/or the

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aggregate (if there is a separate requirement of passing on the aggregate) shall be given grace marks up to maximum of 1 per cent of the total aggregate marks (excluding marks for internal assessment) to make up the deficiency, if by such addition the candidate can pass the examination. While awarding grace marks fraction working to $\frac{1}{2}$ or more will be rounded to a whole.”

Section 20(5) of the Panjab University Act, 1947

“(5). The Syndicate may make such rules, not inconsistent with the provisions of this Act and the Regulations, as they may deem necessary for carrying on the executive Government of the University as specified in Sub-Section (1).”

Rule 8 contained in the Calendar Vol.III of 2009

“8. The re-evaluation will be done under the rules framed by the Syndicate from time to time and the result of re-evaluation will be communicated to the candidate soon after it is declared. No interim communication to this effect will be entertained. The candidate is required to plan his future programme in accordance with his original result already communicated by University Office till it is actually superseded by the result of re-evaluation.”

Amended/replaced Explanation to Rule 3 of the Regulations

REGULATING ADMISSION AND PROMOTION TO B.A./B.COM.LL.B. (HONS.) OF HAND BOOK OF INFORMATION, 2013, AT 115		
Existing Rules	Proposed Rules	Rules approved by Board of Studies
Rule-3 Explanation: A student shall be considered as pass in a paper only if he/she has secured 45% marks in internal assessment and theory paper separately.	Rule-3 Explanation: A student shall be considered as pass in a paper if he/she has secured 45% marks in internal assessment and theory paper jointly. However, the student has to submit the written Project Report/Moot Memorial/Term paper, as the case may be, personally by the date stipulated. Only then the student shall be allowed to make presentation or participate in Viva-Voce or Group Discussion, as the case may be.	Rule-3 Explanation: Approved as such.

Counsel for the petitioner has further submitted that since the result of the petitioner for re-evaluation of 1st semester was declared on 24.07.2014, therefore, the amended/replaced Explanation to Rule 3, carried out by the Syndicate on 18.05.2014, would be applicable to his case. The decision of the Syndicate, taken in its meeting held on 18.05.2014 on Agenda Item No.43, is as under:-

“43. Considered recommendation of the Board of Studies of UILS dated 05.05.2014 (**Appendix-__**) for amendment in Rules regulating admission and Promotion to B.A./B.Com. LL.B. (Hons.) 5 Years Integrated Course (1-10 semesters), as proposed by the Academic Committee of UILS.

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Note: Rules Regulating admission and Promotion to B.A./B.Com. LL.B. (Hons.) 5-Years Integrated Course (1-10 semesters) enclosed (**Appendix- _**).

RESOLVED: That the recommendations of the Board of Studies of UILS dated 5.5.2014 for amendment in Rules regulating admission and Promotion to B.A./B.Com. LL.B. (Hons.) 5 Years Integrated Course (1-10 semesters), as proposed by the Academic Committee of UILS, as per **Appendix**, be approved.”

On the other hand, counsel for the respondent-University has argued that the Rules contained in the Handbook of Information-2013 would be applicable to the admission of the petitioner insofar as the exams of 1st and 2nd semesters are concerned and the date of declaration of re-evaluation result would have no effect on it.

I have heard learned counsel for the parties and examined the available record.

It is not disputed that the petitioner was required to pass 6 subjects in 1st and 2nd semesters for his promotion to the 2nd year i.e. 3rd/4th semesters. The petitioner had already cleared 2 papers [History-I (P2a) & English-1 (P3)] in the 1st semester, as is evident from the Result-cum-Detailed Marks Certificate attached as Annexure R-2. However, he could not secure pass marks in any of the theory paper of the 2nd semester, therefore, he has been given reappear in five theory papers ((P2a, P3, P5, P6 & P1a or P4).

Indubitably, as per Rule 28.1.(a), the petitioner is entitled to grace marks upto 1% of the aggregate marks (excluding marks for internal assessment) to make up the deficiency and the fraction of the grace marks

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working up to $\frac{1}{2}$ or more has to be rounded-off as a whole. According to this provision, the petitioner would be entitled to 4.8 grace marks as out of 600 marks 480 marks are of the theory and 120 of the internal assessment and while rounding off 4.8 grace marks, it would come to 5 marks.

As per original Rule 3 of the Rules regulating admission and promotion to B.A./B.Com.LL.B (Hons.) 5 Years Integrated Course, contained in the Handbook of Information-2013, a student shall be considered as pass in a paper only if he/she has secured 45% marks in internal assessment and theory paper separately. If this rule is applied to the case of the petitioner, then he has to secure 45% marks in both theory and the internal assessment separately. The minimum pass marks in theory paper is 36, whereas in the internal assessment, it is 9. The petitioner has secured the minimum pass marks in the internal assessment in all the subjects of 2nd semester but in all the theory papers he could not secure the minimum pass marks of 36 and if un-amended Rule 3 is applied, then the petitioner could pass only paper of Political Science-II [P1a] of the 2nd semester as out of 5 grace marks, 3 marks would be consumed in the said paper and rest of the 2 marks would be of no use to him. However, if amended Rule 3 is applied which provides that the student shall be considered as pass in a paper if he/she has secured 45% marks in internal assessment and theory paper jointly, then the petitioner would be deemed to have passed the papers of Political Science-II [P1a] and SLR [P4] of the 2nd semester in which he has secured 47 and 48 marks (theory + internal assessment) respectively and he could be declared pass in History-II [P2a] and English-II [P3] by adjusting 1 grace mark each against both the subjects

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in which he had secured 44 marks each. In this manner, the petitioner would clear 4 papers in the 2nd semester and since he had already cleared 2 papers in the 1st semester, therefore, it would enable him to be promoted in the 2nd years i.e. 3rd/4th semesters having passed total 6 papers of 1st year (2 papers of the 1st semester and 4 papers of the 2nd semesters).

The arguments raised by counsel for the respondents that amended Rule 3 would be applicable to the next session cannot be accepted because the amendment has been carried out in Rule 3 of the Handbook of Information-2013 itself and even before the declaration of result of the petitioner. Moreover, nothing has been mentioned by the Syndicate that the said amendment would only operate prospectively for the admission of the next session.

Thus, in view of the aforesaid discussion, the present writ petition is hereby allowed and the respondents are directed to declare re-evaluated result of 2nd semester of the petitioner forthwith as per amended Rule 3 of the Handbook of Information-2013 and also by giving him grace marks as per Rule 28.1.(a) of the Panjab University Calendar Vol.II 2007.

A copy of this order be given to learned counsel for the petitioner under signatures of the Special Secretary attached to this Court.

April 01, 2015
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(Rakesh Kumar Jain)
Judge