

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

CWP No.8537 of 2015
Date of Decision: 06.05.2015

Aman Rohella and others

. . . .Petitioners

Versus

Guru Nanak Dev University, Amritsar and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Ramandeep Singh, Advocate,
for the petitioners.

Mr.Amrit Paul, Advocate,
for respondent No.1 & 2.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed by 26 students of 6th Semester, studying in different courses, in different Colleges (respondents No.3 to 7), affiliated with respondent No.1. They have prayed for the issuance of a writ in the nature of mandamus, directing respondent No.2 to issue them roll numbers to take final examination of 6th semester as they have already been promoted from 5th semester to 6th semester, have requisite attendance in 6th semester, there has been no clause in the prospectus of the year 2012-13 in respect of clearing all the subjects of the 1st semester as a pre-condition for undertaking the examinations of 6th semester and the Syndicate has no power to make any amendment in the Ordinance with retrospective effect.

The brief facts of the case are that the petitioners are the students of three years degree courses i.e. B.A., B.C.A., B.Com. and B.Sc. The courses are based on semester system comprising six semesters. The petitioners are studying in the colleges (respondents No.3 to 7), which are affiliated to Guru Nanak Dev University [for short 'the University'], which is a statutory University, came into being by virtue of the Guru Nanak Dev University Amritsar Act, 1969 [for short 'the Act']. Although, there is no order appended with the writ petition on the basis of which the roll numbers have not been issued to the petitioners but the petitioners have apprehended that because of the amendment in the common Ordinance w.e.f. the year 2012-13, the roll numbers have not been issued because of Clause 'e' of the 'Courses having six semester duration'.

The case of the petitioners is further that once they have been promoted from 5th semester to 6th semester, respondents are estopped from denying them the issuance of roll numbers on the principle of promissory estoppel.

Notice of motion was issued in this case on 4.5.2015 for 5.5.2015. On the adjourned date, the respondents had appeared and the case was thus adjourned for today for arguments.

Learned counsel for the respondents has submitted that the Common Ordinances for Undergraduate/Postgraduate courses under semester system for affiliated colleges/distance education/private candidates were issued and afterwards amendment in item No.1 in syndicate meeting dated 26.3.2012. There was a need for re-amendments in the Rules for promotion of the students in the next class, therefore, the Dean Academic Affairs of the University put up the matter before the Vice Chancellor of the

University to approve the amendments in anticipation of the approval of the Syndicate as the Syndicate meeting was not taking place in near future. The note of the Dean Academic Affairs was approved on 26.4.2012 by the Vice Chancellor.

For the ready reference, the note put up by the Dean of the Academic Affairs reads as under: -

“According to item No.54 of Syndicate meeting dated 22.12.2011, “Common Ordinances for Undergraduate/Postgraduate Courses under Semester System for Affiliated Colleges/Distance Education/Private Candidates were passed and afterwards amendment in item No.1 in Syndicate meeting dated 26.3.2012 was done. There is need of re-amendments in the Rules for promotion of students in the next class. Therefore, the matter will have to be put up to the Syndicate for amendments in these rules and draft regarding it is enclosed. But since the Syndicate meeting is not taking place in the near future, therefore, Vice Chancellor is requested that these amendments may be approved in anticipation of approval of the Syndicate.

For orders, please.

*Sd/- R.Pawar
20/4/12*

*Vice Chancellor
Sd/- A.S. Brar
26/4/12
7135/DAA
1189/Syn.26/4/12*

*O.S. (Syndicate)
Sd/-30.4.12”*

The note put up by the Dean Academic Affairs was ultimately approved by the Syndicate in its meeting dated 25.6.2012 where it was kept in agenda item No.46. The Resolution passed by the Syndicate read as under: -

“46. Approval of amendments in common Ordinances.

46. After discussion:

Resolved

To ratify the orders of the Vice Chancellor passed in anticipation of the approval of the Syndicate, vide which he has given approval as per the Appendix for the amendments of the “Common Ordinances for Undergraduate/Postgraduate Courses under Semester System for Affiliated Colleges/Distance Education/Private Candidates” as approved by the Syndicate vide para 54 of its meeting dated 22.12.2011 and para No.1 of its meeting dated 26.3.2012.”

Thereafter, the Common Ordinances for Undergraduate/Postgraduate courses under semester system for affiliated colleges/distance education/private candidates were amended. A comparative table of the existing Ordinances and the amended Ordinances is reproduced as under: -

<i>Existing Ordinances</i>	<i>Amended Ordinances</i>
<i>A student shall be promoted to second semester of any academic year irrespective</i>	<i>III. Courses having six semester durations: a. There shall be no condition for promoting a</i>

the number of courses which he has passed. However, a student who is failing in more than two subjects at the end of the year, shall be declared as having failed and shall seek readmission of the first semester of that year. For example, if a student fails in 3 or more courses at the end of the fourth semester, he/she shall be reverted to third semester. Further that at the end of any year, during a programme of studies, shall not carry failures in more than two courses. A Course implies a subject (e.g. Physics, Punjabi etc.) at the	student from first semester to second semester. b. However, the student shall be promoted to the third semester only if he/she has passed at least 50% courses / papers of the first two semesters. c. There shall be no condition for promoting a student from third semester to fourth semester. d. However a student shall be promoted to fifth semester only if he/she has passed at least 50% courses/papers of the first four semesters. e. The student shall be promoted to sixth semester only if he has passed all the papers of the first semester. After a period of six semesters the student shall be
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undergraduate. Failing students shall appear in the examination in the regular semester examinations next year i.e., reappear of examination for an odd semester shall be conducted alongwith the next odd semester, and even semester alongwith the next even semester and there shall be no special supplementary examinations.	given a period of two consecutive years to pass.
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Learned counsel for the respondents has also submitted that the amended Ordinance was issued by the Vice Chancellor of the University on 26.4.2012 and ratified by the Syndicate on 25.6.2012 whereas all the petitioners took admission in the month of July/August 2012.

It is also submitted that on 9.4.2015 at 1:08 PM an email was sent to all the Colleges including the colleges of the petitioners that the students of undergraduate classes, who have not cleared their 1st semester examinations and seeking admission in 6th semester or have been admitted provisionally by the college in 6th

semester are not eligible for 6th semester as per semester ordinances. They were informed that if such students have been admitted by the colleges, the admission of such students must be cancelled and their fee be refunded by the college immediately but in case such a student clears his/her 1st semester examination he/she will take regular admission in 6th semester examination in the immediate next academic session because as per the semester ordinances after a period of six semesters the student shall be given a period of two more consecutive years to pass the degree i.e. the student can clear their under graduate course in five year duration.

In reply to the contention of the petitioner that the amendment in the Ordinance pertaining to the undergraduate course at the hands of the Vice Chancellor or the Syndicate is with retrospective effect, the respondent has also referred to a Division Bench Judgment of this Court in **LPA No.1448 of 2014** titled as **“Kirandeep Kaur and others Vs. Guru Nanak Dev University and others”** decided on 2.9.2014 in which this Court has held that the Vice Chancellor of the University has power under Sections 10(5) and 10(8) of the Act to bring a new provision into force with the approval of the competent authority. Competent authority in this case is Syndicate, who had approved the decision taken by the authority in its meeting dated 25.6.2012. It is thus submitted that the decision taken by the Vice Chancellor and the Syndicate of the University is not retrospective in operation.

To buttress his arguments, learned counsel for the respondents has referred to a decision of the Supreme Court in the case of **“Punjab University Vs. Subash Chander and another”** (1984) 3 Supreme Court Cases 603 and **“Punjab University,**

Chandigarh Vs. Devjani Chakrabarti and others” (1984) 3 Supreme Court Cases 612.

In the Case of **Subash Chander and another (Supra)**, respondent No.1 was admitted to the MBBS course in a medical college in Punjab in 1965. Regulation 25 of the Punjab University, as was then in force, required a minimum of 50% of marks to pass in each subject. Rule 7.1 relating to MBBS, as it stood then, provided that the candidate failing in one or more papers/subjects and/or aggregate may be given grace marks upto 1% of the total aggregate marks for passing the examination. Respondent No.1 appeared for the final MBBS examination 9 years later in 1974. Meanwhile in 1970 an amendment was made by the University in the form of an Exception to Rule 2.1 which corresponds to Rule 7.1 (which was in force in 1965) providing that the grace marks shall be given upto 1% of the total marks of each subject and not upto 1% of the aggregate marks of all the subjects as was before. Out of four subjects in the examination, the respondent clearly passed in three and in one he could not pass after adding the grace marks as provided under the Exception to Rule 2.1 as added in 1970, though he would have been declared passed by adding the grace marks as provided under the old Rule 7.1. The Full Bench of this Court held that the change in the regulation by way of addition of the Exception to Rule 2.1 was retrospective in operation as it altered the condition of the respondent retrospectively and so could not apply to him and that he was governed only by Regulation 25 read with Rule 7.1 as it was in force when he joined the course in 1965. Accordingly, this Court directed the University to declare the respondent's result afresh after affording benefit of grace marks provided under the old

Rule 7.1. The respondent was not entitled to the grace marks provided under the old Rule 7.1. The Senate had power under Section 31(2)(n) of the Punjab University Act to award grace marks to candidates appearing in the University examinations and to effect change in rules in that regard. In absence of any allegations of mala fides against the Senate and any contention that the respondent had no sufficient notice of the change brought about in 1970 in the rule or that he was prejudiced by the change, it cannot be said that the University acted unreasonably. There was no element of retrospectivity in the change brought about the addition of the Exception to Rule 2.1 of the Calendar for the year 1970. 'Retrospectivity' in relation to statutes etc. means 'operative with regard to past time'. The change effected does not say that it shall be operative with effect from any earlier date. It is prospective and cannot be said to be retrospective merely because though introduced in 1970 it was applied to the respondent, who appeared for the final examination in 1974 after he had joined the course earlier in 1965. No promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating thereto which were in force at the time of his admission would continue to be applied to him until he finished his whole course without knowing the Supreme Court judgment.

In the similar manner, the decision in the case of ***Devjani Chakrabarti and others (Supra)*** is there in which it has been held that new decision, if prospective in operation, would not become retrospective merely because it also governed those who

joined the course when the old decision prevailed in Punjab University Act, 1947.

In the present case, the facts are altogether different because the petitioners have admittedly got admission in the 3 years course in July/August 2012 when the amended common Ordinance of Undergraduate course came into being w.e.f. 25.6.2012 after getting the approval of the Syndicate.

Learned counsel for the respondent has also brought to the notice of the Court that this amended provision is broadly a student friendly amendment because the student, who has joined 1st semester, would be promoted to 2nd semester even though he does not pass the 1st semester but while promoting to 3rd semester he is required to pass at least 50% courses/papers of the first two semesters. Similarly when he is promoted to 4th from 3rd semester he may have passed but when he is promoted to 5th semester, he is again suppose to pass at least 50% courses/papers of the first four semesters. Insofar as the 6th semester is concerned, since the student will now be leaving the college as the course is of 3 year term of 6 semesters, it was deemed appropriate to the University to lay down the ordinance to provide that the student who has been promoted to 6th semester has to pass all the papers of the 1st semester.

On the other hand as per the old system, if the student was to be promoted to 2nd semester of any academic year irrespective the number of courses in which he had passed but if he fail in more than two subjects at the end of the year i.e. 2nd semester then he would have to be declared failed and had to seek readmission in the 1st semester of that year. For example, if a

student fails in three or more courses at the end of the 4th semester, he/she had to be reverted back to the 3rd semester.

In this view of the matter, I have found that the amendment in the Courses having 6th semester duration by the Syndicate on 25.6.2012 is student friendly then the earlier provision. The second limb of argument of learned counsel for the petitioners is that since the petitioners have enrolled and got admission in the courses of 6th semesters in the colleges of the University/respondent, therefore, they are estopped from denying roll numbers for the purpose of taking the 6th semester examination especially when the decision of the Syndicate has not been taken with the approval of the academic council. In this regard, he has referred to Section 21 of the Act, which reads as under: -

21. (1) *Ordinance shall be made, amended , repealed or added to by the Syndicate. Provided that no Ordinance shall be made: -*

- (a) *Affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations; or*
- (b) *Affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study.*

Unless a draft of such ordinance has been proposed by the Academic Council.

- (2) *The Syndicate shall not have the power to amend any draft*

Ordinance proposed by the Academic Council but may return it to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Syndicate may suggest, or reject it after it has been submitted for the second time.”

In this regard, learned counsel for the respondents has submitted that the academic council is only the authority who gives support to the Syndicate to take decision and here is the case where syndicate had taken a decision in view of the welfare of the student who are studying in the colleges affiliated with the University.

In view of the aforesaid, I do not find any merit in the present petition and the same is hereby dismissed.

06.05.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**