

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.05.2015

+ **W.P.(C) 3185/2015 & CM 5682/2015**

GOURAV JOSHIYA

..... Petitioner

versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr M. Rais Farooqui.

For the Respondents : Mr Sradhananda Mohapatra for University.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 17.11.2014 passed by the Mercy Committee of respondent no.1 (hereinafter referred as the 'University') whereby the petitioner's request for a mercy attempt to clear the papers had been denied and the petitioner's admission to the course of Bachelor of Technology (Mechanical and Automation Engineering), hereafter referred to as 'B.Tech (MAE)', was shown as cancelled. The petitioner further prays that he be permitted to reappear for May-June 2015 end term semester/annual examination.

2. Whilst the petitioner contends that he is entitled to a mercy attempt to appear in the examination, the University disputes the same; according to the University, the petitioner does not fulfill the conditions, which are

essential for being considered for a mercy attempt.

3. The limited controversy to be addressed is whether the petitioner is entitled to reappear in ten papers in May-June 2015 end term semester/annual examination and whether denial of such an attempt is discriminatory.

4. According to the petitioner, the University has provided mercy attempts to several students but is discriminating against the petitioner. This is disputed by the University and it is contended that only those students, who have undergone the course and if successful in the mercy attempt would be entitled to a degree, have been granted the option to clear their remaining papers.

5. Briefly stated, the necessary facts to address the controversy are as under:-

5.1. Respondent no. 2 is a College affiliated with the University. The petitioner was admitted to the course of B.Tech (MAE) at respondent no.2 College in the academic year 2010-11. The duration of the course is four years, comprising of eight semesters.

5.2. The petitioner undertook the first year course (first and second year semesters) and appeared for the end term examinations held in December 2010 and May-June 2011. However, the petitioner did not qualify the criteria for being promoted to the second year. This resulted in the first academic year break for the petitioner in the academic year 2011-12. The petitioner was promoted to the second year (third and fourth semesters) in

the academic year 2012-13 as he fulfilled the criteria of clearing 50% of the total credits required to be promoted from first year to second year.

5.3. Thereafter, the petitioner appeared for the third and four semester examination in December 2012 and May-June 2013 and also re-appeared for the papers pertaining to the first year but he could not be promoted to the third year in the academic session 2013-14 as he had failed to secure 90% of the total credits required for successfully passing the first year of the course. Thus, the academic year 2013-14 was a second academic break for the petitioner.

6. The University contends that as per the applicable ordinance, the admission of any student, who has suffered two academic breaks, is automatically cancelled. It is, thus, contended that the petitioner's admission stands cancelled and no mercy attempts are available to the petitioner.

7. In order to appreciate this contention, it is relevant to refer to paragraph 11 of Ordinance XI of the University. The relevant clauses of the said paragraph are quoted below:-

“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.

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11.2 (i) xxxx

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(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 the 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 for 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.”

8. The duration of the course is $n+4$ (where ‘n’ is the number of semesters). Thus, in the present case, the maximum span of the course is six years. Since the petitioner was admitted in the academic year 2010-11, he was required to complete the entire course by academic session 2015-16. However, the petitioner has not been promoted to the third year as yet and

even if a mercy attempt is granted to the petitioner, he would not be able to complete the course within the maximum permissible span of six years.

9. Further, paragraph 11.2(iii) of Ordinance XI, clearly, indicates that only two academic breaks are permissible for a student for completion of the academic programme/course and in no situation will a student be allowed to take more than two academic breaks. It is also specified that if a student has exhausted two academic breaks and an occasion arises for him to take the third academic break because of non promotion or detention, the admission of student would automatically stand cancelled. In the present case, the petitioner suffered the first academic break in the year 2011-12 as he was not promoted to the second year. He was allowed to reappear in December 2011 and May/June 2012 examination to clear the credits pertaining to the first year (first and second semester). Although the petitioner fulfilled the criteria of achieving 50% of the required credits for the first year, he fell short of clearing 90% of the credits pertaining to the first year. Thus, although he was promoted to the second year in the academic session 2012-13, he would not be eligible to be promoted to the third year until he achieved 90% of the credits required in the first year.

10. The petitioner reappeared in December 2012 and May/June 2013 examination but could not achieve the 90% credits with respect to the first year (first and second semesters) and, thus, was ineligible to be promoted to the third year in the academic session 2013-14. This was the second academic break. The petitioner again reappeared for the papers in December 2013 and May/June 2014 end term examination but the petitioner failed to fulfill the criteria required to be promoted to the third

year (i.e. he did not achieve 90% of the required credits with respect to the first year). Thus, the academic session 2014-15 would be the third academic break for the petitioner, which is not permissible by virtue of paragraph 11.2(iii) of Ordinance XI.

11. In the aforesaid circumstances, the University's contention that the petitioner's admission in the University would stand cancelled, cannot be faulted. The only question that remains is whether the petitioner would be entitled to avail of the relaxation offered by the University, that is, the mercy attempt to clear a paper relating to the first and second semester which, if cleared, would enable the petitioner to qualify for promotion to the third year. It is asserted that if the petitioner cleared one paper, the same would carry the petitioner over the threshold of 90% of the required credits in respect of the first year.

12. At this stage, it is necessary to refer to the notice dated 17.10.2014 issued by the Controller of the Examination (Operations) of the University in terms of which students were invited to apply for grant of a mercy chance. The relevant extract of the said notice reads as under:-

“A meeting of Committee for considering the requests for Last Special/Mercy Chance for End Term December, 2014 and May-June, 2015 Examinations to the students who have completed the span of N+2 years for the programme is scheduled to be held on 06.11.2014 (Thursday) at 10:00 AM in the Committee Room of Examinations Division, GGSIPU, Sector-16 C, Dwarka Campus, New Delhi-110078.

This Special/Mercy Chance meeting as per scheduled mentioned above, is the one last option for such students for a period of one year for completion of the requirements for award of the degree (December, 2014 and May-June, 2015 End Term Examination)."

13. The notice, clearly, indicates that the special chance was granted to students as a last option for completion of the requirements for award of the degree. The respondent has filed the affidavit explaining that a student would have to necessarily comply with the following conditions:-

- “(i) The maximum period i.e. N+2 have lapsed for those students who have been permitted.
- (ii) Completed study of all the courses of their respective programmes within maximum period i.e. by May/June, 2014 (but failed to earn the minimum credits to be eligible for the award of degree).”

14. It is apparent from a plain reading of the notice dated 17.10.2014 that a last opportunity was granted to the students for completion of the requirements for an award of degree. In other words, the mercy attempts have been granted only for the purpose of providing the student an opportunity to clear the papers, which the student had failed to clear and on account of which the award of degree has been withheld. It is, thus, implicit that all students being provided a mercy attempt would have completed their course as there is no question of award of degree without completion of the course. Clearly, the mercy attempts are granted to clear papers and not to undergo the course.

15. The learned counsel for the petitioner had referred to various students who had been granted several attempts and, apparently, had been

permitted to complete this course beyond the permissible span.

16. In view of this assertion, the University was directed to file an additional affidavit to provide the details of the students referred to by the petitioner. In compliance with the said direction, the University filed an additional affidavit providing the details of the students. The said affidavit indicated that no student, who had not completed his/her course, had been granted any mercy attempt. Significantly, the University also affirmed that there were 170 other students, including 143 students who were admitted to B.Tech course, who were placed in a similar position as the petitioner and their admissions had been cancelled on account of two academic breaks. These students were also not considered for mercy attempts and their cases were not even before the mercy committee.

17. In view of the aforesaid, I am unable to accept that the petitioner has been discriminated against in any manner.

18. The learned counsel for the petitioner referred to an order dated 16.01.2015 passed by this court in WP(C) 9243/2014 captioned '**Rashmi Sharma v. Guru Govind Singh Indraprastha University & Ors.**', which notes the scheme of providing mercy attempts as reflected in the minutes of the Mercy Committee held on 07.11.2014. The said scheme is quoted below:-

- “1. First Mercy Chance to all.
2. Second Mercy Chance to those who have to clear 12 papers to be eligible for the award of Degree.
3. SC/ST should be given one additional chance only this time.

4. Third Mercy Chance to those who have to clear 6 papers to be eligible for the award of Degree.”

19. The learned counsel for the petitioner contended that in terms of the aforesaid scheme, the petitioner - being a student belonging to the SC category - was entitled to one additional chance. In my view, this submission is unmerited. The scheme above indicates the number of mercy attempts to be granted; the scheme would have no application where the essential condition for grant of mercy attempts is itself not met.

20. The learned counsel for the petitioner relied upon the decision of the Supreme Court in **Avinash Singh Bagri & Ors. v. Registrar, IIT Delhi and Anr.:** (2009) 8 SCC 220 and contended that it was incumbent upon the University to take all steps to assist candidates from SC/ST category to come up to par with the other students and thus the University ought to grant the petitioner a further opportunity to complete the course.

21. In the aforesaid case, the petitioners were students belonging to SC/ST category and had been expelled from IIT, Delhi as they failed to secure the credits required for being promoted to the next year. The court took note of the fact that in other IITs, students who failed to secure the passing marks were not expelled but put on a slow track programme in order to assist them to clear the programme. In addition, it was also pointed out that there were other students who had secured fewer credits than the petitioner and yet their appeal had been allowed. The court disposed of the petition by directing that IIT, Delhi reconsider the case of the petitioner by considering the aspects as noted by the court.

22. Most of the aspects, as noted by the court, are absent in the present case; unlike IIT, Delhi, the University permits two academic breaks and a student's admission is not cancelled without affording him sufficient chance to clear the papers in which he has failed. In *Avinash Singh Bagri (supra)* the court had noted that there were two students who had earned credits less than the required credits and yet their appeals had been allowed by the competent authority. However, in the present case the petitioner has not been able to point out a single instance where a similarly placed student has been treated more favourably.

23. For the reasons stated above, the petition and application are dismissed. No order as to costs.

MAY 25, 2015
RK

VIBHU BAKHRU, J