

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1286 of 2016

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Roma Jha, D/o Shiv Kumar Jha, Resident of Village- Dhamdaha, P.S.- Dhamdaha,
District- Purnea

.... Appellant/s

Versus

1. B. N. Mandal University, Laloo Nagar, Madhepura through its Vice Chancellor
2. The Vice Chancellor, B.N. Mandal University, Laloo Nagar, Madhepura
3. The Registrar, B.N. Mandal University, Laloo Nagar, Madhepura
4. The Controller of Examination, B.N. Mandal University, Laloo Nagar, Madhepura.
5. The Millia Institute of Technology, Rambagh, Purnea through its Principal
6. The Principal, the Millia Institute of Technology, Rambagh, Purnea
7. The Millia Kishanganj College of Engineering and Technology, Kishanganj through its Principal
8. The Principal, the Millia Kishanganj College of Engineering and Technology Kishanganj
9. Nanak Kumar, S/o Narayan Prasad Yadav, Resident of Village- Sakhauri, P.S. Sour Bazar, District- Saharsa
10. Sajma Sultan, S/o Shoeb Alam, Resident of Village- Dehti, P.S.- Palasi, District- Araria

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Advocate
For the University : Mr. Raju Giri, Advocate.
For Respondent No. 5 : Mr. Rashid Izhar, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 24-11-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 10th of May, 2016 in C.W.J.C. No. 15227 of 2015 whereby, the writ application filed by the appellant claiming grace marks in one carry

over subject remained unsuccessful.

3. The facts have been given in detail by the learned Single Bench, it need not be repeated except to the extent that the appellant qualified 1st year B. Tech examination in all subjects. In the 2nd year B. Tech examination, she could not qualify in one subject i.e. Mechanics of Solid-I as she obtained 16 marks. She was permitted to appear in the 3rd year B. Tech examination. The appellant appeared in the carry over subject in the examination held in the year 2014 but she obtained 21 marks, the qualifying marks being 25. At that stage, the appellant claimed that she is entitled to 5 grace marks in terms of Regulation 11 (c) of the Regulation & Scheme for the B.Tech Examination which reads as under:-

“11 (c) Cases of single subject failures upto 5 marks in one subject of 100 marks or upto 3 marks each in two subjects of 100 marks each will be automatically awarded the requisite number of marks to enable them to pass in these subjects but such marks will not be added in the aggregate for the purpose of awarding class or inter-se-merit.”

4. The appellant relies upon an order passed in C.W.J.C. No. 22167 of 2013 (Pooja Kumari & Ors. Vs. B.N. Mandal University & Ors.), decided on 18th of July, 2014 which has been referred to by the learned Single Bench but not dealt with in the order under challenge. In the aforesaid judgment, it has been held as under:-

“9. In the aforesaid decision, it has been held by

this Court that the University cannot refuse to grant the grace mark/marks, as provided in Regulation 11(c) on the ground that the said Regulation is not applicable where the examination is taken by way of carry-over norm. It has been further held that the Regulation in this regard does not contemplate any distinction between the original examination and the re-examination in carry-over papers.

10. In this view of the matter and in view of the case of the three petitioners that they had appeared in the papers by way of carry-over papers and have secured only twenty (20) marks in one paper each, this Court finds that they are entitled to the grant of grace mark/marks, as required by Regulation 11(c).”

5. The facts of the present appellant are *pari materia* as that in Pooja Kumari’s case (supra).

6. Still further, the argument of learned counsel for the University is that the benefit of Regulation 11 (c) can be granted in the main examination and not in a carryover subject. The said issue has been decided in Pooja Kumari’s case (supra). Apart from the findings given in the said judgment, we find that the Regulation 11(c) does not distinguish between the main examination in all subjects and a carryover examination in one or more subjects. Since there is no distinction or restriction in respect of grant of grace marks in the carryover subject, the benefit of grace marks could not be declined to the appellant.

7. Consequently, we find that the action of the

University in not granting grace marks is not sustainable.

8. Consequently, the Letters Patent Appeal is allowed and the order passed by the learned Single Bench is set aside. The University is directed to grant grace marks to the appellant and declare her result forthwith.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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