

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15227 of 2015

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1. Roma Jha D/o Shiv Kumar Jha Resident of village - Dhamdaha, P.S. Dhamdaha, District - Purnea
 2. Nanak Kumar S/o Narayan Prasad Yadav Resident of village - Sakhauri, P.S. Sour Bazar, District - Saharsa
 3. Sajma Sultan S/o Shoeb Alam Resident of village - Dehti, P.S. Palasi, District - Araria

.... Petitioners

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 Controllor 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

.... Respondents

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Appearance :

For the Petitioners : Mr. Sanjeev Kumar, Advocate
: Mr. Shamshad Alam, Advocate
For University : Mr. Raju Giri, Advocate
For M.I.T. : Mr. Rashid Izhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 10-05-2016

The three petitioners have jointly moved the writ Court for a direction upon the University to grant them grace marks in terms of Regulation 11(c) and to declare them pass and award degree.

2. As per the petitioners, they are entitled to grant of 5 marks in a single subject automatically or three grace marks in two subjects. The petitioners are fortified in their demand by virtue of an

order passed in CWJC No.22167 of 2013 decided by a learned Single Judge on 18.07.2014.

3. The regulation and scheme for the B.Tech. examination has been annexed by the petitioners as Annexure-4 to the writ application. Regulation 11(c) is the bone of contention, therefore, they are reproduced herein below:

"11. In order to pass the examination a candidate must obtain:

- (a) Not less than 35 marks in each of the written papers out of which not less than 25 must have obtained in the University Examination.
- (b) Not less than 60 marks in each sessional work.
- (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. In addition to the above Regulation, Regulation 12, 13, 14, 15 and 16 also have relevance. Though they are not quoted as part of the order but the Court had gone through them meticulously and is of the considered opinion that the Regulation has to be read in its entirety and the spirit behind Regulation 11(c) has to be appreciated and understood in the right perspective. The basic fallacy which has emerged in the order contained in Annexure-5 is that

something more has been read into Regulation 11(c) by virtue of the interpretation given, which is not even contemplated in the said Regulation. The object of granting grace marks in the manner and fashion indicated in Regulation 11(c) is to ensure passing of a candidate over all and not to help him get through every examination, every year even if it is a compartmental examination or examination to clear the backlog paper.

5. With due respect, such a wide interpretation will have a detrimental effect on the standards of teaching and education including conduct of examination because it will take away the seriousness of the evaluation and the true merit of a candidate.

6. The University has filed a counter affidavit. The Court would like to reproduce the factual position with regard to performance of these petitioners so far in the words of the University itself:

"7. That regarding appearance, remaining unsuccessful or passing/clearing the different B.Tech. Examinations etc. of the Petitioners are placed hereunder for better appreciation for the matter:-

(a) Petitioner No.1 – Roma Jha

i. B. Tech. 1st Year Examination

She appeared in B.Tech. 1st year University Annual Examination, 2012 bearing Examination Roll No.3784 Registration No.35809/12 and was declared pass in First Division.

ii. B. Tech. 2nd Year Examination

- (a) She appeared in B.Tech. 2nd Year Annual University Examination, 2013 and obtained only 16 (sixteen) marks in the Subject – Mechanics Solid-I (Subject Code (S.C.))-203) against the minimum required pass marks-25. As per Regulation No.12(i), she was promoted to the next higher class i.e. 3rd year/Class but as per Regulation she was required to appear and pass in the written papers of the subject(s) in which she failed in the **next 2nd Year Examination** alongwith the subjects of the next higher Class.
- (b) She appeared again in B.Tech. 2nd Year Examination, 2014, but she could obtain only 21 (twenty one) marks in the failure subject against the required minimum pass marks-25 and was declared disqualified.

iii. B. Tech. 3rd Year Examination

She appeared in B.Tech. 3rd Year Annual Examination, 2014, obtained successful marks and declared pass in First Class.

(b) Petitioner No.2 – Nanak Kumar

i. B. Tech. 1st Year Examination

He appeared in B.Tech. 1st Year University Annual Examination, 2012 bearing Examination Roll No. 4350 Registration No. 51415/12 and was declared pass in First Division.

ii. B.Tech. 2nd Year Examination

- (a) He appeared in B.Tech. 2nd Year Annual University Examination, 2013 and obtained only 16 (sixteen) marks in the subject – Mechanics Solid-I (Subject Code (S.C.))-203) against the minimum required pass marks-25.

As per Regulation No.12(i), he was promoted to the next higher class i.e. 3rd Year/Class but as per Regulation he was required to appear and pass in the written papers of the subject(s) in which she failed in the **next 2nd Year Examination** alongwith the subjects of the next higher Class.

- (b) He appeared again in B.Tech. 2nd Year Examination, 2014, but he could obtain only 21 (twenty one) marks in the said failure subject against the required minimum pass marks-25 and was declared disqualified.

iii. B. Tech. 3rd Year Examination

He appeared in B.Tech. 3rd Year Annual Examination, 2014, in one subjects Structural Analysis-I (S.C.-306) he obtained only 20 (twenty) marks against minimum required pass marks 25. As per Regulation No.11(C) and as the said B.Tech. 3rd Year Examination, 2014 was Annual Examination, not the qualifying Examination, he was awarded 05 (five) marks to enable him to be declared pass and was declared Pass-U/R (Under Regulation).

(c) Petitioner No.3 – Sajma Sultan

i. B.Tech. 1st Year Examination

- (a) He appeared in B.Tech. 1st Year University Annual Examination, 2012 bearing Examination Roll No.3601 Registration No.35983/12 and failed in two subjects – (i) Mathematics-I (S.C.-102) as he obtained only 01 (one) marks and (ii) Mathematics-II (S.C.-103) as obtained only 07 (seven) marks respectively against the minimum required Pass Marks-25. S per Regulation No.12(i) he

was declared promoted to the next higher Class i.e. 2nd Year / Class and thus as per the said Regulation he was required to appear and pass in the failure subjects in the next B.Tech. Examination, 2013 alongwith subjects of the said next higher class.

- (b) He appeared in the said two failure subject of B.Tech. 1st Year Examination, 2012 in the next 1st Year Examination, 2013; obtained successful marks and was declared qualified.

ii. B.Tech. 2nd Year Examination

- (a) He appeared in B.Tech. 2nd Year Annual University Examination, 2013 but could not obtain minimum required Pass Marks-25 in one of the subjects-Mechanics of Solid-I (S.C.-203) as he obtained only 15 (fifteen) marks. He was declared promoted to the next higher Class i.e. 3rd Year/Class subject to the provisions in Regulation No.12(i) as stated above.
- (b) He appeared again in B.Tech. 2nd Year Examination, 2014, in the abovesaid failure subject (S.C.-203) and again could not obtain minimum required Pass Marks-25 as he could obtain only 22 (twenty two) marks. He was declared disqualified.

iii. B.Tech. 3rd Year Examination

He appeared in B.Tech. 3rd Year Annual Examination, 2014, and declared pass in First Class.

8. That as per Regulation No.11, the grace marks upto maximum 05 marks in one subject and 0.3 (three) marks each in maximum two subjects is

to be awarded only in the Annual Examination, as the Petitioner No.2 has been awarded 05 (five) marks in the B.Tech. 3rd Year Annual Examination, 2014, not in the qualifying examination."

7. If the claim of the petitioners, therefore, are entertained and grace marks are awarded in every qualifying examination then such an interpretation to Regulation 11(c) will have a very-very detrimental effect on maintenance of standards of the examination, in the course in question, which is a technical course.

8. Since all the three petitioners are demanding award of grace marks not in the final examination but in the annual qualifying examination or repeat papers in which they have been failed a second time over, any direction for grant of grace marks would amount to passing the petitioners even without reaching the bench mark fixed for declaration of results in their favour from one year to the next.

9. The object in interpreting such Regulations should be to preserve the spirit behind the provision which is to maintain the standards of education and not to dilute or lower them which will help produce sub-standard students, whose employability will also be a big question mark and even if they do find employment, it will be at the peril of the society because half baked knowledge will be let loose on society.

10. In view of the above, the Court opines that the only

rule of interpretation which can apply to Regulation 11(c) is the golden rule of interpretation and nothing more can be read into Regulation 11(c) to beget any student benefit of grace marks in any other examination but for the final examination.

11. Writ application, therefore, is dismissed being devoid of merit.

(Ajay Kumar Tripathi, J.)

SanjayKumar/-

AFR/NAFR	AFR
CAV DATE	
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