

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2506 OF 2016**

Oneil Sandeep Bhapkar	...Petitioner
<i>Versus</i>	
Savitribai Phule Pune University & Ors.	...Respondents

Ms. Aparna A. Dhavle, with Mr. Ketan A. Dhavle, *for the
Petitioner.*
Mr. Rajendra Anbhule, *for Respondent Nos. 1 and 2.*
Mr. R.M. Pethe, *for Respondent No. 3.*

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**
DATED: 26th February 2016

PC:-

1. By this Petition, which has been urgently circulated for the last date of submission of examination forms falls on 28th February 2016, the Petitioner prays that a Writ of Mandamus or any other writ, order or direction in nature thereof be issued to the Respondents to forthwith declare the result of 7th semester, 4th year B.S.L. LL.B. course and also that a communication, at page 28, dated 9th February 2016 be withdrawn.

2. The facts would have to be set out in some details to appreciate the argument of a failed student.

3. The Petitioner was admitted in the Respondent No. 3-College for a five year law degree course in the year 2011-2012. It is undisputed that the degree is awarded by the Respondent No. 1-University and the course, as also the affiliation of Respondent No. 3-College, is to the Respondent No. 1 University.

4. Thereafter the Petitioner cleared the first two years of the course and took admission in the 3rd year of the said law course in the academic year 2013-2014. This course is semester-wise. The Petitioner appeared for the 3rd year, 5th semester (of this course) and appeared for four papers, details of which are set out in paragraph 4 of the Petition.

5. Then it is averred that the Petitioner re-appeared for the said papers as he could not clear three subjects, namely, Law of Crimes, Criminology and Penology and Labour Law. The Petitioner submits that the backlog papers were to be attempted in the 6th semester of the 3rd year of that Course in April 2015. The Petitioner appeared for four regular subjects of the 6th semester along with the three backlog papers/subjects and the results of this examination were declared in June 2015. The mark-sheet was issued on 12th June 2015. The Petitioner scored 324 marks out of 800. As per standard passing criteria for the 3rd year of the course, the Petitioner was required to obtain 35% of marks in each paper and 50% of the total marks in the examination. The Petitioner scored less than 35 marks in one subject, namely, Legal Ethics, and could not score 400 out of 800. He was informed by the university that he had failed in one subject and he was eligible to apply for provisional admission.

6. Then the Petitioner states that he obtained a provisional admission for the the next academic session on 25th June 2015. That very day, he applied for a photocopy of the answer sheets of the seven subjects for which he had appeared in April 2015. On receipt of these photocopies on 24th August 2015, the Petitioner applied for revaluation of five subjects more particularly mentioned in paragraph 9 of the Petition. In the meanwhile, in October 2015 the Petitioner was advised by the official of Respondent No. 1 university to again fill up the examination form for the 3rd year backlog, namely, five subjects and the 4th year (7th Semester), namely, four subjects.

7. The examination dates were declared from 20 October to 30 October. A hall ticket was issued to the Petitioner on 16th October 2015. In paragraph 11 of the Petition, the Petitioner states that the result of revaluation was declared online on 13th October 2015, but the same was inconclusive and without indicating the status of the Petitioner as failed. Therefore, the Petitioner was not in a position to ascertain whether he had cleared any other subjects of the backlog papers or whether he was to again keep terms.

8. With his online result and his hall ticket, the Petitioner approached the college and some Chief Executive Officer of the Respondent No. 3 college has endorsed thereon that the Petitioner had failed to clear the four subjects in revaluation. That endorsement was sought to be cancelled by the Petitioner by approaching the University, but pertinently, there was no cancellation thereof. The Petitioner was not informed of cancellation of admission either and that is how he thought that he

was not prevented from appearing in the examination. In order to save that year, the Petitioner appeared for nine subjects and none of the Respondents prevented him from so appearing. That is how the 3rd year mark-sheet was given again to the subjects so attempted in the backlog on 22nd December 2015, which is the final mark-sheet at Annexure “I” to the Petition.

9. That is also how the mark-sheet of 7th semester of 4th year was sought but that was not given and finally when the Petitioner approached the Controller of Examination, 2nd Respondent, that the written representation came to be replied with a remark at Annexures “K”, page 28 of the Petition. Since the Petitioner did not clear the 3rd year examination held in April 2015, namely, 1/3rd of the total subjects thereat, the Petitioner could not have been held eligible for the 4th year examination. In other words, he could not have gained admission or entered that year at all.

10. It is in this backdrop that we must appreciate the contention of the Petitioner’s Advocate that for no fault of the Petitioner, he has been denied the opportunity to appear and now for the 8th semester. His appearance at the 4th year, 7th semester now cannot be faulted as the Respondents alone are responsible for delaying the matter. Once the averments in the Writ Petition and the representation would denote that the Petitioner could not obtain the entire details of the revaluation and he was advised by the University itself to fill up the examination form again, then all the more the impugned communication cannot be sustained.

11. Reliance is placed upon a Division Bench judgment of this Court in *Ganesh R. Baheti v. The University of Pune & Anr.*¹

12. Upon perusal of the complete Petition, meaning thereby the averments and all annexures, we are unable to agree with the learned Advocate.

13. Ms. Aparna Dhavale could not convince us that the Petitioner possesses either a fundamental or a legal right as a failed student to get more opportunities to appear for the next year or the next semester and with an admitted backlog. Once the Petitioner appeared for the subject/s more than once, could not clear it, and even on revaluation the result was not altered, then, any provisional admission does not confer a right in the Petitioner to seek the Writ of Mandamus as claimed. A failed student allowed to keep terms cannot claim a higher right than what the permissible academic policy is. If the academic policy is that a student can clear the backlog together with the fresh examination subjects, then to avail of that policy, the Petitioner must establish that he is entitled to continue the studies as not only the backlog but the fresh examination subjects have all been cleared in terms of such policy. Admittedly, the Petitioner was aware of the marks but was not satisfied with them. A revaluation of the marks was attempted. The result of the revaluation on the own showing of the Petitioner was known before 16th October 2015.

14. The averments in the Petition are very guarded. The Petitioner has stated that in October 2015 he was advised by the

¹ 2004 (1) ALL MR 207

Officials of the Respondent Nos. 1 and 2 to again fill up the examination form for the 3rd year backlogs, namely, four new subjects. Annexures “D” and “E” are relied upon in that behalf. A perusal of both of them would reveal that one is 15th September 2015 and the another also bears the same date and stamp.

15. In the representation that the Petitioner makes, he is aware that his Hall Ticket carried this endorsement which is in bold at page 20, i.e., on 16th October 2015 at 1.20 p.m. Therefore, the Petitioner obtained all the details and prior to the date now sought to be projected. The details as sought and in terms of the representation would indicate that online revaluation results were available online only after the 15th October 2015 and the Hall Ticket was already issued on 16th October 2015 with all subjects. This representation curiously does not mention anything about the endorsement, but the Petition does. If the endorsement is known to the Petitioner, then it is clear the outcome of the revaluation process was also known.

16. It is in these circumstances if on 13th October 2015 the outcome of the revaluation process was available online and everything is provisional, then the Petitioner cannot claim appearance at the 8th Semester examination of the 4th year as of right.

17. The reliance placed on the Division Bench judgment by Ms. Dhavle is entirely misplaced. There, the factual averment is that the Petitioner therein approached this Court for setting aside cancellation of the admission to the 4th year and cancelling the

examination forms for the fourth and fifth year. The predicament that the Petitioner faced there was in his having been admitted and successfully completing the first and second year course, securing the 3rd year admission, appearing at the 3rd year examinations but the results being declared on 22nd June 2000. He failed in four theory subjects. He applied for revaluation immediately. He was granted provisional admission by the Respondent No. 2 to the 4th year as he applied for revaluation. Pertinently, the revaluation result was not declared even by November 2000 when the next round of examinations were to be held. Hence, out of abandon caution in the event of his being declared unsuccessful even after revaluation at the 3rd year examination, the Petitioner therein once again appeared for the 3rd year examination. In November 2000, the Petitioner was therefore permitted by the Respondent No. 2 to appear for the 3rd year and 4th year examinations. He was so permitted as he had successfully completed the 4th year course which consisted of only practicals at a single semester. Thereafter, the revaluation results were declared. There was no change in his marks for the 3rd year. However, on 21st January 2001, the result of the 3rd year examination held in November 2000 were declared. The Petitioner in that Petition passed the examination, obtained the mark sheets and when the 4th year examinations results were declared on 23rd January 2001 it became known that the Respondent No.1 had refused to declare the Petitioner's result. That was on the account of the Petitioner's failure in the 3rd year at the initial attempt. This entire exercise of the University of Pune therein ignored the Petitioner's fresh attempt at clearing the 3rd year examination and indeed clearing it. In this factual backdrop the writ as prayed was issued. Ms. Dhavle's argument completely

overlooks this factual backdrop and which cannot be said to be identical to the present case. The entire action of the University in that case and which was admitted as mere inadvertence was, therefore, set aside and the Petitioner therein declared as passed all examinations upto 4th year. That is how his academic pursuits and career was protected.

18. We cannot by applying that logic and principle assist the Petitioner before us for he has been a failure throughout. After revaluation he was unable to clear the examinations or the subjects as specified above. In such circumstances, the writ as claimed cannot be granted.

19. The Petition is dismissed.

(G. S. PATEL, J.)

(S. C. DHARMADHIKARI, J.)