

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3949 OF 2016**

Ritesh Ankush Sawant	}	Petitioner
versus		
The Controller of Examination	}	
and Anr.	}	Respondents

Ritesh A. Sawant – Petitioner in-person.

Mr. Rui Rodrigues with Mr. Ad. Asadullah
Shaikh for respondent no. 1.

Mr. M. J. Bhatt for respondent no. 2.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- APRIL 7, 2016

P.C. :-

1) This petition under Article 226 of the Constitution of India assails a communication from the University of Mumbai Annexure – 'G' at page 27 of the paper book.

2) The petitioner, amongst others, has been declared as failed for the second year law examination of three year degree course. The case of the petitioner is that there is a practical examination and which is internal, which is to be conducted by Thane Law College. It is to be conducted before the theory examination commences and the college itself was aware that such examination must be taken and its results communicated to

the university so that the university would be in a position to allow only those students who have cleared this practical examination, to appear at the examination (theory) to be conducted by it. It is stated to be a practical project and viva carrying 30 marks.

3) This practical examination was held by Thane Law College in the first instance, but the petitioner met with an accident and could not appear at the same. Another opportunity was given to him at a supplementary practical training examination and after the marks of the same were communicated, the petitioner did appear for the theory examination. It is his claim that he cleared it. However, the university declared him failed only because the practical examination was repeated and belatedly. That, according to the university, does not comply with its ordinances and statute.

4) The petitioner complains that he is not at fault. It is his college which held a practical examination, not once, but twice. The petitioner cleared the same. The petitioner could not appear at the initial examination having met with an accident and being treated by the doctor. It is in these circumstances that he was accommodated and the repeat practical examination marks were also communicated well in advance.

5) Since this was the request made by the petitioner appearing in-person and his educational prospectus and career being at stake, we called upon Mr. Rodrigues appearing for the University of Mumbai to satisfy us as to how the student can be declared as failed.

6) Mr. Rodrigues clarified that the communication at page 27 of the paper book concerns not only Thane Law College, but Siddharth Law College and Nalanda College of Law.

7) These colleges did not hold the practical training examination in time or well in advance. Rather Thane Law College held one practical examination and for students like the petitioner, held it again. In fact, such examination for the same set of students was held thrice. That is not permissible and no prior permission was obtained from the university. It was kept in dark. The arrangement which the petitioner carves out was, from inception, impermissible. The petitioner cannot derive any benefit of having cleared the theory examination. The practical training results or marks should have been intimated by the college and it was aware that it was required to so intimate the same.

8) Our attention is invited, in that regard, to the result, copy of which is at Annexure 'A' at page 10 of the paper book, which indicates that failure and absentee students in practical training paper II will not be allowed to appear in Semester IV in April-May, 2015. Such students will not be issued hall ticket for Semester VI.

9) Mr. Rodrigues points out that the practical training examination was held on 23rd April, 2015, whereas the theory papers commenced from 24th April, 2015. It is in the above light that we have perused the petition and all annexures thereto. From letter dated 29th July, 2015 addressed by Thane Law College to the Controller of Examination, University of Mumbai, it is apparent that the college conducted the examination styled as Practical Training Examination more than once. As far as the petitioner is concerned, the petitioner was awarded marks at the said examination. However, those marks were attempted to be corrected by pointing out that the petitioner cleared theory subject but was shown failed in practical training. He approached the college authority. On verifying his marks, it came to the notice of college that this student could not appear for the practical examination conducted on 2nd March, 2015 and pleaded for another chance. On being satisfied regarding the reason for

not attending the initial examination, the college authority permitted him to appear for written examination on 23rd April, 2015, in which, he secured 33 marks out of 70 and hence totally secured 33+15, namely, 48 marks out of 100, but by oversight, the marks were not corrected and the second mark sheet came to be forwarded to the office. This communication, read as a whole, would indicate that the petitioner appeared for the first examination of practical training on 2nd March, 2015, in which he failed and secured 17 marks out of 70. He secured 15 marks in practical project and therefore, his total was 32 out of 100 and remark 'failed' was entered. This clearly shows that the petitioner appeared at such first examination. The college may have allowed him to appear for second practical training written examination, but we do not see any prior approval obtained from the university for such exercise by the college. We do not know whether the petitioner was allowed to appear in the second practical exam for his absence at the first or was it to improve his marks or have them corrected, such course was adopted. Surely, the university's clearance for all this ought to have been sought by the affiliated college, which is missing. The college may have given a impression to the petitioner, but on that alone, we cannot grant the relief prayed by him. We assume that the petitioner proceeded on the footing that the college has cleared the matter

with the university and therefore he took the second examination, but it is apparent that this impression given to the petitioner by the college would enable him only to proceed against the college. The university having not permitted anything, it was justified in declaring the petitioner as failed. Something which is contrary to the academic policy of the university and equally its rules and regulations cannot be permitted in writ jurisdiction. We cannot issue a writ contrary to law. In the circumstances, on the ground of sympathy alone we cannot interfere with the university's decision. The petition is dismissed.

10) It is unfortunate that the petitioner will have to repeat the second year examination and thereafter, if he clears the same, he would be in a position to appear for the final year examination. We hope that the university will not insist on his attending classes for the second year.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)