

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 266 OF 2017**

Miss Sharadhi S. S.
daughter of Dr. S.K. Shyama,
aged 22 years, student,
resident of A-2, Shah Harmony,
Molocca, Mercedes,
Tiswadi, Panaji, Goa.

..... Petitioner.

V/s.

1. State of Goa,
through its Chief Secretary,
having Office at Secretariat,
Alto Porvorim, Bardez, Goa.

2. Goa University, through its Registrar,
Talegao Plateau,
Tiswadi, Goa.

3. The Vice Chancellor, Goa University,
Talegao Plateau,
Tiswadi, Goa.

4. Controller of Examinations,
Goa University,
Talegao Plateau,
Tiswadi, Goa.

..... Respondents.

Mr. S. S. Kantak, Senior Advocate with Mr. P. Talaulikar, Advocate
for the petitioner.

Mr. Sagar Dhargalkar, Additional Govt. Advocate for the
respondent No.1.

Mrs. A. Agni, Senior Advocate with Ms. Priya Sawant, Advocate
for the respondents No.2 to 4.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 19/04/2017.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. S. S. Kantak, learned Senior Counsel appearing for the petitioner, Mr. Sagar Dhargalkar, learned Additional Govt. Advocate appearing for the respondent No.1 and Ms. A. Agni, learned Senior Counsel appearing for the respondents No.2 to 4.

2. Rule. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel.

3. Briefly, it is the case of the petitioner that she was admitted to the course of Bachelor of Engineering in Electrical and Electronics Engineering in Goa College of Engineering somewhere in the year 2012. The petitioner completed her Bachelor Degree in June, 2016 and applied for her rank certificate on 18th November, 2016. The Controller of Examination rejected such request of the petitioner on 20th

December, 2016, on the ground that as per the provisions of OA 13.1 which is a general ordinance governing such matters, which cannot be superseded by ordinance governing individual course. Thereafter, the father of the petitioner made a representation to the Vice Chancellor on 12th January, 2017 requesting the Vice Chancellor to look into the matter. As no favourable decision was forthcoming, the petitioner filed the above writ petition, *inter alia*, seeking to quash and set aside the decision of the respondent No.4 dated 20th December, 2016 and also to issue a writ to the respondents to award rank certificate to the petitioner.

4. The respondents filed their reply, *inter alia*, contending that the petitioner was duly informed vide letter dated 20/02/2016 that she would not be entitled to the rank certificate. It is further pointed out that the petitioner completed the Bachelor of Engineering Course, which study course was conducted under the revised ordinance to 2007-2008, which was applicable ordinance to the Bachelor of Engineering Course. It is further submitted that Ordinance 10.37 provides that a candidate who has secured the highest percentage of marks in the B.E. Degree

Examination and eligible in terms of the provisions of OC 10.A.32.1, shall be awarded a rank certificate by the University. It is further pointed out that OA 13.4 (unamended) which was in force from the year 2007 clearly provides a rider that unless the examinations are passed in the first attempt, the concerned candidate shall not be eligible for Prize, Medal or Scholarship. It is further submitted that the contention of the petitioner that the provisions of amended OA 13, relating to merit list, are not applicable to the petitioner as she had secured grace marks at the Semester III in the year 2013; whereas the amended provisions of OA 13 relating to the merit have come into force w.e.f. 2nd March, 2015, is totally baseless for the simple reason that at the stage when the candidate is claiming rank certificate, the provisions which are applicable are the ones which are in force with effect from 2/3/2015. It is also pointed out that the provisions of OC 10A.37 and OA 13 have to be read together and if so read, it is apparent that in terms of OC 10A.37 the top ranking of the Bachelor of Engineering Course would be entitled to the rank certificate, but the said provisions would have to be read with OA 13 which provides that a candidate who has secured the highest

percentage of marks at the Bachelor of Engineering Course shall be awarded the rank certificate if he/she has passed all the examinations in one attempt, without any grace marks. It is further pointed out that as the petitioner has availed of grace marks whilst passing Semester IIIrd examination, the petitioner was not eligible to get the rank certificate. It is further denied that the amendment cannot be made applicable to the petitioner because it came into force on 2nd March, 2015. Disputing the claim put forward by the petitioner, the respondent No.2 has prayed that the petition be rejected.

5. Mr. S. S. Kantak, learned Senior Counsel appearing for the petitioner has submitted that as on the date when the petitioner started the first Semester in the year 2012, OC-10A.37 was in force and, as such, according to him, the petitioner was eligible for the rank certificate. The learned Senior Counsel further points out that in terms of the amendment which came into force w.e.f. 2/3/2015, OA-13 came to be amended, whereby the eligibility to get the rank certificate is that the candidate must pass all examinations without any grace marks. The learned Senior

Counsel further submits that as the petitioner had already answered the IIIrd Semester before the amendment of 2015 coming into force, the question of applying the amendment to disqualify the petitioner from getting the rank certificate is totally unjustified as, according to him, this would lead to retrospective operation of the amendment which came into force in March, 2015. The learned Senior Counsel further points out that the amendment introduced in the year 2015 can only be made applicable prospectively and, as such, the question of applying such amendment to the petitioner who had passed the IIIrd Semester in the year 2013 is totally unjustified and has no sanctity in law. The learned Senior Counsel further submits that the petitioner has a vested right to be eligible for the rank certificate on the date when the amendment came into force and, as such, the respondents are estopped from now contending that the petitioner is ineligible for the rank certificate. It is further pointed out that the principles of promissory estoppel are also available to the petitioner as, based on the conduct of the respondents, the petitioner believed that she would be entitled to get the rank certificate upon completion of her degree course. The learned Senior Counsel has, thereafter, taken us through the

Ordinance and the relevant provisions therein to point out that the weightage given to ascertain the merit is only for the IIIrd and IVth examinations and, as such, considering that the second year examination is not counted for weightage, the amendment to O.A. 13 is to be read down to mean that the examination referred to therein would only include the examinations which are considered for weightage. The learned Senior Counsel further submits that in such circumstances, grave prejudice has occasioned to the petitioner as, according to him, the petitioner has stood first in rank by obtaining the highest marks in the Bachelor of Engineering Course and is being deprived of a rank certificate on the basis of an amendment which came into force in March, 2015. The learned Senior Counsel has also brought to our notice that similarly placed students in the year 2016 were awarded rank certificates by the respondents. The learned Senior Counsel, in support of his submissions, has relied upon a Judgment of this Court report in 1994(3) Bom C.R. 532, in the case of ***Kush s/o Dr. Damodar Jhunjunwala vs. The State of Maharashtra and ors.*** The learned Senior Counsel, as such, points out that the petitioner is entitled for the relief sought in the petition.

6. On the other hand, Ms. A. Agni, learned Senior Counsel appearing for the respondents No.2 to 4 has vehemently disputed the contentions raised by the petitioner. The learned Senior Counsel, at the outset, pointed out that this Court, in exercise of jurisdiction under Article 226 of the Constitution of India cannot sit in appeal on an academic decision taken by the experts in the field with regard to the merits of the petitioner. The learned Senior Counsel further points out that the principles of *promissory estoppel* are not available to a student like the petitioner as held by the Full Bench of this Court in the Judgment reported in **1992 (2) Bom.C.R. 280** in the case of ***Ashwin Prafulla Pimpalwar vs. The State of Maharashtra***. The learned Senior Counsel further submits that it is expected of the students like the petitioner to give in their maximum efforts to excel in the field of their study and not to depend upon grace marks to pass their examinations. The learned Senior Counsel, as such, points out that there is no vested right accrued to the petitioner to get a rank certificate, merely because she was admitted to the Bachelor of Engineering Course in the year 2012 and, as such, the question

of claiming that vested rights are defeated based on the amendment which came in force in the year 2015, is totally farfetched. The learned Senior Counsel further submits that there is a difference between existing right and a vested right and in the present case, according to the learned Counsel, the right claimed, if any, at the most could be an existing right which cannot be taken away. The learned Senior Counsel further points out that the respondents are not giving a retrospective operation to the amendment of the year 2015 as, according to her, as the right to obtain a rank certificate accrued to the petitioner in the year 2016, OA 13, as amended in the year 2015 was in force and, as such, it is not open to the petitioner to contend that the petitioner need not meet the eligibility criteria as introduced by the Amendment of 2015. The learned Senior Counsel further submits that as the amendment itself shows that there is no retrospective operation of the amendment, the contention of the learned Senior Counsel appearing for the petitioner that the amendment cannot have retrospective effect, has no substance. The learned Senior Counsel further submits that the distinction between the existing right and the vested right has been clearly delineated by the Apex Court in

the Judgment reported in **(2015) 8 SCC 129** in the case of ***P. Suseela and others vs. University Grants Commission and ors.***

The learned Senior Counsel has laid emphasis on paras 14, 15, 16, 19 and 20 of the Judgment to put forward her contention that no vested right was defeated on the basis of the amendment, but, at the most the existing right which cannot enure any benefit to the petitioner. The learned Senior Counsel further submits that the question of reading down the provisions of the Ordinance is totally misconceived as, according to her, it is well settled that the Courts cannot introduce words to give a different meaning to a legislation which is clearly worded. The learned Senior Counsel further points out that the contention of the learned Senior Counsel that OC 10 which is a special provision dealing with Engineering prevails over OA 13 which is a general provision applicable to all the fields of Degree Courses cannot be accepted, but, however, both the provisions have to be read harmoniously. The learned Senior Counsel further submits that the special provisions dealing with Engineering do not deal with granting rank certificate as, according to her, these are governed by the general provisions as provided in OA 13. The learned Senior Counsel has also

vehemently pointed out that in such circumstances, the eligibility of the petitioner has to be judged as on the date when she gets a right to get a rank certificate and, as such, according to her, in the year 2016 when the petitioner became eligible the amendment of the year 2015 was already in force and, as such, the petitioner was ineligible to get a rank certificate. The learned Senior Counsel further submits that the respondents have taken a conscious decision and, as such, this Court, in the present writ petition, cannot interfere under Article 226 of the Constitution of India. In support of her contention, the learned Senior Counsel has relied upon a Judgment of the Apex Court reported in *(2010) 5 SCC 196* in the case of *Pallawi Resources Limited vs. Protos Engineering Company Private Limited*, and *2013 AIR SCW 6510*, in the case of *Basawaraj & Anr. v. The Spl. Land Acquisition Officer*.

7. The learned Additional Government appearing for the respondent No.1 points out that the matter, under consideration, is more dealing with the respondents No.2 to 4.

8. Upon hearing the learned Counsel appearing for the

respective parties, the admitted facts which culled out therefrom are that the petitioner got herself admitted for a Bachelor of Engineering Course with the University of Goa in the year 2012. The petitioner passed her first two semesters for the first year in the year 2012-13 by obtaining more than 60%. Examinations for the remaining two semesters i.e. IIIrd and IVth for the second year were answered by the petitioner in 2013-14 where she also obtained more than 60%, though for the IIIrd Semester, the petitioner had availed grace marks to pass one of the subjects in the year 2013. The petitioner passed the next two Semesters for the third year and obtained first class with distinction and for the 7th and 8th Semesters for the fourth year examination, the petitioner also passed with first class with distinction. It is not in dispute that based on the Ordinance as in force from the year 2007, the petitioner was entitled for a rank certificate in view of her performance in the third and fourth year Examinations. The only dispute which arises in the context of the petitioner obtaining such rank certificate is that in terms of OA 13 which came to be amended and came into force from 2/3/2015, the eligibility criteria recognizes that the candidate has to pass all the

examinations without grace marks. The respondents' contend that as the petitioner had obtained grace marks to pass her IIIrd semester in the year 2013 before the coming into force of the amendment on 2nd March, 2015, the petitioner is ineligible to get the rank certificate. The relevant provisions of the Ordinance read thus :

“OC-10A.32.1 Eligibility for Award of Class :

A Class for passing examination shall be awarded at the end of each academic year examination, provided the candidate does not have any backlog. First year : based on marks in Semester I and Semester II examination.

Second year : based on marks in Semester III and Semester IV examinations.

Third year : based on marks in Semester V and Semester VI examinations.

Class for B.E. Degree:

Cent percent weightage shall be given to marks scored in Semester VII and VIII and fifty percent weightage for marks scored in Semester V and VI in deciding the award of class at B.E. Examination. Semester VII and VIII should be cleared independently each in one sitting for being eligible for the award of class.

OC-10A-32.2 A class for passing an examination shall be awarded only if the candidate passes all theory papers stipulated for that year, passing papers of each semester examination in one sitting. On availing the first regular chance to pass all the papers of a semester in one sitting if the candidate is not satisfied with his performance he/she can avail a second and final chance to pass all the papers of the semester in one sitting without claiming exemption in any of the papers of the previous appearance.

Whenever a candidate registers to reappear for

an examination, the marks scored in the previous examination shall be deemed null and void. However, the marks secured in sessionals/internal assessment, oral and practical in subjects, projects and industrial training shall necessarily be carried over without affecting the eligibility for class.

OA-13.1 Unamended. The University shall award certificate of merit to the first three top rankers of all Bachelors degree Examinations and Master degree Examinations such as :

UG/PG Professional & Non-Professional Examinations as per the following conditions :

1. Candidates who pass the respective examination within the minimum prescribed period and securing a minimum of 60% and more marks or equivalent grade.
2. Candidates who pass the examinations leadings to the Degree i.e. the final and lower examinations which are considered for weightage of marks in the final class/grade in the first attempt in the semester as well as the annual pattern.
3. There shall be minimum of five candidates appearing for the examination.

OA-13.4 - No candidates shall be eligible for award of prize, medals or scholarships unless :

1. He/she passes the Examinations leadings to the Degree i.e. the final and the lower examinations which are considered for weightage of marks in the final class/grade in the first abatement in the semester as well as the annual pattern.
2. He/she passes the respective Examination/s within the minimum prescribed period securing a minimum of 60% and more marks or equivalent grade.

OA-13.1 Eligibility for award of certificate of merit, medal and scholarship as amended from 1.3.2015.

1. Candidates have to pass all examinations, within the minimum prescribed period, conducted by the Colleges and/or University in first attempt without any grace marks.
2. Candidates should secure a minimum of 60% in aggregate marks in those examinations that are considered for weightage for awarding the final grade/class.
3. a. The University shall award a certificate of merit to the first three top rankers of all the degree/diploma examinations.
b. There shall be a minimum of five candidates appearing for the examination for being eligible for the certificate of merit.”

9. During the course of hearing of the above petition, we called upon the learned Senior Counsel appearing for the petitioner to ascertain what was the difference between the petitioner and the incumbent second in line in the merit list. It was pointed out that the difference is of 48 marks between the first and the second person in line. As such, we found it appropriate to proceed examine the above writ petition under Article 226 of the Constitution of India as, otherwise, it would deprive the petitioner of getting the rank certificate if she was so entitled, thereby jeopardizing her future career.

10. The fact which is undisputed is that in the year 2016, similarly placed candidates who passed the graduation examinations of the University and had availed of grace marks before the year 2015, were issued rank certificates. Though Ms. Agni, learned Senior Counsel appearing for the respondents has strongly pointed out that in the reply filed by the respondent No.2, this was stated to be a mistake committed by the respondents in granting such rank certificate and the respondents will take steps to recall such certificates awarded, but, however, the fact remains that a conscious decision was taken by the respondents at the relevant time to grant a rank certificate to the candidates despite of the candidates having obtained grace marks prior to the coming into force of the amendment w.e.f. 2/3/2015. No doubt, there can be no vested right in the petitioner in case such an exercise is contrary to the statute, but, however, we have to note the inconsistent stand of the respondent No.2 that the petitioner was already informed in the year 2016 that she would not be eligible for the rank certificate because she had obtained grace marks when she passed her IIIrd Semester. The person then Incharge of the respondent No.2 had, in fact, understood the same

provisions in a particular manner and granted the rank certificates. Only in the case of the petitioner, who stood first with a first class with distinction in two consecutive examinations which gave weightage for such rankings, the respondent No.2 indulged in a diametrically contrary interpretation to deprive the petitioner of such a certificate.

11. In the background of these facts, the only aspect which has to be considered is, whether the amendment of the year 2015 can make the petitioner ineligible for the rank certificate. In this connection, the learned Single Judge of this Court in the Judgment reported in *1991(1) Bom.C.R. 212* in the case of *Amar Vasudeva Kamath vs. The Registrar, University of Bombay and ors.* has, *inter alia*, observed that the Executive Council of the University may fix a date from which the Ordinance will come into force which date must, necessarily, be prospective and cannot be retrospective. It is further observed that no subordinate legislation will have retrospective effect, unless the Act empowers making of such subordinate legislation. On perusal of the provisions of the Goa University Act, 1984, it is clear that there is no power

delegated to the University to make any provision retrospectively. In fact, the Ordinances which are enacted by virtue of Section 24 the Goa University Act, 1984, based on subordinate legislation come into force prospectively after they are duly approved by the concerned Council. In the present case, it is not in dispute that the amendment to OA 13 came into force on 2nd March, 2015. On plain reading of the said provision, it cannot be disputed that the amendment has prospective operation. But, however, the only aspect to be examined is, whether the eligibility criteria specified by the amendment, would apply to the petitioner, in the circumstances of the case. It is the contention of the respondents that the eligibility has to be decided on the date when the petitioner becomes eligible for the rank certificate. But, however, by refusing the petitioner of a rank certificate by applying the amendment of the year 2015, the respondent No.2, in other words, are making the provisions of the eligibility criteria retroactive from the year 2013 when, admittedly, the petitioner passed the IIIrd Semester by availing grace marks, though above 60% marks. Such an exercise would make the petitioner totally ineligible to get the rank certificate based on such amendment which came into

force in the year 2015 when, admittedly, the petitioner had answered the examination in the year 2013 when the amendment was not in force.

12. Black's Law Dictionary, defines the word “Retroactive” to mean (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. Further “*Retroactivity*” is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity,' consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity,' occurs when a new rule of law is applied to an act or transaction in the process of completion... (T) he foundation of these concepts is the distinction between completed and pending transactions. (“T.C. Hartley. *The Foundations of European Community Law* 129 (1981).)

13. The above definition clearly provides that by making the provision retroactive, it extends its scope or effect to matters

that have occurred in the past. In the present case, on the basis of an amendment in the year 2015, the respondents by depriving the petitioner of a rank certificate is extending the scope of the amendment to the year 2013 when, admittedly, the amendment was not in force. As pointed out herein above, the Goa University Act does not confer any power to the University to make any ordinance retrospective or retroactive and in such circumstances, we find that the contention of the learned Senior Counsel appearing for the respondents that in view of the amendment of the year 2015, the petitioner is not entitled for a rank certificate, cannot be accepted.

14. In this connection, the Apex Court in the judgment reported in *(2007) 5 SCC 77* in the case of *Vice-Chancellor, M.D. University, Rohtak vs. Jahan Singh*, it is observed at paras 19 and 20 thus :

“ 19. The Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The purported regulations, thus, could not have been given retrospective effect or retroactive operation as it is now well settled that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.

20. In Mahabir Vegetable Oils (P) Ltd. v. State of Haryana, this Court stated at paras 41 to 43.

“41. We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne).

43. A retrospective effect to an amendment by way of delegated legislation could be given, thus, only after coming into force of sub-section (2-A) of Section 64 of the Act and not prior thereto.”

15. With regard to the contention of the learned Counsel appearing for the respondents that the principles of promissory estoppel will not be applicable, we find that such contention is irrelevant in the context of the view taken by us with regard to the applicability of the amendment of the year 2015. It is to be noted that the petitioner is not claiming any right of non-applicability of the amendment to any examination conducted after the amendment of the year 2015. It is not the case of the petitioner that she had passed her examination in the year 2015-16 on the basis of grace marks. In such circumstances, such principles as

enunciated by the learned Senior Counsel for the petitioner and the respondents, would not have to be considered. In the present case, admittedly, the petitioner is claiming the rank certificate as the amendment was not in force on the date when she had passed her IIIrd Semester in the year 2013 based on grace marks, though she obtained overall more than 60% as required. The respondents, as such, are not justified to refuse grant of rank certificate to the petitioner if she is otherwise entitled in terms of the statute.

16. The next contention of Mr. S.S. Kantak, learned Senior Counsel appearing for the petitioner to read down the provisions, also need not be considered, taking into consideration the view taken by us herein above.

17. In view of the above, we pass the following :

ORDER

(I) The petition is partly allowed.

(II) The impugned decision dated 20/12/2016 is quashed and set aside. The respondents are, accordingly, directed to examine the application filed by the petitioner for rank certificate, afresh, in the light of the observations made herein above, in accordance with law.

- (III) Rule is made absolute in the above terms.
- (IV) No Costs.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

At this stage, Mr. Talaulikar, learned Counsel appearing for the petitioner seeks for a direction to expeditiously decide on the rank certificate as, according to him, prize distribution ceremony is fixed next week. Ms. Sawant, learned Counsel appearing for the respondents No.2 to 4 submits to the orders of the Court.

Considering the above, the respondents are expected to take a decision expeditiously in the light of the contention of the learned Counsel appearing for the petitioner.

Parties to act on the authenticated copy of the operative part of this Judgment.

NUTAN D. SARDESSAI, J.
ssm.

F.M. REIS, J.