

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

- 1. CWP No.6793 of 2017 (O&M)
Date of Decision: 24.05.2017**

Kavita Sharma

....Petitioner

Vs.

Guru Nank Dev University and others

....Respondents

- 2. CWP No.19584 of 2016 (O&M)**

Varinderjit Kaur and another

....Petitioners

Vs.

Guru Nank Dev University and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. M.S. Batth, Advocate,
for the petitioner (in CWP No.6793 of 2017).

Mr.Lal Singh Sandhu, Advocate,
for the petitioner (in CWP No.19584 of 2016).

Mr.Amrit Paul, Advocate
for respondents No.1 to 3 (in CWP No.6793 of 2017).
for respondents No.1 & 2 (in CWP No.19584 of 2016).

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of 2 petitions bearing
CWP No.6793 of 2017 titled as "*Kavita Sharma Vs. Guru Nanak Dev
University and others*" [for short 'the 1st petition] and CWP No.19584
of 2016 titled as "*Varinderjit Kaur and another Vs. Guru Nanak Dev*

University and others” [for short ‘the 2nd petition] as the issue involved in both the petitions are similar. However, for the sake of brevity, the facts are being extracted from the 1st petition.

The petitioner has prayed for a writ in the nature of certiorari for quashing the order dated 31.5.2016 by which the improvement examination taken by her has been cancelled.

In the 2nd petition, the petitioners are the students of Khalsa College, Amritsar. They had appeared in the improvement examination, which has also been cancelled by the college because the academic council of the said college adopted the Ordinances of Guru Nanak Dev University regarding all the semester and annual courses in the college. It has also implemented the University notification dated 31.5.2016 regarding the improvements also.

The brief facts of the 1st petition are that the petitioner passed her B.A. examination in May, 2015 in semester system. She secured 1176 marks out of 2400 cumulatively in all the six semesters. Since the petitioner had secured 49% marks and wanted to improve it to secure at least 2nd division, therefore, decided to improve her score in Political Science & Punjabi subjects of the 5th semester examination. She applied to the University for the purpose of appearing in the improvement examination, which was scheduled to be held in December, 2015. After the procedural formalities were over, the University issued roll No.10321238903 to the petitioner to appear in the improvement test. According to the petitioner, she had done well in the improvement test and was awaiting her result. However, instead of declaring the result, the petitioner was informed

that the University has cancelled her result and notified the same on 28.7.2016. The petitioner filed an application under the RTI in order to get the reason for cancellation of her examination and also made a representation to the Vice Chancellor of the University in this regard. In response thereto, the respondent/University informed the petitioner on 18.8.2016 that vide order dated 31.5.2016, the Controller of examination has cancelled the improvement examination on the ground that neither there is any provision in the University Calendar for the improvement of semester system examination nor any permission has been obtained from the syndicate in this regard. The result of the petitioner was cancelled and the fee deposited by her for the improvement test was also refunded.

Learned counsel for the petitioner has relied upon a Single Bench decision of this Court rendered in the case of ***“Mala Chawla Vs. Guru Nanak Dev University, Amritsar”*** 1989 AIR (Punjab) 40 to contend that once the petitioner has been issued roll number for appearing in the improvement test, it cannot be cancelled later on. Similar is the case set up by the petitioners in the 2nd petition.

However, in the reply filed by the respondent/University, it is averred that the semester system for the various courses run in the colleges affiliated to the University is governed by the statutory “Common Ordinances under Semester System”, which has been introduced by it in the year 2012 for the colleges affiliated to it and are also published and uploaded on the official website of the University. It is also submitted that in the absence of any provision for allowing improvement in the papers of any semester to a student,

who is pursuing semester system, the issuance of roll number to the petitioner was an erroneous act on the part of the official of the University but as soon as it came to the knowledge of the Vice Chancellor, the result of all such candidates has been cancelled including the petitioner and the fee has been refunded. It is also submitted that the judgment relied upon by the counsel for the petitioner in the case of ***Mala Chawla (Supra)*** is not applicable to the facts and circumstances of the present case. It is also submitted that the Calendar, Volume II-2008 of the University, pertaining to the examinations, also deals with the power of the University to cancel such kind of examination. In this regard, he has referred to Clause 3(C)(i) of the Calendar, Volume II-2008, which read as under: -

“3(C)(i) If a candidate, subsequent to the issue of Roll Number or subsequent to appearance in an examination is found to be ineligible to take the examination, his candidature shall be cancelled by the Registrar.”

Learned counsel for the respondents has also submitted that since the petitioner was not eligible to appear in the improvement examination in the presence of statutory provision, therefore, the examination of the petitioner has been cancelled in terms of the aforesaid provision i.e. Clause 3(C)(i) of the Calendar, Volume II-2008. It is further submitted that the decision in the case of ***Mala Chawla (Supra)*** is not at all applicable. Rather counsel for the respondents has argued to the extent that the said judgment can be

treated as *per incuriam*. On the other hand, he has relied upon a decision of the Supreme Court rendered in the case of “***Maharshi Dayanand University Vs. Surjeet Kaur***” 2010 (11) SCC 159 to contend that the University is an autonomous body and its statutory provisions have to be implemented through its officers and the rules and regulations cannot be allowed to be defeated merely because the University erroneously allowed the respondent to appear in the examination. He has also referred to another decision of the Supreme Court rendered in the case of “***State of U.P. Vs. Neeraj Awasthi and others***” 2006(1) SCC 667 to contend that any decision rendered by the Supreme Court, exercising its power under Article 142 of the Constitution of India is not a binding precedent. Therefore, it is submitted that the decision of the Supreme Court rendered in the case of “***Rajendra Prasad Mathur Vs. Karnataka University and another***” 1986(sup) SCC 740, which has been made the basis by the learned Single Judge of this Court, while deciding the case ***Mala Chawla (Supra)***, is also not applicable because the said judgment has been delivered by resorting to Article 142 of the Constitution of India. It is also submitted that even in the case of ***Mala Chawla (Supra)***, there was a provision in the Ordinance permitting the student to re-appear in the same examination but it was limited to 55% marks and not more whereas in that case the petitioner wanted to improve her marks above 55% and that is why the University had cancelled her result and the writ petition was allowed on the ground that it was arbitrary.

I have heard both the learned counsel for the parties and perused the available record with their able assistance.

The 1st issue involved in this case is *as to whether the examinations taken by the petitioner to improve her score in two subjects of 5th semester can be recognized in the absence of relevant provision in the Statute or the Calendar of the University?*

The 2nd issue would also be *as to whether the decision in the case of **Mala Chawla (Supra)**, in which the decision of the Supreme Court rendered in the case of **Rajendra Prasad Mathur (Supra)** has been relied upon is of any help to the petitioner?*

In order to answer the 1st issue, it would be relevant to mention that the petitioner has failed to show any provision on the basis of which she may seek improvement in the papers of 5th semester, if admittedly pursuing the course under the semester system. Thus, in the absence of any such provision, which allows the petitioner or make her eligible to appear in the improvement examination, she could not have applied for improvement examination in two subjects as has been done in the present case. However, the fact remains that the petitioner being a student has submitted the application form and requisite fee, which has been accepted by the University and roll number was issued to her. She had appeared in the improvement examination and was legitimately expecting good marks in the improvement examination but the University has cancelled her result. Is there any fault of the student in this case? The student may not be at fault but the fact remains that the examination taken by her is not supported by any statutory provision,

therefore, the University has decided to cancel all such examinations, which were taken by such students, who are seeking improvement in their marks. In this regard, the University exercises its power in terms of Clause 3(C)(i) of the Calendar, Volume-II, 2008 pertaining to examination, which specifically provides that if a candidate, subsequent to the issue of Roll Number or subsequent to appearance in an examination is found to be ineligible to take the examination, his candidature shall be cancelled by the Registrar.

Thus, to my mind, there is no error on the part of the University in cancelling the examination of the petitioner.

Insofar as the 2nd issue as to whether the decision rendered in the case of *Mala Chawla (Supra)* would help to the petitioner is concerned, the petitioner, in that case, passed M.A. (Part I) examination in Fine Arts (Drawing and Painting) from Guru Nanak Dev University, Amritsar, in August, 1984, securing 228 marks out of 400 marks. Thereafter, she appeared in M.A. (Part II). Examination in May, 1985 and passed the same securing 249 marks out of 400 marks. Thus, in total she secured 477 marks out of 800 marks, i.e. 3 marks less than 480 which are the minimum marks for the First Division. The petitioner thus, filed application for the purpose of appearing in the improvement examination because there was a provision in the Ordinance for permitting the students to improve their divisions by reappearing in the same examination. However, the examination of the petitioner was cancelled by the University on the ground that the improvement was allowed up to 55% marks and not higher whereas the petitioner requires only 3 marks, therefore, she was having more

than 55% marks in the examination, which she had taken before the improvement. In this background, the Court had held that the rule or regulation which debars a candidate securing more than 55% marks from improving his/her performance from Second Division to First Division, that is, from 55% to 60 %, such a condition would be wholly discriminatory and arbitrary in the eyes of law because any such condition, if imposed, would amount to putting premium on less merit as candidates with higher merit will be at a discount and at a disadvantage so far as the right to appear for the second time as an 'Improvement Case' is concerned. In the said judgment, the Court also relied upon the decision rendered by the Supreme Court in the case of ***Rajendra Prasad Mathur (Supra)***.

In the present case, there is no statutory provision for appearing at all in the improvement examination as the petitioner has been pursuing the semester system course. Insofar as the decision rendered by the Supreme Court in the case of ***Rajendra Prasad Mathur (Supra)*** is concerned, in that case, the students were admitted to engineering degree course. They were given provisional admission under the order of the Court. They pursued their course for 4 years and ultimately when the matter reached the Supreme Court, they had already completed their course. The Supreme Court had found that though the petitioners were ineligible but as they had already completed their course, therefore, the Supreme Court, exercising its power under Article 142 of the Constitution of India, did not disturb the degree already obtained by the petitioner, under the order of the Court, but the appeal filed against the order of the High Court for not

taking action against the management of the Engineering College, was dismissed. Similarly in the case of ***Maharshi Dayanand University (Supra)***, the Supreme Court has held that there can be no estoppel/promissory estoppel against the Legislature in the exercise of the legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition. In the case of ***State of U.P. (Supra)***, the Supreme Court has though again passed the order under Article 142 of the Constitution of India but it was observed that it did not constitute a binding precedent.

Thus, in view of the aforesaid facts and circumstances, I do not find any merit in the present petitions and both the issues framed hereinabove are answered against the petitioner. Consequently, both the petitions are hereby dismissed.

A photocopy of this order be placed on the file of another connected case.

(RAKESH KUMAR JAIN)
JUDGE

24.05.2017
Vivek

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*