

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

Date of Decision: May 04, 2017

1. CWP No.8088 of 2017 (O&M)

Priansh Abrol

.....Petitioner

vs.

Guru Nanak Dev University and othersRespondents

2. CWP No.9203 of 2017 (O&M)

Vipul Negi

.....Petitioner

vs.

Guru Nanak Dev University and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Baldev Raj Mahajan, Senior Advocate
with Mr. A.P.S. Sandhu, Advocate and
Mr. Saurabh Mago, Advocate for the
petitioner in CWP No.8088 of 2017.

Mr. Vivek Salathia, Advocate for the petitioner
in CWP No.9203 of 2017.

Mr. Amrit Paul, Advocate for respondents
No.1 to 3.

Rakesh Kumar Jain

This order shall dispose of two petitions bearing CWP No.8088 of 2017 – Priansh Abrol v. Guru Nanak Dev University and others (first petition) and CWP No.9203 of 2017 - Vipul Negi v. Guru Nanak Dev University and others (second petition) as the issues involved in both the petitions are common. However, for the sake of convenience, the facts are extracted from the first petition in which prayer has been made for the issuance of a writ in the nature of mandamus directing the respondents to

allow the petitioner to appear in final exams of 10th Semester, compartment examination of 8th Semester and paper of Contract Act of the 5th Semester.

In short, the petitioner took admission in the Ist Semester of LL.B. (Five Years Integrated Course) (for short, 'the LL.B (FYIC)') of total 10 Semesters, in the Session 2012-13 in respondent No.4- College, starting from July, 2012. The duration of the 5 Years Course run under the Semester System starting with the admission of the petitioner w.e.f. July, 2012 would be depicted as per the following chart:-

“Academic Year Period covered		Semesters covered
<u>No.</u>		
Ist Year	July 2012, to May 2013	Ist and 2 nd semesters
2 nd Year	July 2013, to May 2014	3 rd and 4 th semesters
3 rd Year	July 2014, to May 2015	5 th and 6 th semesters
4 th Year	July 2015, to May 2016	7 th and 8 th semesters
5 th Year	July 2016, to May 2017	9 th and 10 th semesters”

The petitioner had a compartment in the 5th Semester in the paper of Contract Act which he could not clear in three chances. He appeared in the 6th, 7th, 8th and 9th Semester but got compartment in three subjects in the 8th Semester. He submitted fee for appearing in the supplementary papers in the 10th Semester for three compartment papers in 8th Semester and also paid for a golden chance to appear in the paper of Contract Act of the 5th Semester. Since the respondents have allegedly refused to issue roll number to the petitioner on account of his failure in the 5th Semester paper, to appear in the 10th Semester and 8th Semester compartment papers, therefore, he has filed this petition for seeking the aforesaid directions.

Learned counsel for the petitioner has submitted that as per

Rule 6 pertaining to the Bachelor of Laws (Five Years Integrated Course) contained in the Calendar Volume III, 2008 (Admission to Examinations) of the University, the petitioner can complete his degree within seven years from the date of joining the Ist Semester which means that he can avail more than three chances of re-appearance. He has further submitted that Rule 19 as contained in University Calendar, Volume II, 2008 pertaining to Admissions to Examinations, provides that “If a candidate who is placed in compartment/re-appear in one paper of an integrated course and is unable to clear his/her compartment/ re-appear after availing the admissible chances, but has appeared and passed the higher examination of that course of this University simultaneously, he/she shall be granted one extra chance to clear the compartment/ re-appear paper.” He has further submitted that Rule 32 of the General Admissions Examinations Ordinance contained in University Calendar, Volume II, 2008 provides that “If a candidate who is placed in compartment in any part of the undergraduate examination and does not clear the compartment subject in the permissible chances as specified in the relevant ordinances shall be allowed two special consecutive chances.” He has also submitted that the petitioner has been illegally denied chance to appear in the one paper of the 5th Semester in which he had re-appeared and has also challenged the amendment in the Rule 32, of the General Ordinance, by virtue of the order passed by the Syndicate on 14.12.2016 on the ground that the said Ordinance cannot be made to operate retrospectively as the petitioner would be governed by the Ordinances which were in existence at the time when he had taken admission and in this regard, he has relied upon a decision of this Court rendered in the case of

Alka Masih and others v. Panjab University and others – CWP No.25316 of

2013 decided on 10.3.2014.

On the other hand, learned counsel appearing for the University has submitted that the odd Semester examinations i.e. 1st, 3rd, 5th, 7th and 9th are held in November/December while even Semester examinations i.e. 2nd, 4th, 6th, 8th and 10th are held in May every year. It is further submitted that there are specific Ordinances for examinations pertaining to Bachelor of Law (Five Years Integrated Course) in the University Calendar, Volume II of 2008 in which Rule 6 allows reappearance in the examination of a particular Semester within three years of joining. The said chances have already been availed by the petitioner which is depicted by way of a table reproduced as under:-

<u>“Year No.</u>	<u>In the Examination held in</u>
Ist year of 5 th semester [July 2014, to May 2015]	December, 2014
2 nd year of 5 th semester [July 2015, to May 2016]	December, 2015
3 rd year of 5 th semester [July 2016, to May 2017]	December, 2016”

It is further submitted that the petitioner cannot be allowed to urge that he can be allowed to complete a degree within seven years from the date of joining the Ist Semester and in this regard, he has referred to rule 9 of the Ordinance pertaining to Bachelor of Laws (Five Years Degree Course) to contend that the student has to clear all the papers of the first six Semesters and claim a degree of Bachelor of Arts but the degree of Bachelor of Laws shall be awarded if he passes all the ten Semesters and since the petitioner has failed in all the three attempts to clear one paper of the 5th Semester, therefore, he has failed for all intents and purposes and cannot be allowed to complete his degree within a period of seven years as suggested.

It is further submitted that it was an inadvertent mistake of the computer in printing below the DMC of the 5th Semester examination held in December, 2015 that the petitioner would be eligible to re-appear in the failed/reappear subject of 5^h Semester upto December, 2017 because in the actual result gazette notification dated 24.2.2016 of 5th Semester examination held in December, 2015, his result is declared as “R (Paper IV till December, 2016)”, meaning thereby that he was eligible to reappear in the said subject of the paper IV of the 5th Semester upto December, 2016 only which he could not clear while reappearing in December, 2016 and his result has been declared as “Failed” in the Course in the result Gazette Notification dated 7.4.2017 and thus there was no estoppel in favour of the petitioner as against the statutory Gazette Notification and the applicable statutory Ordinance and he cannot be permitted to rely upon the mistake or clerical error in the DMC.

It is also submitted by the respondents that Rule 19 is of separate General Ordinance on Admission to Examinations in the Guru Nanak Dev University Calendar 2008, Volume II which is not applicable to the admission of the petitioner to the LL.B (FYIC) under the Semester System which is governed by the specific Ordinance provided in the Guru Nanak Dev university Calendar, 2008 Volume III. It is also submitted that the General Ordinances are generally meant for the Annual System of Examinations and Rule 19 of the said Ordinance pertains to a candidate who appears in the re-appear paper of the lower examination and who also simultaneously (at the same time) appears in the higher examination which is not the case of the petitioner because as per the respondents, the petitioner took 5th Semester examination in December, 2015 and then in December,

2016 and then he appeared in the regular 6th Semester examination not simultaneously with the re-appear examination of 5th Semester in December, 2015 or December, 2016 but in May, 2015. It is also submitted that no student of the LL.B (FYIC) Semester System has, however, so far been granted any extra special chance under Rule 19 of the Ordinance because it is not applicable.

It is further submitted by the respondents that Rule 32 of the General Ordinance on Admission to Examinations provided in Guru Nanak Dev University Calendar, 2008 Volume II has been misread and misinterpreted and rather misused for the purpose of granting one more chance and in this regard, the Vice Chancellor of the University, in exercise of his emergency powers vested in him under Section 10(8) of the Guru Nanak Dev University Act, 1969 (for short, 'the Act') passed clarificatory directions/ orders on 17.11.2016, in anticipation of approval by the Syndicate, by way of making amendment in the Ordinances that Rule 32 of the General Ordinances is not to govern the grant of extra special chances to clear re-appear subjects of the candidate of the LL.B (FYIC), which as per the decision of the Syndicate on 14.10.2014, has to be governed by the specific governing Ordinance given in the Guru Nanak Dev University Calendar 2008 Volume III. He has also submitted that the orders dated 17.11.2016 passed by the Vice Chancellor came into effect instantly and has relied upon a decision of the Division Bench judgment of this Court in this regard rendered in LPA No.1448 of 2014 – **Kirandeep Kaur and others v. Guru Nanak Dev University Amritsar and others**. It is also submitted that the petitioner cannot claim vested right while disputing the decision of the Syndicate dated 14.12.2016 in contending that this would not operate

retrospectively rather it is submitted that Senate is entitled to effect amendments in the Rules from time to time and in this regard, he has relied upon decision of the Supreme Court in the cases of Punjab University v. Subash Chander and another, (1984) 3 Supreme Court Cases 603, Punjab University, Chandigarh v. Devjani Chakrabarti and others, (1984) 3 SCC 612. He has also relied upon a decision of the Supreme Court in the case of Chandigarh Administration and another v. Jagjit Singh and another etc., JT 1995(1) S.C. 445 to contend that if a wrong order is passed in favour of one person then it is not supposed to be passed in favour of others, compelling the authority to repeat the illegality or to pass an unwarranted order. He has also referred to a decision of the Supreme Court in the case of Central Board of Secondary Education v. Nikhil Gulati and another, 1998(2) RSJ 153 to urge that the Court should desist from passing interim directions permitting the students to take examination under the order of the Court.

I have heard both the learned counsel for the parties and perused the available record with their able assistance. The first question which requires to be decided is as to “whether the case of the petitioner is governed by the Ordinance which is specifically issued for the Bachelor of Laws (Five Years Integrated Course) contained in University Calendar 2008, Volume II (Ordinance for Examinations) or it is also governed by General Ordinance of Admission to Examinations contained in Calendar 2008 issued by the University?” In the presence of the specific Ordinance belonging to the Bachelor of Laws (Five Years Integrated Course) provisions of General Ordinance would not apply until and unless it is specifically provided in the said Calendar. Rule 6 of the Ordinance

pertaining to Bachelor of Laws (FYIC), relied upon by the petitioner and Rule 9 relied upon by the respondents are reproduced as under:-

“6. The candidate shall be allowed to re-appear in the examination of a particular semester within three year of joining the said semester provided that the candidate shall appear according to the new syllabus prescribed from time to time.

However, the candidate shall complete his degree within seven years from the date of joining the first semester.

No student shall be promoted from first to second, second to third, third to fourth, fourth to fifth and fifth to sixth, sixth to seventh, seventh to eighth, eighth to ninth and ninth to tenth semester if he/she fails to appear in the lower semester examination.”

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9. i) Every successful candidate shall be awarded a certificate stating the details of marks secured by him/her in each semester.

ii) A candidate who has cleared all the papers of the first six semesters shall be awarded a degree of Bachelor of Arts stating the division and percentage of marks.

iii) The degree of Bachelor of Laws LL.B. (Professional), will be awarded on passing the papers of all the ten semesters.”

Rule 6 provides that the candidate would be allowed to re-appear in the examination of particular semester within three years of

joining. It further says that the candidate shall have to complete his degree within seven years from the date of joining the first semester. In the present case, the petitioner has already availed all the three chances of re-appearance in terms of Rule 6 which has already been depicted in the earlier part of this order. The petitioner has ultimately failed when he took the third chance in the 4th paper of Contract Act held in December, 2016. Since the petitioner has failed, therefore, he cannot claim to complete his degree within a period of 7 years in view of Rule 9(ii) and (iii) of the Ordinance relating to Bachelor of Laws (FYIC) which mandates that a degree of Bachelor of Law LL.B (Professional) shall be awarded after passing the papers of all the 10 semesters whereas the petitioner has failed in one of the paper of the 10th Semester.

Although Rule 19 and 32 of the General Ordinance on Admission to Examinations contained in Guru Nanak Dev University Calendar, 2008 Volume II would not apply yet it may still be tested that if they are made applicable whether the petitioner would get any benefit? In this regard, Rule 19 and 32 are also reproduced for a quick reference which read as under:-

“19. A candidate who is placed in compartment/ re-appear in one paper of an integrated course and is unable to clear his/her compartment/ re-appear after availing the admissible chances, but has appeared and passed the higher examination of that course of this University simultaneously, he/she shall be granted one extra chance to clear the compartment/ re-appear paper.

This concession will be confined to the examinations

within the same integrated course and not to the candidates passing the higher examination of another course.”

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32. A candidate who is placed in compartment in any part of the undergraduate examination and does not clear the compartment subject in the permissible chances as specified in the relevant ordinances shall be allowed two special consecutive chances only to clear the compartment subject of that part with a special fee as prescribed by the University from time to time. However both the special chances would be admissible only to complete the under-graduate degree and not for getting admission in the next higher Post-graduate course/class.

Provided further that the result of the next higher class shall automatically stand cancelled.”

Rule 19 says that if a student is placed in compartment/ re-appear in one paper of Integrated Course and is unable to clear the said paper after availing the admissible chances but has appeared and passed the higher examination of that course then he would be granted one extra chance to clear the compartment/ re-appear paper.

Counsel for the petitioner has argued that the petitioner is pursuing the Integrated Course of Law, he has availed all the admissible chances to re-appear and could not clear the paper but has passed the higher examination of the said Five Year Integrated Course, therefore, he is entitled to another chance. The argument may be attractive but Rule 19 also provides that he has to appear in the re-appear exam with the higher

examination simultaneously, i.e. at the same time, i.e if the petitioner is appearing in the 4th paper of 5th semester i.e. Contract Act in December, 2016 then he should also have appeared in the 6th semester exam i.e the higher examination in December, 2016 itself and neither earlier or later on because the word used in this Rule is “simultaneously” whereas admittedly, the petitioner had appeared in the re-appear exam in December, 2016 and appeared in the higher examination in May, 2016 which in no case can be called his appearance in the re-appear exam and the higher examination simultaneously. Therefore, he cannot take advantage of the provisions of Rule 19 of the said Ordinance.

Insofar as Rule 32 of the General Ordinance is concerned, it provides that if a student who is placed in compartment in any of the undergraduate examination and does not clear the compartment examination in the permissible chances specified in the relevant Ordinances, then he shall be allowed two consecutive chances only to clear the compartment subject of that part. According to the Petitioner, the petitioner got compartment in the undergraduate examination which he could not clear within the permissible chances, therefore, he should have been allowed two consecutive chances special consecutive chances. This provision is stated to have been frequently misused as a result thereof, the Vice Chancellor using his emergency powers took a decision for bringing an amendment with effect from the examination commencing from 19th November, 2016 onwards. Rule 32 of the General Ordinance Admission to Examinations, Guru Nanak Dev University Calendar, 2008 Volume II will not be applicable to the grant of special chances for the candidates of the LL.B. (FYIC) Classes as these classes have already been given chances in the

specific Ordinances which are given in the University Calendar 2008, Volume III. The decision was taken by the Vice Chancellor on 17.11.2016 which was approved by the Syndicate and in view of the Division Bench judgment of this Court in the case of **Kirandeep Kaur's case (supra)**, the decision of the Syndicate would relate back to the decision of the Vice Chancellor and thus when the exam was taken by the petitioner in December, 2016, Rule 32 was not available to him. The argument of the petitioner that the Rule 32 could not have been amended as he had crystalised rights from the date he had taken admission is also not correct in view of the decision of the Surpeme Court in the case of **Subash Chander's case (supra)** and **Devjani Chakrabarti's case (supra)**.

Hence, in view of the aforesaid discussion, there is hardly any material/ merit in these two petitions for this Court to issue the direction as prayed for by the petitioners. The petitions being devoid of any merit, are hereby dismissed, though without any order as to costs.

May 04, 2017
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(Rakesh Kumar Jain)
Judge