

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.24999 of 2016
Date of Decision:27.08.2018

Rajni Kumari

..... Petitioner

Vs.

Maharshi Dayanand University, Rohtak and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Ashwani Bakshi, Advocate,
for the petitioner.

Mr.Amit Rao, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J.

The petitioner got registered herself as a student of MA (Political Science) with the Maharshi Dayanand University, Rohtak [for short 'the University'] under the Distance Education Programme in the session 2004-2005. She was issued Registration No.04-DEPF-863 and admit card for the First year examination in the year 2005 to appear in the examination of May, 2005. The petitioner did not appear in the said examination because she was in the family way at that time. However, she took the examination in the year 2006 under the Roll No.912088 and cleared the papers of MA previous and appeared in the year 2007 in the examination of MA final year under Roll No.037979 and cleared all the papers. As per the merit list of the MA (Political Science) the petitioner had secured 65.75% marks as against Sonia Roni (respondent No.4), who had secured 61.63% marks. The University issued a circular on 12.10.1998 on the subject

“To

- 1. Controller of Examination,
M.D. University, Rohtak.*
- 2. Asstt. Registrar(R-I, II & III),
M.D. University, Rohtak.*
- 3. Asstt. Registrar (General),
M.D. University, Rohtak.*

Subject:- Medals

Sir,

I am directed to inform you that the rules relating to medals had been omitted from the ordinance relating to scholarships, stipends, medals and prizes appearing at page 294 of Calendar Vol. II of 1998. The same is reproduced below:-

Medals

The university shall award annually, Gold Medals to the students who obtain first class first position in order of merit in the various university examinations held at the end of the each course. The name of the candidate(s) to whom the medals is/are to be awarded will be mentioned on each medal. Provided that if more than one candidate has obtained equal number of marks in the examination on the basis of which a Gold Medal is to be awarded the Medal shall be awarded to each of them bracketed.

Provided further that the Gold Medal shall be awarded only to such candidates who pass all the examination, qualifying, subsidiary etc. in the first attempt. This condition shall apply separately to all part semester examination of the course, on the basis of which the final result is prepared.

You are requested to add the above clause at page no. 306 A of Calendar Vol. II of 1998.”

According to the petitioner, she came to know in the year 2013 that the University has awarded gold medal/certificate of merit in MA (Political Science) for the session in question to respondent No.4 despite the fact that she had obtained less marks than the petitioner. The petitioner made a representation to the University and got the reply dated 29.11.2013 by which she was informed that *“you were registered for the course in the year 2004 for the session 2004-05 and Roll No. was also issued for appearing the exam. held in May, 2005, therefore, it was necessary for you to complete the course in the session 2005-06 i.e. in two years continuously for claiming the benefit of 1st attempt. You completed the course in three continuous sessions/year instead of two. Therefore, you cannot be considered to be equal to those students who completed their course in two years/sessions (both classes i.e. 1st and 2nd year) in 1st attempt”*. Thereafter, she made various representations/applications and was informed that she did not appear in the examination held in May 2005 despite the fact that she was issued Roll No.912088 by the University and her result was declared as “Absent”. She had again filled up the examination form of MA previous

therefore, she has not passed the course under reference in first attempt. Thus the prayer made by the petitioner for considering her for the gold medal was turned down only on the ground that since she did not appear in the examination held in the month of May 2005 and had appeared in the subsequent years i.e. 2006-2007 to complete her MA (Political Science), therefore, she had not completed her MA (Political Science) in first attempt and her absence in the examination held in May 2005 is considered as an attempt made by her.

Learned counsel for the respondents has relied upon a decision of the Bombay High Court rendered in *Writ Petition No.8766 of 2016* titled as ***“Harsha Vs. The State of Maharashtra and another”*** decided on 9.8.2016 whereas learned counsel for the petitioner has relied upon a decision rendered by this Court in ***“Rubinder Brar Vs. Panjab University, Chandigarh and another” 2011(3) SLR 798.***

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

The sole question to be decided by this Court is as to whether the absence of the petitioner on the ground that she was in family way would be termed as the first attempt or the occasion on which she had actually taken the exam would be the first attempt?

There is no dispute that the petitioner was issued roll number for her appearance in the examination in May 2005 but she did not appear and has been marked as “Absent” in the result declared by the respondents which is also attached as Annexure R1/4. The petitioner could not appear in the said examination because she was in the family way and her condition at that time was beyond her control.

In the case of **Harsha (Supra)**, relied upon by the University, it has been held that *“once the petitioner had a complete opportunity to appear for the examination in December, 2008, then, refraining from appearance at that examination on account of some other reason, which may be genuine and bonafide, would mean that the examinations leading to the degree in law have not been cleared in the first attempt”*.

On the other hand, the Division Bench of this Court in the case of **Rubinder Brar (Supra)** has taken a contrary view. In the said case the litigation was stated to be two decade old in which the dispute was regarding the gold medal and merit certificate claimed by the petitioner therein in the Bachelor of Engineering (Civil) examination qualified in the year 1992. This Court has held that the Ist attempt would be considered to be availed if the student had actually sat in the examination.

In the present case, the petitioner had admittedly not taken the examination rather she remained absent, may be because of the reason that she was in the family way at that time. Even otherwise, the circular issued by the University on 12.10.1998 also says that *“provided further that the Gold Medal shall be awarded only to such candidates who pass all the examination, qualifying, subsidiary etc. in the first attempt”*. The question of pass or fail would arise only if a student actually takes examination but in case the student, for some unforeseen reasons, beyond his/her control remains absent then the said attempt cannot be treated to be the Ist attempt.

Thus, in view therefore, this Court would follow the decision rendered by the Division Bench of this Court in the case of **Rubinder Brar (Supra)** to hold that the attempt in the examination of May 2005 in which the petitioner remained absent was not her Ist attempt because in that attempt

the family way and therefore, the said attempt cannot be considered as 1st attempt to deny her the gold medal and the certificate of merit. The petitioner is otherwise, in all respects, is entitled to the gold medal and certificate of merit because she had secured 65.75% marks whereas respondent No.4 to whom the gold medal was awarded had secured 61.63 marks.

Now the question would arise as to what the Court should do at this stage, when the gold medal has already been awarded to respondent No.4 long back for the examination of 2006-2007?

In this regard, reference could be had to the circular dated 12.10.1988 in which he is also mentioned that *“provided that if more than one candidate has obtained equal number of marks in the examination on the basis of which a Gold Medal is to be awarded the Medal shall be awarded to each of them bracketed”*.

Although the petitioner and respondent No.4 did not secure equal number of marks but in order to balance the equities on account of the time gap between the year of examination i.e. 2006-2007, it would be just and expedient if the petitioner is also awarded gold medal and certificate of merit in the same subject bracketed with respondent No.4.

Thus, with these observations, the present petition is hereby allowed. The University is directed to award gold medal and certificate of merit to the petitioner as well on account of her performance in MA (political science) in which she had appeared in the year 2006-2007 and secured 65.75% marks over and above respondent No.4 to whom gold medal has been awarded on securing 61.63% marks. The gold medal and the certificate of merit to be awarded to the petitioner shall be bracketed with

shall not be taken back. The needful shall be done by the University within a period of one month from the date of receipt of certified copy of this order.

27.08.2018
Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No