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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 01.10.2018

Date of pronouncement: 16.10.2018

+ **LPA No.248/2018 & C.M. Nos.18034-35/2018**

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY

.... Appellant

Through Ms.Ekta Sikri, Adv. with Mr.Jasbir
Bidhuri, Adv.

versus

ABHINAV PANDEY & ORS

..... Respondents

Through Dr.Amit George, Adv. with
Mr.Rishabh Dheer, Adv.,
Mr.Swaroop George, Adv. &
Ms.Rajsree Ajay, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. The present intra court appeal impugns the judgment dated 23.01.2018, passed by the learned Single Judge in WP(C) No.2028/2016, allowing the captioned writ petition filed by respondent no.1 and directing the appellant/Guru Gobind Singh Indraprastha University (hereinafter referred to as the “University”) to award a Gold Medal to the respondent no.1 for his remarkable

academic performance in the five year B.A.LL.B. (Hons.) course conducted during the academic session 2010-2015.

2. The relevant facts emerging from the record are that the respondent no.1 was enrolled in the B.A.LL.B. (Hons.) course of the respondent no.2/Amity Law School (hereinafter referred to as “College”), which is affiliated with the appellant/University. The said course was for a period of five years, from 2010-2015, at the end of which period, the respondent no.1 was to be awarded his degree in the year 2015. The respondent no.1 had admittedly been regularly appearing in all the semester examinations from time to time and had obtained outstanding results. However, on 23.05.2013, during his Sixth Semester Examinations, he contracted Chickenpox and fell severely ill and was, therefore, advised by the doctor not only to take rest, but also to avoid physical contact with other persons, it being a contagious disease.

3. In the light of the medical advice given to him, the respondent no. 1 did not appear in two out of a total of five papers in the Sixth End Semester Examinations, namely, Code of Civil Procedure-2 and Code of Criminal Procedure-2, which were scheduled to be held on 29.05.2013 and 31.05.2013 respectively, even though he had obtained very high marks in the internal examinations in the aforesaid two subjects. Immediately on being given a Fitness Certificate dated 03.06.2013 by the treating doctor at Central Government Health Scheme Wellness Centre, Gole Market, New Delhi, the respondent no.1 appeared in the remaining examinations of the Sixth Semester scheduled from 04.06.2013. Thereafter, in accordance with the relevant Ordinance of the appellant/University, the respondent no.1

who had been marked “*absent*” in the aforesaid two subjects papers he had missed due to his illness, wrote the examination for the same in the following year 2014, along with his already scheduled examinations of the Eighth Semester and once again, performed very well.

4. The respondent completed his B.A.LL.B. (Hons.) course in the prescribed timeline of five years and when he graduated in the year 2015, he obtained the highest Cumulative Performance Index (CPI) of 80.56 in the appellant/University. Based on his performance, the respondent no.1 expected that he would be awarded the Gold Medal which is conferred by the appellant/University upon the student with the highest CPI, which is calculated on the basis of his/her performance throughout the entire course of study. However, on 27.02.2016, when the respondent no.1 visited the respondent no.2/College he learnt that he was being denied the Gold Medal despite his having obtained the highest CPI, on the ground that he had not cleared the aforementioned two examinations in the first attempt in the year 2013 and had only cleared the same in the next academic session, in the year 2014. Aggrieved by the same, he submitted representations to the Vice-Chancellor as also the Controller of Examinations but to no avail.

5. In the above circumstances, the respondent no.1 approached this Court by way of WP (C) No.2028/2016, seeking a direction to the appellant/University to award him the Gold Medal for the B.A.LL.B. (Hons.) course for the academic session 2010-15. In his writ petition, the respondent no.1 had also impleaded respondent no.3/Ms.Prachi

Gupta, who had been awarded the Gold Medal for the same session even though she had a lesser CPI than him, i.e., 79.14.

6. Upon notice being issued in the captioned writ petition, separate counter affidavits were filed by the appellant/University and the respondent no.3, both of whom opposed the claim of the respondent no.1 by primarily contending that the main pre-requisite for awarding a Gold Medal was that the student must pass every paper/course in the first attempt. Therefore, the respondent no.1 having not appeared on the first available attempt for every paper/course and having cleared the same only in his subsequent attempts, did not fulfill the condition for award of a Gold Medal. The appellant/University also contended that the respondent no.1 had admittedly not cleared two subject papers of his Sixth Semester Examinations in the first attempt, namely, Code of Civil Procedure-2 & Code of Criminal Procedure-2, when they were first offered in the year 2013 and had passed the same only after being permitted to re-appear in the said examinations in the following year. Therefore, the appellant/University could not be faulted for not conferring the Gold Medal upon the respondent no.1 and instead, awarding the same to the respondent no.3 who had appeared for and secured the highest marks in every subject on the first available attempt.

7. In support of his pleas, counsel for the respondent no.1 had relied on *Sovila Mathur v. Maharshi Dayanand Saraswati University* [MANU/RH/1631/2015], *Shashi Kant Mall v. Vice Chancellor & Ors.* [AIR 1982 All. 56], *Abhijit v. Dean, Government Medical College, Aurangabad & Anr.* [1987 SC 1362], and *Rubinder Brar v. Punjab University, Chandigarh & Anr.* passed by the Punjab

& Haryana High Court in Civil Writ Petition No.3269/1993. On the other hand, counsel for the appellant/University had cited the decisions in *Dr. Rajkumar Shantilal Gandhi v. State of Maharashtra & Ors.* [1988 Mh.L.J. 1022] and *Mrs. Swathi B. v. Karnataka State Law University, Hubli & Ors.* [ILR 2015 KAR 491].

8. After considering the rival submissions of the parties, the learned Single Judge has allowed the writ petition filed by the respondent no.1 by placing reliance on the decisions of the Supreme Court in Abhijit (supra), of the Rajasthan High Court in Sovila Mathur (supra), and the Punjab and Haryana High Court in Rubinder Brar (supra) by holding that the term “*first attempt*” has to be considered in the light of the facts of each case and where a candidate fails to appear in an examination because of an illness, his non-appearance in the said examination would not be a ground to impose a penalty on him or to hold that he had failed to pass the paper on his first attempt. It may, however, be noted that the learned Single Judge while directing award of a Gold Medal to the respondent no.1, further observed that she would not like to disturb the status of the respondent no.3. Thus, the direction to the appellant/University was to award a second Gold Medal to the respondent no.1. Aggrieved by the decision of the learned Single Judge, the present appeal has been preferred by the Appellant/University.

9. Ms. Ekta Sikri, learned counsel for the appellant/University besides reiterating the submissions made before the learned Single Judge, contends that the Court has failed to appreciate the real meaning of the term “*first attempt*”, which has led to a situation where a candidate who has to be treated as a student re-appearing in his

examinations, has been directed to be granted a Gold Medal. She draws our attention to Ordinance 5 and Ordinance 11 of the appellant/University and submits that the said Ordinances do not treat appearance in a supplementary examination as a first attempt even if the student could not appear in the regular examination due to medical reasons.

10. Ms. Sikri further contends that in the context of an academic course, the term “*first attempt*” viz-a-viz examinations, has a special meaning and necessarily connotes the very first time a student is entitled/obligated to appear for an examination. Accordingly, where two students are expected to complete an academic course by taking a set examinations as per a fixed academic schedule, only the student who appears for the said examinations by strictly adhering to the schedule can be said to have cleared the same in the first attempt, whereas the student who appears at a subsequent time, cannot be treated as having passed the examinations in the first attempt. She further submits that two such students cannot be treated as similarly placed as the latter student gets the advantage of more time to prepare for the same examination than the former student. In support of her arguments, learned counsel has relied upon the decisions of the Bombay High Court in *Dr. Rajkumar Shantilal Gandhi (supra)* and *Harsha d/o Bhikaji Gadekar v. The State of Maharashtra & Anr. [2016 SCC OnLine Bom 9451]* as also a decision of the Karnataka High Court in *Mrs. Swati B. (supra)*.

11. Per contra, Dr. Amit George who appears for the respondent no.1, supports the impugned judgment and contends that the decision of the appellant/University to deny the Gold Medal to the respondent

no.1 was arbitrary, irrational and has been rightly quashed by the learned Single Judge. He argues that the decision of the appellant/University rests on a wholly misconceived reading of the term “*first attempt*” as the University has chosen to interpret it as including a situation where a student was compelled not to appear in an examination due to serious illness. He has also drawn our attention to a medical certificate and an application submitted by the respondent no.1 to the Director of the respondent no.2/College, wherein after being declared fit, he had sought permission to appear in the remaining three subject papers of his Sixth Semester Examinations.

12. Mr. George further submits that it is undisputed that the respondent no.1 had suffered from Chickenpox and in those circumstances, once the doctor had advised him to remain isolated and avoid physical contact with others due to the high risk of infection involved, the interpretation sought to be placed by the appellant/University on the term “*first attempt*”, would lead to gross injustice to meritorious students like the respondent no. 1 who had completed the five-year course within the prescribed time span. In fact, he submits, it was far more onerous for the respondent no.1 to have taken two pending examinations of the Sixth Semester along with the ongoing examinations of the Eighth Semester and, therefore, he cannot be denied the fruits of his hard work and outstanding performance. In this regard, learned counsel had relied upon the judgment of the Allahabad High Court in **Shashi Kant Mall (supra)**; Delhi High Court in **Ms. Nandita Narain v. University of Delhi & Ors. [AIR 1983 Delhi 170]**; the Andhra Pradesh High Court in **Kum. M. Anuradha v. Sri Venkateshwara University, Tirupati [AIR 1990**

Andhra Pradesh 122]; the Punjab & Haryana High Court in *Rubinder Brar (supra)* and Rajasthan High Court in *Sovila Mathur (supra)*

13. Having noted the facts and the submissions of the learned counsel for the parties, we may first notice the undisputed facts. The parties are *ad idem* on the aspect that the respondent no.1 did not appear in two out of a total of five subject papers in the Sixth Semester Examinations and had, therefore, taken the aforesaid examinations in the subsequent year, alongwith his Eighth Semester Examinations. It is also undisputed that the respondent no.1 was suffering from Chicken Pox, a highly contagious disease and the moment he was given a fitness certificate, he had appeared for the remaining three examinations of the Sixth Semester. Further, there is no dispute *qua* the fact that the respondent no.1 had obtained the highest CPI in the entire batch which had completed the B.A. LLB. (Hons.) course in the year 2015.

14. Thus, we find that the only controversy between the parties is as to whether in view of the admitted position that the respondent no.1 had appeared for the first time in the aforesaid two subject examinations in the year 2014, even though he was eligible to appear in the said examinations in the year 2013, it can still be said that he had cleared all his papers on the first attempt, thus making him eligible for the award of a Gold Medal. The appellant/University would urge that the very fact that the respondent no.1 had appeared in the aforesaid subject papers not alongwith his batchmates, but in the examinations held in the next year, would itself show that he had not cleared the said examinations in the first attempt. On the contrary, the

respondent no.1 has endeavored to urge that he having been prevented due to medical circumstances beyond his control to appear in the said two papers in his Eighth Semester instead of the Sixth Semester, cannot be treated as not having cleared the said papers in his first attempt.

15. Before we deal with this issue, it may also be relevant to notice that during the pendency of the writ petition, the appellant had modified its Ordinance 5 dealing with the institution of medals, prizes and awards to outstanding students, by specifically stipulating therein that a certificate of merit or certificate of exemplary performance would be granted only to those students who have passed each paper/subject when the paper is offered for the first time during the regular examinations of the batch in which the student was admitted.

16. To consider the rival contentions of the parties as to the meaning and scope of the term '*first attempt*', it would be appropriate to first refer to the Ordinances as were applicable to the respondent no.1 when he had graduated. For the sake of ready reference, the relevant provisions of Ordinance 11 and the unamended Ordinance 5 of the appellant/University, are reproduced hereinbelow:-

Ordinance 5: Institution of medals, prizes and awards to outstanding students

(1) ...

(2) ...

(3) *For programmes of study with credit based evaluation, the student obtaining highest CPI (Cumulative Performance Index) at the end of the study in a given programme group/programmes of study shall be eligible for the award of the gold medal and/or exemplary performance certificate, if the student has passed every paper/course in the first attempt.*

Ordinance 11: Conduct and Evaluation of Examinations for Programmes leading to all Bachelor's/Master's Degrees and Under Graduate/Post Graduate Diploma following the semester system of examination

11.3 (i) A student obtaining less than the passing marks assigned to a course and failing in the course, shall be allowed to re-appear in semester term end examination of the course in a subsequent years when the course is offered, subject to maximum permissible period as mentioned in clause 4.3.

17. On a perusal of the unmodified provisions of Ordinance 5, which were in force at the time the respondent no. 1 had graduated in the year 2015, we find that the term 'first attempt' has not been clarified by the appellant/University and for this reason, both the parties have relied on the decisions of the various High Courts in support of what they contend would be the true and correct meaning and import of the term 'first attempt'. We may first refer to the decisions relied upon by the learned counsel for the appellant/University. In Mrs. Swathi B. (supra), while interpreting Clause 18 of Section 48(1)(b) of the Karnataka State Law University Act, 2009, the Karnataka High Court held as follows:-

14. Though the petitioner and the respondents No. 3, 4 and 6 herein have answered the very same question papers from the second semester in June, 2011 onwards, the vital difference which is required to be noticed is that despite the petitioner having secured more marks in the aggregate, the difference in the question paper which has been answered by the petitioner and the private respondents No. 3, 4 and 6 herein insofar as the first semester would make all the difference to come to a conclusion as to whether, merely because the petitioner has appeared for the first semester examination during June, 2011 it can be claimed as the "first attempt". Due to the said difference in question paper they cannot be put on the same pedestal for comparison. I am of the said opinion, for the reason that under the other Clauses of the Ordinance, the

marks obtained would be taken into consideration only for the purpose of assessing the standard of a student to come to a conclusion whether such student has passed or secured the first or the second class but it is not for comparative assessment with a fellow student. But, when it is considered in the background of assigning a rank or the award of Gold Medals, the inter-se merit of the students would be more relevant with regard to the marks that has been obtained by them. Such inter-se merit amongst them can be determined only if in all aspects they are similarly placed and the same bench mark has been adopted inter-se amongst them to come to a conclusion as to who is more meritorious. That is possible only if the same set of questions are answered by the students in all the semesters of the course. One can be declared as a winner only if he/she is compared with the same set of competitors in all the laps of a single race.

15. In the instant case, as noticed, the respondents No. 3, 4 and 6 and all the other students who had appeared for the first semester had answered a particular question paper which had been set for the examination conducted during January, 2011. As compared to her other batchmates, the petitioner had answered a different set of questions while attempting her first semester examination during June 2011.

16. Therefore, in such circumstance, when the petitioner has attempted a different examination at least for one semester as against all the other students who had appeared for the first semester examination during January, 2011, the inter-se merit cannot be assessed though the subsequent three semesters were commonly attempted by the petitioner as well as the respondents No. 3, 4 and 6 and all other students of the same batch of a particular academic session. It is in that context the “first attempt” becomes relevant.

17. [T]he word “first attempt” should be understood in the sense as the scheduled attempt of the course provided by the University to the student and not the one opted or chosen by the student to appear for the examination as his or her first attempt. The said understanding is for the reason that only if such purport is given to the said words a uniform procedure could be adopted as otherwise the students would have the choice of writing the examinations as and when they deem to do so by not having undergone the uniform test by answering the very same set of questions which the regular student

would have attempted in the examinations as scheduled by the University.

18. Therefore, if these aspects are kept in view, though the petitioner has written the theory examination for the first time in June, 2011, the said examination cannot be considered as a "first attempt" provided by the University to the student to appear for the examination. Therefore, the marks as obtained by the petitioner even if it is more than the marks obtained by third respondent in the aggregate, the same would not answer the requirement of Clause-18 in the Ordinance."

18. By placing reliance on the aforesaid observations of the Karnataka High Court, Ms. Sikri, learned counsel for the appellant/University contends that term 'first attempt' has to necessarily mean the stage when a student was entitled to appear in the examination for the first time, which in the facts of the present case, has necessarily to be taken as May, 2013 when the respondent no.1 was admittedly eligible to appear for the aforementioned two subject papers but could not do so for medical reasons.

19. Learned counsel for the appellant/University has further placed reliance on the decision in **Dr. Rajkumar Shantilal Gandhi (supra)**, wherein the Bombay High Court had the occasion to interpret the term "attempt" as occurring in the "Rules for the selection of candidates for admission to post-graduate courses" framed by the Government of Maharashtra vide its resolution dated 18.06.1971. The relevant paragraphs of the decision in the caption case read as under:-

"7. We will first examine whether the fact, that the petitioner refrained from appearing at the examination when in the normal course he was due to appear, constitutes an "attempt" for the purposes of the Rules. When one speaks of an attempt to do a certain thing, there is implied in it a contrast with the attainment of its object. An attempt thus means an effort, an endeavour which turns out to be futile. In a nutshell, it is an unsuccessful endeavour. In the context of

admissions to academic courses where academic performance is relevant, “attempt” has a special meaning. The rules framed by the Government of Maharashtra display one dominant purpose. It is to ensure that the marks obtained in the subject at the university examination determine the admission to the course. 5% of the marks are deducted in case a candidate has passed the examination in that subject at the degree course at the second attempt. The rule of deduction of marks is based on sound reason. Consider case where two students who are expected to complete a course within one year. One of them appears for examination at the time when in the normal course he is “due” to appear and secure X marks. The other student chooses not to appear when “due” and appears one year later securing (X+10) marks. This situation means that the student who secured 10 marks more than the student who appeared one year earlier took two years to secure 10 more marks. Where, as in this case, academic performance is the basis on which admissions are granted, not only the marks obtained at the examination at which the student appears but also the time taken by him to appear for that examination, the marks of the previous examinations and so on, are relevant. This is relevant for understanding the meaning of the word “attempt” in the context of admission to educational institutions.

8. It is the argument of Mr. Pradhan on behalf of Dr. Gandhi that unless Dr. Gandhi actually appears for the examination, he cannot be said to have “attempted” that examination. In civil cases an “attempt” means an intent combined with an act falling short of execution of the thing intended. It is an endeavour to do an act, carried beyond mere preparation, but short of execution. Black's Law Dictionary, Fifth Edition.

9. Dr. Gandhi had prepared himself to appear for the examination, submitted the requisite form and was possessed of seat number and the hall ticket. In Dr. Shashikant Langade v. Dean, Medical College, Miraj, Writ petition No. 3162 of 1985, a division bench of this Court, in identical circumstances held that the application for appearing for the examination, payment of fees and inclusion of the name in the list of examinees, are steps taken by the examinee which travel beyond mere preparation and constitute “attempt”. We are in agreement with this view. The view propounded by Mr.

Pradhan, Learned Counsel for Dr. Gandhi is opposed to the principle on which the rule of deduction is founded.

10. In our opinion, Dr. Gandhi did not appear for the examination when he was in normal course due to appear. His endeavour to pass the M.B.B.S. examination did not stop at the stage of preparation. He submitted the requisite form, paid the fees and was listed as an examinee. This conduct which was much more than mere preparation was an “attempt” at the M.B.B.S. examination. Therefore, the deduction of 5% of marks for determining the corrected marks was valid.

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14. In the view which we have taken of the meaning of the word “attempt”, we see no merit in the case of Dr. Gandhi. Dr. Prani has not pressed the petition and was content with a recommendation from us that Dr. Gandhi and Dr. Prani both be admitted to the Post-Graduate course. Dr. Gandhi secured 266 marks out of 400 but lost 20 marks because he passed at the second attempt. Dr. Prani passed at the first attempt to secure only 246 marks out of 400 marks. The result of the deduction of 20 marks from the marks obtained by Dr. Gandhi is that his corrected marks are equal to those secured by Dr. Prani. Since we have upheld the validity of the decision of the respondents to deduct 20 marks from the marks obtained by Dr. Gandhi, he should rank at the same place in the list alongwith Dr. Prani. Having regard to the heart ailment from which Dr. Gandhi suffers and the fact that Dr. Prani has the same number of corrected marks as those of Dr. Gandhi, we recommend to the respondents that they should admit both the candidates to the post-graduate course in surgery and condone the deficit in the first term. We have no doubt that the respondents will consider our recommendation in the right spirit and adopt a sympathetic attitude in the matter. Subject to what we have stated above, both the petitions are dismissed. Rules are discharged. However, there will be no order as to costs.

20. Learned counsel for the appellant/University has also placed reliance on another decision of the Bombay High Court in **Harsha d/o Bhikaji Gadekar (supra)**, wherein the Court while relying on its

earlier decision in **Dr. Rajkumar Shantilal Gandhi (supra)**, held as under:-

15. We do not see as to how a different view can be taken. In any event, a view similar to Rajkumar Gandhi (supra) has been taken by this court consistently. For a complete reference, we point out the judgments in the case of Lata Prabhuappa Warad vs. State of Maharashtra and Ors. 2 , Bharat Sharad Kulkarni vs. State of Maharashtra and Ors. 3 and Ansari vs. M. G. V. S. P. H. College of Pharmacy 4 . 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. The petitioner was aware it is a five year law course. At the end of the fifth year, the degree would be awarded. The requirement in the Rule is all the examinations leading to the degree have to be cleared in first attempt. Once the petitioner did not clear them in the first attempt, but cleared one of the exams later in point, then, the interpretation placed by the authorities and the respondents in this case that the petitioner has not fulfilled the requirement of the Rules cannot be said to be arbitrary or perverse. The Rule as it stands is plain, unambiguous and clear. There is no scope for any interpretation. In any event, the authoritative pronouncement of the Division Bench and with which we respectfully agree supports the view of the respondents in this case.

21. To contend that the term ‘first attempt’ is very specific and would only include the first available attempt, Ms. Sikri submits that unfortunate cases like the present one, where the respondent no.1 was unable to appear due to medical problems or deliberate cases where students choose not to appear in the first available opportunity but rather in subsequent academic sessions, cannot be included in the term ‘first attempt’.

22. Now, we may refer to some of the decisions relied upon by the learned counsel for the respondent no.1. In the case of Abhijit (supra), the appellant herein had not been able to take his third-year M.B.B.S. examinations on account of falling severely ill. When he recovered, he took his third-year M.B.B.S. examinations at the first opportunity available to him and passed the same by securing the first rank. However, when the appellant sought admission to the M.S. degree course, he was penalized by deducting five percent from the marks obtained by him on the ground that he had passed the concerned subjects in his second attempt. As a consequence of the penalty imposed on him, the appellant therein was not granted admission to the M.S. degree course. In these circumstances, the Supreme Court while directing the respondents to grant admission to the appellant in the M.S. degree course, held as follows:-

"3. On behalf of the respondent, it was submitted that though the rules relating to admission to the post graduate course did not define what a second attempt was the rules for appointment of Residents under the III year Residency programme at Government Medical Colleges defined what was a second attempt and since those admitted to the MS degree course were necessarily to be appointed to Residencies the rules applicable to Residencies were made applicable to those seeking admission to the MS degree course. In the first place, we do not see how the rules relating to appointment to Residencies could be made to regulate admission to the MS degree course. In the second place, we do not think that even the rule on which the respondents rely justifies the deduction of 5 per cent marks. A note under Rule IV.5(e) of the Rules relating to appointment to Residencies is to the following effect:

"For the purpose of the reductions, non-appearance at any examination when due, is deemed as an attempt at the said examination."

We may at once say that the appellant was not "due" to appear at the examination as he had not put in the necessary attendance of the classes and clinics and had not even submitted his application form for the examination. We are also of the view that if the rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of 5 per cent of marks when seeking admission to a postgraduate course the rule is indeed arbitrary."

23. Placing reliance on the aforesaid observations of the Supreme Court, a learned Single Judge of the Andhra Pradesh High Court in ***Kum. M. Anuradha (supra)***, held as follows:-

"1. The petitioner studied in Adoni Arts and Science College, Adoni during the academic years 1984-87. The first year examinations of the B.Sc., were scheduled to be held in June, 1985. The petitioner was seriously ill during that period. Therefore, she did not attend the examination due to illness. She however appeared in the supplemental examinations held in September, 1985 and passed in one attempt. She also passed second year examination in one attempt; so also the third year examination. She secured 58% of marks in Chemistry, 72.8% in Botany and 67.4% in Zoology in the aggregate of all the three examinations. She applied for admission in M.Sc., Botany. The list of selected candidates was announced on December 17, 1987 but her name was not included while a candidate who secured 63% in Botany was selected. She was later informed that as she passed the first year examination in September, 1985 instead of June, 1985. She was treated as having passed in second attempt and was not selected, pursuant to R. 2 of the General Conditions for Admission to Different Courses of Study. The petitioner therefore challenges the validity of the Rule as being arbitrary and unjust and unreasonable and violative of Art. 14 of the Constitution of India and prays that the said Rule be struck down.

5. Rule 2 of the General Conditions for admission to different courses of study which is challenged in this writ petition reads thus:—

“2. Admission will be on the basis of merit subject to reservation. Order of merit is decided taking into account the marks obtained as well as the attempts made. Any candidate who has not taken the examination at the appropriate time for any reason will be considered as having attempts.”

6. The rule provides that the admission will be on the basis of merit subject to reservation, and that the order of merit is decided taking into account the marks obtained as well as the attempts made. The Rule further says that any candidate who has not taken the examination at the appropriate time for any reason will be considered as having attempts. In so far as the first limb of the Rule is concerned, no valid challenge can be made. The challenge might only be against the second limb of the Rule noted above. There may be cases where a candidate, due to sudden illness, may not be in a position to attend the examination. There may as well be a case where due to accident, or due to any other unforeseen circumstances beyond his control a student is prevented from taking the examination. The Rule does not take into consideration these aspects. If really the candidate takes the examination and does not pass the same, there will be justification in counting it as attempt against him. But where the candidate does not take the examination at all for reasons beyond his control, to count it as attempt against him would be oppressive and unreasonable. I am supported in my view by a judgment of the Supreme Court in *Abhijit v. Dean, Government Medical College, Aurangabad*, AIR 1987 SC 1362...

7. From the above discussion it follows that in so far as the second limb of R. 2 is concerned, it has to be held as unreasonable and arbitrary as it does not take into consideration the circumstances which might prevent the candidate from appearing for the examination while counting it as an attempt. The offending portion of R. 2 is separable from the rest of the Rule. Therefore, the second limb of R. 2 of the General Conditions for admission namely, “Any candidate who has not taken the examination at the

appropriate time for any reason will be considered as having attempted”, is struck down.”

24. Dr. George, learned counsel for the respondent no.1 has also placed reliance on the decision of the Punjab and Haryana High Court in **Rubinder Brar (supra)**, the relevant paragraphs of which are reproduced hereinbelow:-

"A reading of Clause 14 of the Regulations for Bachelor of Engineering Examinations (hereinafter referred to as 'the Regulations') as prevailing in the University at the relevant time, would indicate that "first attempt" has been defined to mean as the first time a candidate has actually sat for the subject in the University examination. According to the petitioner, in one of the papers, he did not appear on account of his ill health and, therefore, the occasion on which he took the paper would be the first attempt in the said paper which, therefore, entitles him to the honour in question. The University, however, has taken a contrary stand in the matter to deny the honour due to him.

Having read and considered Clause 14 of the Regulations and the explanation/clarification of the expression "first attempt" contained therein, we are of the view that if the petitioner did not at all sit in the paper on account of ill health, the occasion when he actually sat in the paper, must be understood to be his first attempt."

25. In the light of the aforesaid decisions, we find that the term 'first attempt' unless defined specifically in the Regulations/Ordinance, has to necessarily take colour from the context in which it is used. Even though the Karnataka High Court and the Bombay High Court have interpreted the term to include a situation where a candidate could have appeared but did not appear in an examination due to medical problems, we find that the Apex Court as also the Andhra Pradesh High Court, Rajasthan High Court and this

Court itself have taken a different view that situations like in the instant case, where a student due to medical reasons could not appear in an examination on the first available opportunity, cannot be used to his detriment or in any manner to penalize him. We are unable to persuade ourselves to follow the view adopted by the Bombay High Court in **Dr. Rajkumar Shantilal Gandhi (supra)**, and **Harsha d/o Bhikaji Gadekar (supra)** as also the Karnataka High Court in **Mrs. Swasthi B. (supra)**.

26. We are of the considered opinion that the term "*first attempt*" as occurring in the unmodified provisions of Ordinance 5 of the appellant/University cannot take in its sweep, situations where a student could not, as a consequence of severe medical issues, give an examination when it was first due. Thus, in the facts of the instant case, we have no hesitation in arriving at the conclusion that the respondent no.1 having been prevented due unavoidable medical concerns from appearing in the aforesaid subject papers in the first instance, during the Sixth End Semester Examinations, he ought not to be penalized or deprived of the fruits of his labour and well-deserved merit.

27. Another important factor that needs to be emphasized is that the unmodified provisions of Ordinance 5, which were applicable to the respondent no. 1 as they were in force when he had graduated, do not in any way support the interpretation sought to be placed by the appellant/University on the term '*first attempt*'. There is nothing in the unamended provisions of Ordinance 5 that can be read to mean that a student, who could not appear in an examination on account of medical concerns, has to be treated as a student re-appearing in an

examination. In fact, Clause 11.3(i) of Ordinance 11 of the appellant/University clearly stipulates that only a student obtaining less than the passing marks assigned to a course, shall be allowed to reappear in a semester end term examination. Thus, it is apparent that only a student who has failed in an examination is allowed to reappear in the same, and clear it in his second attempt. Such a case is clearly distinguishable from the instant case where the respondent no. 1 cannot for obvious reasons be treated as a candidate who had failed in an examination in his first attempt and had to reappear in the same in terms of Clause 11.3(i) of Ordinance 11.

28. Therefore, we are unable to appreciate as to why the appellant/University while compiling the final results for the B.A. LLB. (Hons.) course of the 2010-2015 batch had ignored the case of the respondent no.1 and overlooked the fact that Ordinance 5 as existing on the date of the examinations, in no manner debarred him from being eligible for grant of a Gold Medal. The very fact that Ordinance 5 was amended by the appellant/University w.e.f. 09.12.2016, itself shows that the said Ordinance as applicable to the respondent no.1, did not exclude him from being eligible for award of a Gold Medal.

29. We need to deal with the plea in para 10 above of the student taking exams. Later, having an advantage of more time for preparation.

30. We have also considered the contention of the learned counsel for the appellant that the respondent no. 1 was allowed to appear in the remainder of his Sixth Semester Examinations after almost one year and, therefore, got an unfair advantage of more time to prepare for the

same examinations than those students who had taken the said examinations on their scheduled date. In our opinion, the aforesaid contention is wholly unmerited as it overlooks the fact that in the present case, instead of getting any undue benefit, the respondent no. 1 was compelled to prepare for and take the remainder of his Sixth End Semester Examinations alongwith his Eighth End Semester Examinations. In other words, the respondent no. 1 while appearing for his Eighth Semester Examinations, had to prepare for and take more examinations in the same duration that his fellow students had to prepare for a lesser number of examinations. Evidently, the burden cast on the respondent no. 1 was, if not measurable, more than that falling on the shoulders of his peers who were appearing in their Eighth Semester Examinations. Therefore, the aforesaid contention of the learned counsel for the appellant is also rejected.

31. Before concluding, we may also briefly deal with the appellant's apprehension that the impugned judgment, if allowed to stand, will open floodgates for similar claims by other students who may have missed some examination for any reasons, not limited to medical grounds. In the light of the admitted position that the appellant/university has already taken steps to modify its Ordinance 5 to clarify that a certificate of merit or certificate of exemplary performance would be granted only to those students who have passed each paper/subject when the paper is offered for the first time during the regular examinations of the batch in which the student was admitted, we are of the view that the aforesaid apprehension of the University is completely unfounded.

32. For the aforementioned reasons, we find no infirmity in the impugned order. Therefore, the present appeal is dismissed as meritless along with pending applications, with no order as to costs.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

OCTOBER 16, 2018/aa/sr