

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION [STAMP] NO.35462 OF 2018

Vikas Kumar & 23 Others

.... Petitioners

Vs.

Indian Maritime University (IMU)

through Vice-Chancellor & Anr.

.... Respondents

Mr. Farooq A. Chowdhary for the Petitioners.

Mr. Santosh Shetty for Respondent No.1.

Mr. Anil D. Yadav for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.

DATE : FEBRUARY 11, 2019

P.C:

1. The rejoinder affidavit tendered by the petitioners'

Advocate today is taken on record.

2. By this petition under Article 226 of the Constitution

of India, the petitioners are seeking the following two reliefs:-

“(a) This Hon'ble Court may graciously be pleased in the interest of justice to issue appropriate writ(s), direction(s) or order(s) declaring the action of the Respondent No.1

through Circular No.1743 dated 24/10/2017 having Ref.No.IMU/AS/AC 2017-19-19/2017 and Addendum dated 01/12/2017 having Ref.No.IMU/AS/AC 2017-19-19 to the said Circular 1743 as arbitrary, illegal, unjust, biased and void.

(b) This Hon'ble Court may graciously be pleased in the interest of justice to issue appropriate writ(s), direction(s) or order(s) directing the Respondent No.1 to restore the earlier Rule and reschedule or make the Schedule afresh of arrear examination allowing the above named Petitioners to appear in December, 2018 arrear examination rescheduled.”

3. The petitioners before us are Indian citizens. They are 24 in number. They have sued the Indian Maritime University (“IMU” for short) and the Union of India through the Ministry of Shipping, stating that petitioner Nos.1 to 17 have taken their admissions in Three Year B.Sc. (Nautical Science) Course, having 12 papers per semester, in the Academic Session 2015-2016 and have passed out in the Academic Year 2017-2018. The petitioner Nos.18 & 19 have taken this Three Year Course in the Academic Session 2015-2016 and have passed out in the Academic Year 2017-2018 from IMU Chennai Campus. The petitioner Nos.20 to 24 have taken their admissions in this Three Year Course, having 12 papers per semester, in the

Academic Session 2014-2015 and have passed out in the Academic Year 2016-2017.

4. Then, the grievance is that the petitioners were charged hefty sums towards fees. At the time of their admissions, the petitioners were informed that the maximum duration for completion of this Three Year Course will be six years. The exams would be conducted twice in a year - during November/December for odd semester along with arrear papers of even semester in May/June. This examination would be for even semester along with arrear papers of odd semester too. Reliance is placed on Circular No.1526, dated 27-7-2015.

5. That another Circular was issued on 24-10-2017 declaring that there will no arrear examinations in odd semester examinations for the odd/even semester subjects. It is alleged that this Circular was not given effect because of the objections of the students.

6. An Addendum thereto was issued on 1-12-2017 enforcing this Circular. The arrear examination attempts of the

above petitioners have been reduced, and conducting of examinations for even semester papers in the odd semester examinations, which were going to be held in December, 2018, were thus not permitted by relying on the Circular and its Addendum.

7. It is complained that these students or the batches of students passing out in the Academic Sessions 2016-2017 and 2017-2018 are the last ones having 12 papers and had opportunity been given to them in December, 2018 to clear their arrear subjects, they would have been successful in their career. They would have got an opportunity in the year 2019 and to be precise, in July, 2019. That is on the understanding that the examinations in the arrear subjects would have been allowed to be cleared by taking examination in the month of June, 2019. On account of the Circular, now these chances have diminished.

8. Now they will have to wait till July, 2019 for the arrear examinations and thereafter wait for 2-3 months for the

results. It is claimed that now new batches for the Academic Sessions 2016 to 2019 have qualified and they have only 6 papers in every semester but the most surprising and shocking thing is that they were allowed to appear in the December, 2018 examination to clear their arrear papers and this allegation is made in para 10 by relying upon the Instructions and Time Table for December, 2018 End Semester Examinations.

9. It is urged thereafter that the petitioners and others approached the Registrar and Vice-Chancellor and several other academic bodies within the set up but their grievances are not redressed. It is worthwhile mentioning, according to the petitioners, that on 16-11-2018 the Vice-Chancellor of the Kurukshetra University, by a Notification, has approved the grant of an additional mercy chance and that could be availed of by the undergraduates and postgraduates and other professional courses students and they can appear in their examinations or reappear with an additional fee of Rs.20,000/- plus usual fees for each examination and the examination in terms of such semester pattern were allowed to be taken by them.

10. It is on the above allegation that the impugned Circular is challenged on several grounds. The arguments are built and centered around the violation of the mandate of Article 14 of the Constitution of India. The next argument that the Circular is vitiated by non-application of mind and finally there is discrimination writ large.

11. In response to this writ petition, the first respondent has filed an affidavit and in the relevant paragraph 4, sub-paras (i) and (ii), this affidavit states as under:-

“4. Without prejudice, I say that the present writ petition has become infructuous for the reasons set out hereinbelow:

(i) I say that the time-table for the exams pertaining to different courses in Indian Maritime University (IMU) and its affiliated colleges, viz, BSc [Nautical Science], BSc [Maritime Science], BSc [Ship Building & Repair], etc., B.Tech [Marine Engineering], B.Tech [Naval Architecture] & Ocean Engineering, etc. commencing on 26/12/2018 was published on the official website of IMU in the month of October 2018. The registration process commenced on 15/11/2018 and the last date for enrolment/registration for the exams was on 4/12/2018. I say that the end-semester examinations-December 2018/January 2019 for all the programmes has been conducted during the period 26/12/2018 till 9/1/2019. The said fact is evident from the instructions issued by the respondent No.1 [IMU] to the IMU Campuses and

Affiliated Institutes [at Exh.E, pg.66 of the Writ Petition]. In view thereof, the present Petition does not merit consideration.

(ii) I say that the impugned Circular dt. 24/10/2017 was to come into effect from December-end 2017 semester examinations of the academic year 2017-18. Thereafter, the Addendum to circular dated 24/10/2017 was issued on 1/5.12.2017 clearly setting out that as a special case the students will be permitted to clear the arrears of the previous semester. I say that all students including the Petitioners were thus given an opportunity to clear the arrears subjects during the examinations held in December 2017 and June 2018. Despite the same, the Petitioners in view of their poor performance have failed to clear their respective arrear subjects.”

Thereafter it is stated that, without prejudice to the above, it is denied that the Circular and the Addendum is arbitrary, illegal, biased and against the interest of the petitioners. It is reiterated that the petitioners have already been given two opportunities to clear the arrear subjects in December, 2017 as well as in June, 2018. Having not been able to clear these arrear subjects in the two-end semester examinations, the petitioners and like students have turned around and blamed the University. We have perused this affidavit very carefully and which enlists a policy. That policy decision is taken after consultation with several academic bodies, including the Academic Council. The

Academic Council, in its 19th meeting, had this subject on the agenda and on 11-9-2017 it resolved to approve the policy for rescheduling of end-semester examinations and to do away with arrear examinations in odd semester. The object was to promote an atmosphere where merit and excellence would be the key factor. The students would then strive hard and not fail to clear all the subjects. They would study and obtain the best results.

12. Finally we find that it is said that only some students have approached the Court.

13. In the rejoinder affidavit, the petitioners alleged that it is incorrect to say that their performance is poor. It is denied that the petitioners have been given two opportunities to clear the arrear subjects. It is claimed that conducting the arrear examinations twice in a year was the rule and thus petitioner Nos.1 to 19 have given their final examination in June, 2018 and petitioner Nos.20 to 24 gave their final examination in June, 2017. They had appeared in the arrear examinations with their semester examination as per the prevailing rules. It is now the

University who has decided to cause harm and prejudice and the petitioners would suffer academically. It is claimed that the petitioners would now have to compete with the freshers and there is no guarantee then of the petitioners obtaining a success.

14. With the able assistance of the counsel appearing for both sides, we have perused the writ petition and the annexures thereto. We have also perused the affidavits placed on record.

15. The petitioners challenge the Circular and claim that the Circular and the Addendum has caused serious prejudice to them.

16. For ready reference, we reproduce the Circular which is the subject-matter of challenge. A copy of this Circular is annexed as Annexure-A, pages 32 to 34. These pages read thus:-

“Ref: IMU/AS/AC 2017-19-19/2017

24.10.2017

CIRCULAR 1743

*Sub: Policy for Scheduling of End Semester
Examinations – reg.*

*Ref: 19th AC Agenda No AC 2017-19-19
dated 11.09.2017*

The Academic Council in its 19th meeting vide Agenda No AC 2017-19-19 dated 11.09.2017 had resolved to approve the policy for scheduling of End Semester Examinations and to do away with arrears examinations in odd semester. The detailed policy for Scheduling of End Semester Examinations is given below:

- 1. End Semester Examinations will be conducted at the end of every semester for regular papers of that Semester.*
- 2. Arrear paper examinations of both semesters will be conducted only at the end of Even Semester examinations. This is to facilitate any student left with arrear papers to complete the same in the same year. Therefore there will be no arrear examinations in Odd Semester Examinations for the Old/Even Semester subjects.*
- 3. DLP Examinations will be conducted only with End Semester examination i.e. in November-December and June-July.*

This will come into effect from the December 2017 End Semester examinations of the Academic Year 2017-18.

The Campus Directors (i/c) and the Principals are requested to display this circular on their Notice Boards.

*Sd/-
REGISTRAR*

To

All IMU Campus Directors

All Principals of Affiliated Institutes”

“Ref: IMU/AS/AC 2017-19-19 Dated: 01/05.12.2017

ADDENDUM TO CIRCULAR 1743

Sub: Policy for scheduling of End Semester Examinations – Reg.

Ref: 1. 19th AC Agenda Item No.AC 2017-19-19 dated 24.10.2017.
2. Circular 1743 dated 24.10.2017.

Reference is drawn to Circular 1743 vide which the “Policy for scheduling of the End Semester Examinations” was circulated. Several representations have been received stating that IMU is not allowing Odd semester arrear papers during the forthcoming December 2017 End Semester Examinations.

As per sub-point (2) the sentence reads as “Therefore there will be no arrear examinations in Odd Semester Examinations for **the Old** / Even Semester Subjects”. Apparently the term the Old has been misread as “**Odd**”. The following clarification is issued with regards to the same:

- (i) The Students who are currently studying in IMU Campuses and Affiliated Institutes and who have arrears in the Odd Semester can appear for their arrear papers when the examinations are conducted for the same.

For ex: A student appearing for 7th Semester Examinations, can appear for any of the arrear papers of 1st, 3rd and 5th Semesters arrear papers, if any during the End Semester Examination conducted at the end of Odd Semester. Similarly Student appearing for 5th Semester Examination can appear for arrear papers in 3rd and 1st

semester, if any. Similarly a Student appearing in 3rd Semester Examination can also appear for any arrear paper in 1st Semester Examination. The same rule shall apply for the arrear paper examinations of the Even Semester during the Even Semester End Examinations.

- (ii) *It is clarified that the students currently studying from the DNS programme (either January or August Admission) can appear for their arrear papers in every end semester examination.*

Many representations were received stating that the Circular 1743 was issued at a very short notice and many students have arrear papers to be cleared before the prospective employers come for the Campus Selections in the month of March 2018 and requested that the University may consider conducting all arrear examination with this End Semester Examination. After considering these requests and as a special case, all students currently studying in IMU Campuses and Affiliated Institutes and having arrears in Even Semester subjects, arrear examinations for the Even Semester subjects will be conducted after the completion of present regular End Semester Examinations going to be held in December 2017. It is once again reiterated that this provision is only for the December/January 2017 End Semester Examinations thereafter the new policy which has been formulated will be applicable.

*Sd/-
Registrar*

To,

Directors of all IMU Campuses

Principals of all Affiliated Institutes”

17. A bare perusal of this Circular leaves us in no

manner of doubt that it is pursuant to the Academic Council meeting and a policy decision taken therein of completely doing away with arrear examinations in odd semester that the Circular is issued. That does away with the pattern prevailing before the issuance of the Circular. The decision is very clear, in the sense no semester examination will be conducted at the end of every semester for regular paper of that semester. The arrear papers examinations of both semesters will be conducted only at the end of even semester examination. This is to facilitate any student left with arrear papers to complete the same in the very year. There will be no arrear examinations in odd semester examinations for the old/even semester subjects. The Addendum very clearly says that the word “Old” has been misread as “Odd”. Therefore, the clarification is issued and which clarification also is reproduced by us.

18. Thus it is stated that the clarification will not cause any prejudice or harm to such students who are covered by the same.

19. With all this, to our mind, the arguments of the petitioners are totally misconceived. The permission to clear the arrear papers is not totally done away with. That facility continues and what every University and Academic Body will strive to achieve is excellence and expect the students who are undergoing examination and studies to give their best. They must be devoted to study and expected to perform well by their dint of hard work. Once these are examinations and competitive in nature and conducted by a Maritime University, it decided that the academic atmosphere should not be polluted further by carrying failures and allowing them to clear the examination at their sweet-will. The allowed to keep terms (ATKT) facility has its own pitfall. The students get relaxed and once they know that they can clear the examination at any time before the final one, then, they necessarily do not put that effort which is expected and demanded of them by their teachers. This has an overall adverse impact and the image and reputation of the University is affected. Now, only one opportunity is given and the arrear subjects will have to be cleared at only one examination.

Therefore, this does not completely do away with the facility, as is projected before us. All that it does is to curtail and none can claim that clearance of an examination at any time before the duration of the course is an absolute right vesting in a student. A student is always aware that when he takes admission, it is subject to the academic policies and decisions of experts in the field. The Nautical Science course was devised and to prepare the students to go and take jobs at the sea. When they are expected to be trained for such jobs, it was naturally thought, that allowing them to clear the examination and particularly the theory papers any time in any semester and before the final examination would affect the reputation and image of the course itself, then, the policy decision was taken and the earlier policies were amended. We do not think that academic bodies have in any way violated any vested or fundamental right of the petitioners. Neither there is a right to fail nor is there an absolute right to clear the arrear subjects in the next examination. There can be curtailment of the opportunities and ultimately this is a facility or a concession. Once a mandamus

cannot be issued and particularly in policy matters of the nature claimed, then, we cannot grant any relief to the writ petitioners.

20. As a result of the above discussion, this writ petition fails and it is dismissed, without any order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)