

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 171 of 2021**

Mayank Shukla S/o Shri Umashankar Shukla Aged About 19 Years R/o House
No. 111, Sector-II, Janta Quarter Shankar Nagar, Raipur Tahsil And District
Raipur Chhattisgarh

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher
Education, Mantralaya, Indrawati Bhawan, Atal Nagar Naya Raipur Tahsil And
District Raipur Chhattisgarh
2. Pt. Ravishankar Shukla University Raipur Through Its Registrar Pt.
Ravishankar Shukla University Raipur District Raipur Chhattisgarh
3. Deputy Registrar (Examination) Pt. Ravishankar Shukla University Raipur
District Raipur Chhattisgarh
4. Vivekanand College Through Its Principal Vivekanand College,
Moudhapara, Raipur Chhattisgarh

---- Respondents

(Cause Title taken from Case Information System)

For Appellant : Mr. Sourabh Sharma, Advocate.

For Respondent No. 1 : Mr. Arjit Tiwari, Panel Lawyer.

For Respondent No. 2 & 3 : Mr. Neeraj Choubey, Advocate.

For Respondent No. 4 : Mr. Shobhit Mishra, Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Sanjay K. Agrawal, Judge

Judgment on Board

Per Arup Kumar Goswami, Chief Justice

26/10/2021

Heard Mr. Sourabh Sharma, learned counsel for the appellant, Mr. Arjit Tiwari, learned Panel Lawyer for the respondent No. 1, Mr. Neeraj Choubey, learned counsel for the respondents No. 2 and 3 as well as Mr. Shobhit Mishra, learned counsel for the respondent No. 4.

2. This appeal is presented against the order dated 13.04.2021 passed by the learned Single Judge in Writ Petition (C) No. 146 of 2021, whereby, while not acceding to the prayers made by the writ petitioner, the learned Single Judge directed compensation of an amount of Rs. 15,000/- to be paid to him by Pt. Ravishankar Shukla University (for short, University).

3. The petitioner was enrolled as a student of Bachelor of Business Administration (for short, BBA) in Vivekanand College-respondent No. 4 under the University-respondent No. 2. He appeared as a regular student for BBA I-Semester in the academic session 2018-2019, the result of which was declared on 02.04.2019. The petitioner had subjects of English, Computer Application, Business Mathematics, Principles of Management and Financial Accounting for the aforesaid I-Semester examination. Out of the said five subjects, the Petitioner obtained pass marks in English and Principles of Management but failed in the other three subjects and accordingly, the result was declared as 'fail'.

4. The petitioner again took the examination of the I-Semester as an ex-regular student and the result was declared on 13.03.2020. He had appeared in all the aforesaid five subjects and this time, while obtaining pass marks in four subjects, he failed to secure pass marks in Business Mathematics and accordingly, in the statement of marks for the aforesaid examination held in December-January 2019-2020, the result was shown as 'ATKT 1st chance'. ATKT denotes 'Allowed To Keep Term'. The petitioner, thereafter, had applied for re-evaluation for the marks on 23.03.2020 and had also deposited examination fee for the II-Semester on 28.08.2020. In view of Covid-19 pandemic, all the students who were in II-Semester were promoted. The result of the petitioner was also placed in the official website on 06.10.2020 wherein it was indicated that the petitioner had passed.

5. Despite the request made by the petitioner, the original mark-sheet of the II-Semester examination was not furnished to the petitioner and after a prolonged correspondence, subsequently on 17.12.2020, it was communicated by the University that on re-evaluation, his marks have remained unchanged and as he had failed to clear the I-Semester as ex-regular student, under the BBA Ordinance-91, he was not eligible to appear in the II-Semester examination. It is averred that after the aforesaid letter dated 17.12.2020 was passed, the mark-sheet of the II-Semester of the petitioner was taken off from the official website of the University.

6. In the backdrop of the aforesaid events, recourse was taken by the petitioner to this Court praying for a direction to the authorities to give admission to the petitioner in the III-Semester of the BBA course by restoring the II-Semester result and afford opportunity to clear ATKT in I-Semester and also for setting aside the letter dated 17.12.2020 with a further direction that

the petitioner had successfully cleared the II-Semester examination.

7. On consideration of the BBA Ordinance-91, which forms the basis of the order dated 17.12.2020, the learned Single Judge opined that the result indicating 'ATKT 1st chance' was wrongly declared by the University and though the petitioner appeared in the I-Semester supplementary examination, he was not entitled to do so and no relief could be granted to the petitioner as his very enlistment in the II-Semester was not in accordance with the Ordinance. The learned Single Judge, while observing that because of the wrong committed by the University, the petitioner was made to suffer loss of one year as, in the meantime, he could have pursued any other stream, thought it fit to impose upon the University an amount of Rs. 15,000/- to be paid by way of compensation.

8. Mr. Sharma, learned counsel for the appellant, submits that reliance placed by the University in Clause 11 of the BBA Ordinance-91 is entirely misplaced as the case of the petitioner does not fall within the parameters of Clause 11 of the BBA Ordinance-91. Learned counsel submits that the petitioner was rightly allowed to take the examination and he having failed only in one subject, 'ATKT 1st chance' was rightly reflected in the mark-sheet and it is on the basis of that only, the petitioner was allowed to prosecute II-Semester. It is submitted that the stand taken by the University in the letter dated 17.12.2020 cannot be countenanced in law as the same is beyond the ambit of Clause 11 of BBA Ordinance-91. Accordingly, he submits that the order of the learned Single Judge is liable to be interfered with and directions may be issued, as prayed for in the writ petition, so that the academic career of the petitioner is not jeopardized.

9. Mr. Neeraj Choubey, learned counsel appearing for the respondents No. 2 and 3, while supporting the order of the learned Single Judge, submits that a bare reading of Clause 11 of BBA Ordinance-91 would make it abundantly clear that the case of the petitioner falls squarely within the ambit and amplitude of Clause 11 and therefore, no interference with the order of the learned Single Judge is called for. He further submits that in academic matters, writ court should be slow in interfering with the decisions of the authorities and to bolster his submission, he has relied upon the decision of the Hon'ble Supreme Court in the case of ***University Grants Commission & Another v. Neha Anil Bobde (Gadekar)***, reported in ***(2013) 10 SCC 519***.

10. Mr. Shobhit Mishra, learned counsel appearing for the respondent No. 4 has also endorsed the submissions of Mr. Choubey and in addition, has placed before this Court Ordinance No. 6 to place reliance on the definitions as appearing in Section (1)(ii) therein.

11. Learned counsel for the parties are at *ad idem* that the case of the Petitioner, bearing in mind the factual matrix, hinges on the Clauses 8 to 11 of Ordinance-91 and more importantly, on Clause 11.

12. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

13. At the outset, it will be appropriate to set out Clauses 8 to 11 of BBA Ordinance-91 for better appreciation of the issue involved in the present case. The same read as under:

“BBA Ordinance – 91

8. A candidate after passing in the internal assessment of all the papers and appearing all the theory papers

fails in two of the theory papers but secures at least 45% marks in aggregate in papers already cleared shall be eligible to keep the term (ATKT) and will be promoted to the next semester.

9. A candidate having ATKT in I, III and V (odd semesters) and II IV and VI (even semester) shall be permitted to appear in the ATKT examination along with the following even or odd examinations respectively.

10. A student who has obtained ATKT in any semester examination shall be allowed Two chances to clear the ATKT papers of that semester, when the examination of that semester will be held.

11. A candidate obtaining ATKT and after appearing in two chances given to him/her to clear the semester, fails to clear it, shall be allowed to appear in All the papers of that semester once, as an Ex student. If a candidate fails to clear the semester as an Ex student he/she shall cease to be the student of BBA course."

14. It will be also necessary to extract herein below the letter dated 17.12.2020, the translated version of which has been placed before the Court during the course of submission:

"Pt. Ravi Shankar Shukla University, Raipur (Chhattisgarh)

E-mail: rsuexam@gmail.com

To,

Mayank Shukla,
House No. 111, Sector-02,
Janata Quarter, Shankar Nagar Raipur (CG)

Subject- Regarding B.B.A. Second Semester Marksheet.

Sir,

With reference to subject matter, Applicant Mayank Shukla, failed in B.B.A. first semester (regular) Exam December-January 2018-19 and also failed to clear the B.B.A. first semester exam as ex-student and also in revaluation December-January 2018-19 (ex) examination, along with this revaluation of 1st Semester B.B.A. December-January 2019-20 (ex-student) the result remain unchanged.

That, as per B.B.A. Ordinance No.-91 (Under Section 38) sl. No.11, the applicant was not eligible for B.B.A. Second Semester May-June 2019-20 exam.

Therefore, in absence of eligibility of applicant to appear in B.B.A. Second Semester May-June 2020, same was rejected by letter no. 2176 / Exam / 2020 Raipur dated 04.12.2020, the information of which has been sent to the concerned college and student.

Letter no. 2274 / Exam / 2020

Sd/-
Deputy Registrar (Examination)
Raipur, dated 17/12/2020

Copy

1. Commissioner, Directorate of Higher Education, Indravati Bhavan, Nawa Raipur, Atal-Nagar,

2. Secretary to the Vice Chancellor / Personal Assistant to the Registrar, for information to P.R.Sahu.V.V. Raipur.

Sd/-
16.12.2020
Room Officer (Exam)"

15. A perusal of the aforesaid letter dated 17.12.2020 would demonstrate in unequivocal terms that the petitioner was held to be ineligible to appear in the BBA II-Semester examination placing reliance on Clause 11 of the BBA Ordinance-91.

16. Clause 8 of the BBA Ordinance-91 provides that a student would be eligible to keep the term (ATKT) and will be promoted to the next semester in the event of passing in the internal assessment of all the papers and appearing in all the theory papers, but fails in two of the theory papers while securing at least 45% marks in aggregate. It is not in dispute when the petitioner appeared in the examination held in December-January 2018-19, he had failed in three subjects, and therefore, he could not keep his term and was not promoted to the next semester. After one year, in the examination held in 2019-20, the petitioner again appeared and in that examination also, as noted earlier, he failed to pass in all the subjects, but was shown to have been given result 'ATKT 1st chance'. In the mark-sheet, the status of the petitioner was shown as 'ex-regular'.

17. Clause 9 of BBA Ordinance-91 provides that a candidate having ATKT will be permitted to appear in the ATKT examination of odd or even semester, as the case may be. Clause 10 of the BBA Ordinance-91 provides that a student who has obtained ATKT in any semester examination shall be allowed two chances to clear the ATKT papers of that semester, when the examination of that semester would be held.

18. Clause 11 of the BBA Ordinance-91 provides for a situation when after availing the chances as indicated in Clause 10, a student fails to clear the examination, he will be allowed to appear in all the papers of that semester

once again as an ex-student and it is only in the event of failing in that examination also, such an ex-student will cease to be a student of the BBA course.

19. A perusal of definitions appearing in Ordinance No. 6 goes to show that there is no definition of 'ex-regular'. In Section 1, 'regular candidate', 'ex-student candidate', 'non-collegiate candidate' and 'a regular course of study' have been defined as follows:

"ORDINANCE No.6

EXAMINATIONS (GENERAL)

(Refer clause (iii) of Section 37)

PART-I Definitions:

1. In this Ordinance and in all Ordinances and Regulations laying down conditions for appearing at an examination of the University for a Degree or a diploma, either generally or for a particular examination, unless there is anything repugnant in the subject or context:-

(i) 'Regular Candidate' means a person who has prosecuted a regular course of study in a University Teaching Department, School of Studies or College and seeks admission to an examination of the University as such.

(ii) 'Ex-Student Candidate' means a person who was admitted to an examination as regular candidate and was not declared successful there at or was not able to appear in the examination though admission card was correctly

issued to him by the University and seeks admission again to the said examination.

(iii) 'Non-Collegiate Candidate' means a person who seeks admission to an examination of the University otherwise than as a regular candidate or ex-student candidate.

(iv) 'A Regular Course of Study' means:-

(a) In case of faculties other than the Faculty of Medicine, Ayurveda, and Engineering, attendance at least 75% of lectures and practicals separately;

(b) In case of the Faculties of Medicine & Ayurveda, attendance at least five percent of lectures and eighty five percent of practicals and clinicals separately,

(c) In case of the Faculty of Engineering, attendance at least eighty five percent of lectures and practical/sessional work separately-

In a University Teaching Department, School of Studies or College in each subject which a candidate intends to offer an examination.

N.B. In this ordinance, unless provided otherwise, lectures shall include tutorials and seminars."

20. Clauses 8 to 11 of BBA Ordinance-91, in our considered opinion, do not take within its fold a case of a student who fails in three subjects in the first attempt and then having been allowed to sit for the examination after one year in all the subjects fails to clear one subject. Clauses 8 to 11 are all in the context of ATKT. Though the learned Single Judge had described the examination as supplementary examination, no provision has been brought to our notice on the basis of which the petitioner was allowed to appear in all the

subjects of I-Semester examination as 'ex-regular'. In our perception, the petitioner could, perhaps, be described as 'ex-student candidate' as he was initially admitted to I-Semester examination as a regular candidate but was not successful and thereafter, was again admitted to I-Semester examination. Even if the petitioner was given the status of ex-regular, which expression as noted earlier, does not find place, either in the BBA Ordinance-91 or in the Ordinance No. 6, the petitioner having been allowed to take the I-Semester examination in all the subjects again and he having failed only in one subject, we are of the considered opinion that in the first instance, it was rightly described in the result that 'ATKT 1st chance' was obtained by the petitioner. It is on that premise that we hold that the petitioner was allowed to pursue his II-semester and eventually promoted, though formal result has been withheld.

21. In view of the above discussion, we are of the considered opinion that subsequent volte-face of the respondent-University that the petitioner was not eligible to appear in the II-semester examination cannot receive judicial imprimatur.

22. The issue that had fallen for consideration in ***Neha Anil Bobde*** (supra) was as to whether the University Grants Commission had the power to fix the final criteria for those students who had obtained the minimum marks in all the papers before the final declaration of the result. In the aforesaid case, a notification for conducting the National Eligibility Test examination for determining eligibility of Indian nationals for the award of Junior Research Fellowship and the eligibility for Lectureship in Indian Universities and Colleges was issued indicating that final qualifying criteria is to be decided before declaration of result and consequently, a Moderation Committee finalized the qualifying criteria for Lectureship and category-wise benchmark

for General, OBC, etc. and thereafter, results were declared. Subsequently, some representations were received by the University Grants Commission regarding the criteria adopted and based on the said representations, the University Grants Commission had set up a five-member committee for examining the representations and to revisit the results, if found necessary. After that exercise, a few additional candidates were found to be eligible and accordingly, a supplementary result was declared. It was in the background of the above factual matrix, the Hon'ble Supreme Court had stated that in academic matters unless there is a clear violation of statutory provisions, the regulations or the notifications issued, the Courts should keep their hands off since those issues fall within the domain of the experts.

23. In the instant case, it is not an opinion of the expert body on academic matters which has been called in question. The issue revolves around the interpretation of a provision of the Ordinance, and therefore, we are of the opinion that aforesaid decision has no application in the attending facts and circumstances of this case.

24. In view of what has been stated above, we set aside the order passed by the learned Single Judge while maintaining the direction to pay compensation. The writ petition is allowed. We direct the respondent-University to furnish the II-Semester mark-sheet of the petitioner within a period of two weeks from today and to admit the petitioner in the III-semester as also to appear in the examination in light of Clauses 9 and 10 of the BBA Ordinance-91.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE