

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION (L) NO. 23394 OF 2021****ALONGWITH****INTERIM APPLICATION NO. 2395 OF 2021****IN****WRIT PETITION (L) NO. 23394 OF 2021****Deepika Hemant Hamav****..... Petitioner****VERSUS****State of Maharashtra & Ors.****..... Respondents**

Mr. Samir Sarambalkar for the Petitioner.

Mr. S.B.Gore, A.G.P. for the State – Respondent no.1.

Ms.Deepali Deherkar for the Respondent no.2.

Mr.Vishal Kanade, a/w. Ms.Gauri Sakhardande, Ms.Riya Thakkar, i/b.
Mr.Tushar Goradia for the Respondent nos. 3 and 4.**CORAM : A.S.CHANDURKAR &
G.A.SANAP, JJ.****DATE : 29TH APRIL, 2022.****P.C:-**

Rule. Rule made returnable and heard learned counsel for the parties.

2. The petitioner after passing her CET in the year 2013, was admitted at the four year degree course in Engineering in the academic year 2013-14. In December 2013 she appeared for the 1st Semester Examination but failed to clear the same. By keeping term, she made repeated attempts to clear the 1st Semester Examination but could not

do so. In December 2015, the petitioner passed 2nd Semester Examination. Thereafter again she attempted to clear the 1st Semester Examination along with 3rd Semester Examination but was not successful. Ultimately in May 2018, the petitioner cleared her 3rd and 4th Semester Examination. She had also appeared in the 5th and 6th Semester Examination but her results were kept on hold for the reason that she had yet not passed her 1st Semester Examination. Being aggrieved by the action of withholding her result, the petitioner has approached this Court praying that her result for the 5th and 6th Semester be declared.

3. The learned counsel for the petitioner submits that the petitioner after appearing for the 1st Semester Examination had sought revaluation of her marks she had been declared as failed. It is only in May 2018 that the petitioner was informed that there was no change in the marks and hence her attempt in revaluation was not successful. Referring to the Rules and procedure prescribed in the matter of seeking revaluation, it is submitted that under Rule 44, pending declaration of the result on seeking revaluation, admission to the next higher class is to be provisional in nature and the result of that examination can be

declared only on passing requisite number of subjects on revaluation would entitle such student to take admission in the next higher class. Since the petitioner had not passed the 1st Semester Examination, her admission to the 3rd and 4th Semester Examination ought to have been provisional and the results of both Semesters ought not to have been declared till the petitioner cleared the 1st Semester. Instead, the petitioner's result for 3rd and 4th Semester were declared in May 2018 and her subsequent admission to the third year in the 5th and 6th Semester was being treated as provisional. It was thus submitted that in May 2019, the petitioner cleared her 1st Semester Examination and hence her result for the 5th and 6th Semester ought to be declared.

4. The learned counsel for the respondent no.2 - University submits that since the petitioner had not cleared the 1st Semester Examination, she was not entitled to seek the relief as sought in the writ petition. The admission to the 5th and 6th Semester was provisional and no right could to be claimed by the petitioner. It was stated that only in May 2019, the petitioner cleared her 1st Semester Examination.

5. The learned counsel for the respondent nos.3 and 4 –

Engineering College referred to the reply filed on behalf of the Principal of the College and submitted that the results for the 5th and 6th Semester were not declared as the petitioner had not cleared her 1st Semester Examination. The admission to the 5th and 6th Semester was provisional in nature. Since the Examinations for the 5th and 6th Semester were held in November 2017 and May 2018, the results were liable to be treated as null and void as by that time, the petitioner had not cleared the 1st Semester Examination. On this ground, it was submitted that the petitioner was not entitled to any relief.

6. On hearing the learned counsel for the parties, we find that as per the provisions of Rules 42 to 44 relating to the matter of revaluation, it has been stipulated that a student is entitled to be admitted to the next higher class only if he/she had passed the original Examination or had been granted A.T.K.T. for admission to the next class. Such admission was to be provisional and would stand cancelled on receipt of result indicating failure upon revaluation. It is further stipulated that the result for the next Examination would be declared only on the student passed the requisite number of subjects on revaluation entitling grant of admission to the higher class. It is seen that the petitioner had failed in

the 1st Semester and had sought revaluation of it. Though the result of revaluation of the 1st Semester Examination was not declared, the petitioner was admitted to the 3rd and 4th Semester - 2nd year. The petitioner passed the 3rd and 4th Semester Examination in May 2018. Under Rule 44 in fact the said result for the 3rd and 4th Semester Examination ought not to have been declared since by that date it was indicated that the petitioner was not successful in revaluation and thus the admission to the next Semester was provisional. On the contrary, the petitioner was admitted to the 3rd year and she appeared in the 5th and 6th Semester Examination. It is only in May 2019 that she cleared her 1st Semester Examination. In other words, instead of the admission to the 2nd year being treated as provisional, admission to the 3rd year is sought to be treated as provisional. Her result for the 3rd and 4th Semester ought not have to be declared till she had cleared 1st Semester but that has not been done.

7. We find that the petitioner is not at fault as she was permitted to prosecute her studies and has now cleared 3rd and 4th Semester. In these peculiar facts, since it is found that the petitioner was not at fault and her admission to the 3rd and 4th Semester was not treated as provisional,

in the facts of the case, we are inclined to direct the respondent no.3 to declare her result for the 5th and 6th Semester Examination.

8. Accordingly, writ petition is allowed by directing the respondent no.2 to treat the case of the petitioner as an exceptional case and the respondent no.3 to declare the petitioner's result for the 5th and 6th Semester Examination and thereafter permit the petitioner to further prosecute her studies in accordance with law. Rule is made absolute accordingly with no order as to costs.

9. In view of the disposal of the writ petition, the interim application is also disposed of.

[G.A.SANAP, J.]

[A.S.CHANDURKAR, J.]