

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 2796/2022

Shreyas Sanjaykumar Bhagat,
Aged About 19 Years, Occ:- Student,
R/o Plot no. 67, Madhav Nagar,
Waghpur Road, Dist. Yavatmal 445001.

..... PETITIONER

// VERSUS //

1. Maharashtra State Board of Technical Education.
Through the Deputy Secretary,
Technical Education Regional Office,
Government Polytechnic Campus,
Sadar Bazar, Nagpur 440001.
2. Governing Council of the Maharashtra State Board of Technical Education,
Through the Controller of Examination Officer
Incharge, Mumbai Sub-region
2nd Floor, Govt. Polytechnic Building,
49 Kherwadi, Bandra (East), Mumbai 400051.
3. Principal, Acharya Shrimannarayan Polytechnic College,
Tq. Pipri Dist. Wardha.

.... RESPONDENT(S)

Dr. Mrs. R.S. Sirpurkar, Advocate for the petitioner
Mr. P.R. Puri, Advocate for the respondent nos. 1 and 2
Respondent no. 3 served.

CORAM : A.S. CHANDURKAR AND URMILA JOSHI-PHALKE, J.J.

DATED : 18/07/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

In view of the notice for final disposal issued earlier, the learned Counsel for the parties have been heard by issuing Rule and making it returnable forthwith.

2. The petitioner is pursuing Diploma in Civil and Rural Engineering at the respondent no. 3 – College. He appeared for the 5th Semester Examination in February 2022 and secured 73.2% marks. In the Practical Examination he secured 331 marks out of 500 marks. Since the petitioner was not satisfied with the aforesaid score he sought to appear in the improvement examination as provided in the Regulation RE-8 of Part II of the Maharashtra State Board of Technical Education Examination (For the Diploma, Post-Diploma, Post Graduate Diploma, Advanced Diploma and any other Diploma in Engineering/Technology and such other disciplines) Regulations, 2018 (for short the “Regulations of 2018”). He moved an application on 18.04.2022 in that regard. The petitioner was orally informed that the facility in improvement of performance was only to the extent of Theory Examination and not for the Practical Examination. Since according to the petitioner, he was denied an opportunity of improvement of performance in the Practical Examination, he has filed this writ petition seeking a declaration that the Regulation RE-8 of the Regulations of 2018 was unconstitutional since it

denied an opportunity of improvement of performance in the Practical Examination.

3. On 07.06.2022 by an *interim* order the petitioner was permitted to appear for the 5th Semester Summer-2022 Theory Examination subject to final outcome of the writ petition. Accordingly, the petitioner has appeared for the 5th Semester Examination and since the petitioner desires to undertake the Practical Examination for improving his performance, the writ petition has been heard.

4. The learned Counsel for the petitioner submitted that on a plain reading of the Regulation RE-8 of the Regulations of 2018 in the matter of improvement of performance, it was clear that the candidates who passed the pre-final and final Semester Examinations leading to award of Diploma could be permitted to re-appear at the same examination for improving his/her performance within a year. While attempt for improvement was permitted for the Theory Examination, there was no reason to exclude such permission for the Practical Examination. Inviting attention to similar Regulations for the Pharmacy Course as framed by the respondent no. 2, it was submitted that such facility for improving performance in the Practical Examination was permissible therein. There was no reason to exclude the Civil and Rural Engineering Course from the facility of appearing and seeking to

improve the performance in the Practical Examination. In absence of any rational basis for denying the facility of improvement of performance in the Practical Examination, Clause RE-8 of the said Regulation was arbitrary. It was thus submitted that the petitioner was entitled for the relief as prayed for.

5. The learned Counsel for the respondent nos. 1 and 2 opposed the aforesaid submissions by relying upon the reply filed on record. It was submitted that since the petitioner had not passed Final Year Examination including the 6th Semester, he was not eligible to seek improvement of his performance. As per Regulation RE-8 of the Regulations of 2018, such facility was available only after passing the Final Semester Examination which was the 6th Semester Examination. After appearing in the 6th Semester Examination it would open for the petitioner to seek improvement of his performance. He further submitted that there was no provision for improving the performance in the Practical Examination. The Regulations framed for the Pharmacy Course could not be relied upon to seek facility of improvement in the Engineering Course in so far as the Practical Examination was concerned. The nature of instructions imparted in both the Courses was different and hence there was nothing arbitrary therein. It was submitted that the request made by the petitioner on 18.04.2022 was premature as

the petitioner had only appeared for the 5th Semester Examination. Such request could be made after appearing for the 6th Semester Examination. This was clear from the reading of the Regulations of 2018 as a whole. Reliance was placed by the learned Counsel on the order dated 27.07.2016 passed in Writ Petition No. 8658/2016 (*Rajshree Neelam Tukral Vs. Secretary, Maharashtra State Board of Technical Education & Anr.*) at the Principal Seat to urge that decisions of academic bodies ought not to be easily interfered with. The learned Counsel therefore submitted that there was no merit in the challenge raised by the petitioner.

6. We have heard the learned Counsel for the parties and we have perused the documents on records. Regulation RE-8 of the Regulations of 2018 applicable for the Civil and Rural Engineering Course being pursued by the petitioner clearly stipulates that after passing the Final Semester Examination leading to award of Diploma, a candidate can be permitted to appear for both the Semesters to enable him to improve his/her performance within a period of one year. The fact that such facility would be available only after results of the Final Year Examination are declared is clear from the said Regulations itself in as much as, such candidate is required to forfeit Certificate of Marks and award of Diploma granted earlier to which he/she is entitled to after

passing the Final Year Examination. It is also stipulated that the previous marks obtained in subjects/course other than theory subjects/course would be carried forwarded. From the aforesaid, it becomes clear that only after the petitioner appears for the Final Semester Examination which is the 6th Semester that he would be entitled to seek improvement on his performance in Semesters 5th and 6th. On 18.04.2022 when the petitioner sought permission to improve his performance in the 5th Semester Examination he had not appeared for 6th Semester Examination. Thus, under Regulation RE-8 of the Regulations of 2018, the application moved by the petitioner was premature and was rightly not considered by the respondent nos. 1 and 2.

7. As regards the permission to improve performance in the Practical Examination is concerned, we find that there is nothing arbitrary or irrational in Regulation RE-8 of the Regulations of 2018 by not extending that facility for the Practical Examination. Merely because such facility is extended in Pharmacy Courses conducted by the respondent nos. 1 and 2, it would not mean that such facility for improving the performance in the Practical Examination should also be extended in Engineering Courses. The respondent nos. 1 and 2 being responsible academic Authorities conducting the relevant Courses, there was no reason to doubt their expertise and experience in that field.

Hence the challenge raised by the petitioner of not permitting improvement of performance to the Engineering students in the Practical Examination, is neither arbitrary or irrational.

8. For the aforesaid reasons, we do not find any merit in the challenge raised by the petitioner. The writ petition is thus dismissed with no order as to costs. Rule stands discharged.

9. It is however clarified that the petitioner would be entitled to seek improvement in the Theory Examination after having appeared for the Final Semester Examination / 6th Semester Examination in accordance with Regulation RE-8 of the Regulations of 2018. The attempt that the petitioner has taken pursuant to the *interim* order dated 07.06.2022 shall not be treated as an attempt as such attempt has been found to be premature under Regulation RE-8 of the Regulations of 2018.

(URMILA JOSHI-PHALKE, J.) (A.S.CHANDURKAR, J.)

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