



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.10.2022

+ LPA 392/2022

ALI HUMAM

..... Appellant

versus

**JAMIA MILLIA ISLAMIA UNIVERSITY
& ORS.**

..... Respondents

Advocates who appeared in this case:

For the Appellant	: Appellant in person.
For the Respondents	: Mr Pritish Sabharwal, SC, JMI with Mr Sanjeet Kumar, Advocate.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT****VIBHU BAKHRU, J*****Introduction***

1. The appellant – a student of Jamia Millia Islamia University (Respondent no.1, hereafter '**JMIU**') – has filed the present appeal, *inter alia*, impugning an order dated 23.05.2022, whereby his petition being **W.P.(C) 7801/2022** captioned **Ali Humam v. Jamia Millia Islamia University & Ors.**, was rejected. The appellant also seeks that this Court pass an order directing that the appellant be promoted to 9th Semester of B.A. LLB (H) course and permit him to appear in the 10th



Semester examination, which was scheduled to commence on 05.06.2022.

2. By an *ad interim* order dated 13.06.2022, the appellant was permitted to appear for his 10th Semester examination, albeit subject to the condition that no equities would be claimed.

3. The appellant had filed the aforesaid writ petition [W.P.(C) 7801/2022], *inter alia*, praying that directions be issued for the respondents to correct the technical fault resulting in not releasing the appellant's result for the 5th Semester examination. The appellant's result for the 5th Semester examination was withheld and released on completion of the 7th Semester examination. The appellant had not cleared the 5th Semester examination. Since the result for the 5th Semester examination was declared after the 7th Semester examination, the appellant claims that he was effectively prevented from re-appearing in the said examination – which was otherwise permissible – along with the 7th Semester examination. As a consequence, the appellant was also declared unsuccessful in the 6th Semester examination as the marks for the 6th Semester examination were computed partly by taking into consideration the 5th Semester examination.

4. The appellant was not promoted to the 9th Semester and is, essentially, aggrieved by his promotion being withheld.

Factual context



5. The relevant facts necessary to address the present appeal are as under:

5.1 The appellant cleared his entrance examination for being admitted to the B.A. LLB (H) course with JMIU and joined the said course in the month of July 2017. The B.A. LLB (H) course is a five years course spread over 10 semesters.

5.2 Ordinance 15-C of JMIU is relevant and set out below:-

“5. Promotion Scheme

i) **A student shall be promoted automatically from an odd semester to next even Semester.**

ii) **Provided that a student shall not be promoted from an even Semester to next odd Semester, if he/she has failed in more than four courses/subjects.**

iii) **Every student who has failed in more than four courses at the end of a given academic year or who has failed to clear requisite number of courses of the preceding years before being eligible to be promoted to the next odd Semester, shall be entitled to appear as an ex-student for the same year in respect of the courses to be cleared by paying such fee as may be prescribed from time to time.**

In respect of such students there will be no requirement of compulsory attendance in such courses. However, such students will have to complete all other requirements of the course/courses as prescribed for the regular students.”

[Emphasis supplied]

5.3 In terms of the said Ordinance 15-C, a student would be automatically promoted from an odd semester to an even numbered



semester (mid-year semesters) irrespective of the examination papers cleared by him. Thus, the student would not be withheld in the 3rd, 5th, 7th or the 9th Semester and would be automatically promoted to the next semester. However, the promotion from an even numbered semester to an odd numbered semester is contingent upon a student having not failed in more than four examination papers. Thus, if a student has not cleared five examination papers, he would not be promoted to the next academic year.

5.4 The appellant was sought to be detained in the 5th Semester on account of shortage of attendance. According to JMIU, the appellant had not completed the 5th Semester and therefore, he was not eligible to be promoted to the 6th Semester. However, the appellant was permitted to appear in the 5th Semester examination but his results were withheld.

5.5 It appears that the Dean, Students' Welfare had condoned the shortage of attendance and the appellant was promoted to the 6th Semester. The studies of students were adversely affected in the 6th Semester (the first half of 2020) on account of outbreak of the Covid-19 pandemic.

5.6 However, the appellant was promoted to the 7th Semester in view of the UGC Policy to not hold back students on account of the mitigating circumstances.

5.7 The appellant did not clear his two papers from the 7th Semester. Nonetheless, he was promoted to the 8th Semester. According to JMIU, the appellant had failed in fifteen papers as at the end of the 7th



Semester. This included two papers from the 4th Semester, six papers from the 5th Semester, and five papers from the 6th Semester.

5.8 A student can re-appear for the examination papers of an odd semester, which he/she has failed to clear, along with the examination held for an odd semester. In other words, the students can re-appear for the 3rd Semester paper along with the 5th Semester (regular), the 7th Semester (regular), or the 9th Semester (regular), examination. It is not open for the student to re-appear for examination of papers of an odd semester along with the regular examination relating to an even semester. Similarly, a student can re-appear for an even semester paper along with examinations relating to even semesters.

5.9 Thus, the appellant was entitled to re-appear for his 5th Semester papers along with the 7th Semester (regular) examination but he did not do so. According to the appellant, this was because his results had not been declared at the material time.

5.10 It is also material to note that in terms of the Guidelines issued by the University Grants Commission (UGC), the students for the session ending May, 2020 were assessed on the basis of internal assessment and past performance in view of the disruption caused by the outbreak of the pandemic. Thus, JMIU assessed the students for the 6th Semester (session ending May, 2020) on the basis of 50% weightage to the results of the 5th Semester examination and 50% on internal assessments. Since the appellant's result for the 5th Semester had been withheld, the same also affected his results for the 6th Semester.



Nonetheless, in terms of the UGC Policy, he was promoted to the 7th Semester.

5.11 The appellant was not promoted to the 9th Semester as, according to JMIU, he had not cleared backlog of thirteen papers in which he had failed.

5.12 Aggrieved by not being promoted to the 9th Semester, the appellant filed the afore-mentioned writ petition.

Reasons and Conclusion

6. At the outset, it is relevant to note that the appellant's grievance, as articulated in the writ petition is, essentially, two-fold.

6.1 First, that his 5th Semester result was arbitrarily withheld. The same was declared on 12.02.2021, after the 7th Semester examinations were over. Resultantly, the appellant was prevented from re-appearing in the 5th Semester examination along with his papers for the 7th Semester.

6.2 Second, that his assessment for the 6th Semester was incorrectly made by reducing the marks by 50%. According to the appellant, JMIU has misread the UGC Examination Guidelines and it was not necessary to assess the performance of the students on the basis of the performance in the past examination.



6.3 The appellant further claims that although he had not been promoted to the 9th Semester, he had taken the 9th Semester examination as the same was available on the online examination portal.

7. The present appeal along with the interim application was listed on 03.06.2022. The appellant had also filed an interim application, praying that he be permitted to appear for his 10th Semester examination, which was scheduled to be held on 14.06.2022. The said prayer was not acceded to. However, this Court directed that all results of the appellant, which were withheld, be declared. Consequently, the results of the appellant relating to the 5th Semester examination were declared on 29.06.2022. The appellant had passed in four papers. Although, strictly speaking, the benefit of the same may not be available for the assessment of the 6th Semester examination, JMIU granted the benefit of his results for the 5th Semester examination to evaluate the assessment of the 6th Semester examination. After providing the said benefit, the appellant was declared as having cleared four papers of the 6th Semester examination. He had also re-appeared in two papers of his 7th Semester and cleared the same.

8. In view of the above, the appellant was promoted to the 9th Semester for the academic session 2022-23. This was informed to the Court during the hearings held in the month of July, 2022.

9. In view of the above, the principal question that requires to be addressed is whether the decision of the JMIU to withhold the



appellant's promotion to the 9th Semester examination, for the session 2021-22, can be faulted.

10. In compliance with the order dated 03.06.2022, JMIU had filed an affidavit enclosing therewith a tabular statement indicating the appellant's performance in various semesters. The said tabular statement is reproduced below:

"Case of Mr. Ali Humam, Student of B.A.LL.B. (Hons.) Roll No 17BLW007 Dated 12.07.2022

S. No.	Session	Examination	Semester	Date of Examination	Declaration of Result	Result Declared	Mode of Exam.	Backlog Papers
1.	Dec-2017	Dec-2017	I (Regular)	07.12.2017 to 01.01.2018	09.02.2018	Passed	Offline	Nil
2.	May-2018	May-2018	II (Regular)	07.05.2018 to 29.05.2018	02.07.2018	Passed	Offline	Nil
3.	Dec-2018	Dec-2018	III (Regular)	Untraceable	20.02.2019	Failed in BLW-305, BLW-306, Promoted	Offline	02
4.	May-2019	May-2019	IV (Regular)	06.05.2019 to 24.05.2019	20.06.2019	Failed in BLW-305, 306, BLW-403, BLW-404, Promoted	Offline	04
5.	Dec-2019	Jan-Feb 2020	III (Back papers)	28.01.2020 to 14.02.2020	06.04.2020	Passed with 2GM	Offline	Nil
6.	Dec-2019	Jan-Feb 2020	V (Regular) <i>Appeared in 3 papers only</i>	28.01.2020 to 14.02.2020	Detained due to shortage of attendance 12.02.2021 Allowed by DWS & referred to Exam Committee. Permitted to declare result.	Detained due to shortage of attendance Failed BLW-403, 404 501, 502, 503, 504, 505, 506 Promoted	Offline	08
7.	May-2020	Assignment based	IV (Back)	Assignment based	26.07.2020	Failed in BLW-403, BLW-404 Not appeared	Assignment based	02
8.	May-2020	Assignment based	VI (Regular)	Assignment based	23.02.2021	Failed in BLW-403, BLW-404, 501, 502, 503, 504, 505, 506, BLW-601,	Assignment based	13



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						602, 604, 605, 606. Promoted as per UGC Policy		
9.	Dec-2020	Jan-Feb 2021	V (Back papers)	19.01.2021 to 12.02.2021	Not appeared in back papers	Not appeared in back papers	Open book	08
10.	Dec-2020	Jan-Feb 2021	VII (Regular)	19.01.2021 to 12.02.2021	08.07.2021	Failed in BLW-403, 404, BLW-501, 502, 503, 504, 505, 506, 601, 602, 604, 605, 606, 704, 705. Promoted	Open book	15
11.	May-2020	June 2021	IV (Back papers)	07.06.2021 to 29.06.2021	18.11.2021	BLW-403, BLW-404 Appeared & Passed	Open book	Nil
12.	May-2020	June 2021	VI (Back papers)	07.06.2021 to 29.06.2021	24.12.2021	Failed in BLW-501, 502, 503, 504, 505, 506, BLW-601, 602, 604, 605, 606.	Open book	11
13.	May-2020	June 2021	VIII (Regular)	07.06.2021 to 29.06.2021	30.12.2021	Passed (Sem-8) Failed in BLW-501, 502, 503, 504, 505, 506, 601, 602, 604, 605, 606, 704, 705. Result Declared "FAILED"	Open book	13
14.	Dec-2021	Jan-Feb 2022	V ((Back papers)	06.01.2022 to 05.02.2022	29.06.2022	Passed BLW-501, 502, 504, 505 Failed in BLW-503 & 506	Open book	09
15.	Dec-2021	Jan-Feb 2022	VII (Back papers)	06.01.2022 to 05.02.2022	27.06.2022	Passed BLW-704, 705	Open book	07
16.	Dec-2021	--	VI (Back)	--	--	Passed BLW-601, 602, 605, 606 Failed in BLW-604	By giving 50% formula in V semester as per UGC policy	03
17.	--	--	VIII	--	--	Failed in BLW-503, 506, 604 PROMOTED to	--	03"



						Sem-IX in the session 2022-23		
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11. There is no dispute regarding the material facts as stated in this aforementioned tabular statement.

12. It is seen from the aforesaid chart that the appellant's performance for the first year (Semester-1 and Semester -2) was satisfactory and he had cleared all the papers. However, he failed to clear two papers of the 3rd Semester (Paper nos. 305 and 306). Notwithstanding the same, he was promoted to the 4th Semester in view of the Ordinance 15-CUGC, which did not permit withholding promotions from odd semesters to even semesters. Further, the numbers of examination papers in which the appellant had failed to appear were not more than four.

13. The appellant appeared in his 4th Semester examination that was held between 06.05.2019 to 24.05.2019. He failed to clear two papers (Paper nos. 403 and 404). Notwithstanding the same, he was promoted to the 5th Semester as his backlog was only four papers and not more.

14. The appellant appeared only in three papers of the 5th Semester examination that was held during the period 28.01.2020 to 14.02.2020. His attendance during the 5th Semester was short and therefore, his results for the 5th Semester were not declared. The appellant had also re-appeared for two papers of the 3rd Semester along with the 5th Semester examination and had cleared the same albeit with some grace marks. The appellant's backlog at the end of the 5th Semester included



two papers of the 4th Semester (Paper nos. 403 and 404) apart from the six papers of the 5th Semester, the results of which had been withheld. Notwithstanding the above, the appellant was promoted to the 6th Semester.

15. The assessment for the 6th Semester was on assignment basis and the appellant had not cleared five papers of the 6th Semester. He could not be assessed in respect of the backlog of two papers of the 4th Semester (Paper nos. 403 and 404) as no assignments had been submitted. Thus, at the end of the 6th Semester, the appellant had a backlog of thirteen papers (Paper nos. 403, 404, 501, 502, 503, 504, 505, 506, 601, 602, 604, 605 and 606). However, in view of the UGC Policy, the appellant was promoted to the 7th Semester.

16. The examinations of the 7th Semester were held during the period of 19.01.2021 to 12.02.2021. The results of the said examination were declared on 08.07.2021. The appellant had not cleared two papers of the 7th Semester (Paper nos. 704 and 705). The results of the appellant's 5th Semester examination were declared on 12.02.2021, that is, after examination for the 7th Semester was over. The appellant could have re-appeared for his 5th Semester examination along with 7th Semester examination but did not do so. According to the appellant, he was prevented from re-appearing for the 5th Semester examination papers along with 7th Semester as his results for the 5th Semester had not been declared as of that date.



17. It is material to note that the appellant had appeared only for three examination papers of the 5th Semester in the regular examination that was held during the period 28.01.2020 to 14.02.2020. He had not appeared in the remaining three papers. Thus, in any event, the appellant was fully aware that he could not have cleared the three papers as he had not sat for the said examination papers. It was open for the appellant to thereafter, request the authorities to permit him to re-appear for the three papers (for which he had not appeared along with his 7th Semester papers) but he did not pursue JMIU for the same.

18. At the end of the 7th Semester, the appellant had a backlog of fifteen papers, which included two papers from the 4th Semester and two papers from the 7th Semester as well.

19. The appellant re-appeared for his 4th Semester papers along with examinations of the 8th Semester and cleared the same. Thus, at the end of the 8th Semester, the appellant had a backlog of thirteen papers: eleven papers relating to 5th and 6th Semesters and two papers from the 7th Semester. The appellant was, thus, detained in the 8th Semester and not promoted.

20. The appellant did suffer some disadvantage on account of his results of the 5th Semester not being declared prior to the 7th Semester examinations being held. There is merit that the appellant could have re-appeared in the 5th Semester papers along with the 7th Semester examinations, if the results of the 5th Semester were declared prior to the said examinations (which were held during the period 19.01.2021



to 12.02.2021). However, this Court is unable to accept that the appellant is entitled to be promoted to the 9th Semester notwithstanding that he had not cleared his 5th Semester examination. As noted above, the appellant had not appeared in three papers for the 5th Semester examination. Thus, in any event, he was aware that he had not cleared three papers of the 5th Semester examinations. He was also aware that he had failed in two papers of the 4th Semester examination (403 and 404). In addition, the appellant had not cleared two papers of the 7th Semester examination (704 and 705). Thus, even if the examinations of the 5th Semester for which the appellant had appeared as well as the backlog of the 6th Semester examination is ignored, the appellant had not cleared at least seven papers as at the end of the 7th Semester. He had, subsequently, appeared and cleared two papers of the 4th Semester along with the 8th Semester examination. Thus, at the end of the 8th Semester, the appellant had a backlog of at least five papers, which he was clearly aware of even if the three papers of the 5th Semester in which he had appeared and the five papers of the 6th Semester are ignored.

21. In view of the above, JMIU's decision to detain the appellant in the 8th Semester, cannot be faulted.

22. The appellant had, thereafter, re-appeared for his 5th Semester examination and 7th Semester examination held during the period 06.01.2022 to 05.02.2022. The appellant had cleared four papers from the 5th Semester and two papers of the 7th Semester (501, 502, 504, 505, 704 and 705).



23. As noted above, the assessment for the students of the 6th Semester had been done by including a 50% weightage for the performance of the 5th Semester.

24. At the time of the assessment of the 6th Semester, the appellant's result for the 5th Semester examination (three papers for which he had not appeared and three papers in which he had appeared) were withheld. Consequently, the appellant was also declared as having failed the papers of the 6th Semester. However, with the appellant subsequently re-appearing and passing in four papers of the 5th Semester (501, 502, 504 and 505), JMIU had decided to also grant the benefit of the said marks in the appellant's assessment for the 6th Semester. Consequently, the appellant was declared as having cleared four subjects of the 6th Semester (601, 602, 605 and 606).

25. The results for the 5th Semester and 7th Semester papers for which the appellant had re-appeared during the period 06.01.2022 to 05.02.2022 were declared on 29.06.2022 and 27.06.2022 respectively. In view of the said results and the consequent benefit granted to the appellant in respect of the 6th Semester papers; the appellant's backlog reduced to three papers (Paper nos. 503, 506 and 604). Consequently, the appellant has now been promoted to the 9th Semester for the session 2022-23.

26. In view of the above, the decision of JMIU to detain the appellant in the 8th Semester examination for the academic year 2021-22, cannot be faulted.



27. Before concluding, it is also necessary to mention that the appellant had moved the present appeal on 03.06.2022 (the last working day, prior to the Court closing for the summer vacation). On that date, the appellant had also requested for interim relief to permit him to appear for the 10th Semester examinations, which was scheduled to be held shortly. This Court had not acceded to the said request as the appellant had not been promoted to the 9th Semester at the material time. Although the appellant's request was not acceded to, the appellant once again filed an application seeking the same relief. This application was moved before the Vacation Bench and was taken up on 13.06.2022. On that date, the Court passed an interim order permitting the appellant to appear in the 10th Semester examination while making it clear that the results would not be disclosed until further orders and would be subject to the final outcome of the appeal.

28. The appellant was not entitled to appear for the 10th Semester examination and therefore, the said results are of no material relevance and are not required to be declared.

29. It is also relevant to state that during the course of the proceedings, the learned counsel for JMIU submitted that despite the appellant being promoted to the 9th Semester, he is not attending classes. This Court had, during the course of the proceedings, put the appellant to notice that in the event he did not attend the classes, the necessary consequences would follow.



30. It is, thus, apposite to clarify that pendency of the present appeal would not be accepted as an excuse for the appellant to not attend the 9th Semester classes.

31. The present appeal is, accordingly, dismissed with the aforesaid observations.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

**OCTOBER 6, 2022
RK**