

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-336-2021 (O & M)

Reserved on: 23.01.2023

Date of Decision: 30.01.2023

Panjab University and others

.....Appellant(s)

Versus

Ishita Uppal

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Subhash Ahuja, Advocate,
for the appellants.

Respondent-in-person.

G.S.SANDHAWALIA, J.

Consideration in the present letters patent appeal filed by the Panjab University is against the judgment of the learned Single Judge dated 23.02.2021 passed in CWP No. 20275 of 2019 filed by the respondent herein namely Ishita Uppal which has been allowed by imposing Rs.1,00,000/- as compensation to be paid by the University and University Institute of Legal Studies (hereinafter referred to as 'UILS') in equal shares. Liberty has been given to recover the same from the erring officials. Resultantly, directions were issued to restore and release the entire benefit of freeship/EWS scholarship to the writ petitioner while quashing communications dated 26.06.2019, 10.07.2019, 19.07.2019 (Annexures P-4, P-5 and P-8, respectively).

2. The following questions were culled out for adjudication on merits of the controversy by the learned Single Judge:-

“A) Whether in view of Clause (vi) of guideline

No.9 (P-9), the action of the respondents to withdraw the benefit of freeship/ EWS scholarship while considering the case of the petitioner as a compartment / re-appear candidate for 6th Semester, is legally sustainable?

B) Whether the action of the respondents while not treating the petitioner on the rolls of the Department and consequently terminating her internship programme is based on legal malice and liable to set aside?

C) Whether the action of the respondents while rejecting the claim of the petitioner for freeship/ EWS scholarship is violative of principles of natural justice?

D) Whether the action of the respondents has caused great prejudice to the petitioner resulting into miscarriage of justice?"

Finding of the Learned Single Judge:

3. The learned Single Judge came to the conclusion that the absence of the respondent in the French-III paper of the 6th semester on 14.05.2018 was on account of her medical condition as such and the relevant medical certificate had been duly handed over to the clerk of the institute. It was accordingly held that non-forwarding of the medical certificate of the concerned quarter had made the respondent run around from pillar to post for complete one year. It was noticed that there was an admission as such by the University that the father had also submitted an application on 12.06.2018 that his daughter could not take the examination on account of health problems and the same had also been forwarded to the Controller of Education on 13.06.2018 and that the dealing official of the Examination Branch had telephonically informed her on 25.06.2018 that her case had been cleared by the Doctor of the Health Centre regarding re-conducting of the

said paper on medical grounds. It was held that there was specific admission that no individual intimation had been sent to the candidates appearing in the examinations in pursuance of the date sheet dated 06.07.2018 and that for a period of one year, no intimation was sent to the petitioner for the request of the French-III paper, whether it has been accepted or rejected by the Vice Chancellor of the Institute. Finding was recorded that it is only after a period of one year the communication had been sent to the petitioner that she had remained absent for the said paper and, therefore, her case was to be treated as compartment/reappear while taking shelter under Clause (vi) of Guideline 9. Reliance was accordingly placed upon Clause 7.1 of Chapter VIII Volume II, Panjab University Calendar, 2007 that there was a provision for a candidate to complete the annual examination on account of serious illness or accident or on account of death of near relative on one of the days in the same year by the Vice Chancellor provided he was satisfied by the evidence produced and that the concession applied for was justified. It was accordingly held that she had been treated as a compartment/reappear candidate but no order had been passed by the Vice Chancellor and supplied to her till date. Therefore, the University was depriving her for claiming the benefit of freeship under the garb of the said guidelines. Resultantly, finding was arrived at that because the candidate had not appeared in the paper, she could not be treated as a re-appear candidate and treating her as a compartmental candidate was not justified as she had not failed in the previous examination. The justification of the University that she had been informed of the special chance was held not acceptable on the ground that at the time of the issuing of the date sheet on 06.07.2018, University was closed

about the second chance being granted. No individual intimation having been sent and the plea that she had been informed by the dealing officials of the Examination Branch on telephone was not accepted in the absence of any such mode having been prescribed by the competent authority. Resultantly, finding was further recorded that the absence on 17.05.2019 also was on account of the fact that she had been orally informed that her scholarship had been discontinued on account of the non-submission of the detailed marks card of the 6th semester and, therefore, till her case was decided by the Vice Chancellor, she was apprehensive to lose the benefit of freeship and could not be interpreted in the manner while treating her case to be a case of reappear.

4. A finding of legal malice was recorded that the candidate belongs to a Economically Backward Class category and her father had given an application on 24.06.2019 and keeping in view her track record, her case had also been forwarded on 06.06.2019 but had been rejected by taking erroneous approach and her name was wrongly removed from the rolls of the department resulting in termination of her internship programme without affording any opportunity of hearing which had hampered her career.

5. Under Point 'C', the finding was recorded that action was violative of principles of natural justice and withdrawing of the benefit of the scholarship without affording any opportunity of hearing and removing the name from the rolls of the department and the internship programme was done by simply sending intimations whereby the impugned orders had been passed. There were no discernible reasons for rejection of the claim of the petitioner by the Vice Chancellor/Board of Control of the Institute and, therefore, by filing an affidavit of the Director of the Institute would not be a

substitute for the orders of the competent authorities. An opportunity as such

should have been given to her to prove her case before passing the rejection order and, therefore, it was held under point 'D' that great prejudice had been caused to her and it was noticed that in terms of the interim order dated 24.07.2019, she had been allowed to appear in the papers and her result was ordered to be kept in sealed cover and she had successfully completed her B.A. LL.B. course by securing a good first division and, thus, she had been harassed for 2-1/2 years which led to the directions for imposition of compensation.

Background of the case and interim orders passed:

6. A perusal of the paper book would go on to show that the claim as such as per the writ petition filed was for grant of the EWS scholarship, to quash the arbitrary orders of the respondent, to grant stay against the termination of the internship programme and to set aside the arbitrary orders of the Director of the Institute denying her the right of scholarship. Further prayer was made that rules in the hand book of information be amended for the candidates availing scholarships in case of missing an exam on account of medical illness and order such rules to be made to help the student and not hamper their chance of scholarship apart from various other remedial measures which were to be taken including asking a sitting Judge from this Court to be the Administrative and Regulatory Head of the Student Grievance Cell. The writ petition was filed in person by the respondent herein, who is now also working as a Law Researcher in this Court and attached to one of the Hon'ble Judges.

7. At that point of time, vide interim order dated 24.07.2019, she was allowed to continue with her internship which was subject to the outcome

of the writ petition. Vide order dated 01.08.2019 thereafter, she was

permitted to furnish the bank drafts for the fees for the 9th semester and directions were issued to the Director of the Institute to get the application processed as per rules on receipt of the application form and bankers cheque from the writ petitioner. Vide order dated 30.08.2019, she was also allowed to join classes, however, her result was not to be declared and was to be subject to outcome of the writ petition. A similar order was also passed on 24.09.2019 that the admission form be accepted subject to the outcome of the writ petition. Resultantly, the writ petition was allowed on 23.02.2021 after arguments which had concluded on 16.02.2021 by way of video conferencing.

Arguments raised by counsel for the University:

8. Mr. Ahuja, counsel for the University has vehemently assailed the judgment of the learned Single Judge by pointing out that the admission was in the 5 year B.A. LL.B. course for the academic session 2015-20. It is his case that the concession contained in brochure/prospectus would carry the force of law. Once the guidelines as such provided that the freeship was to be continued in the years in which the student passes the previous examination with the requisite 55% for the other departments than Science and that also in the first examination and should not have a reappear which was a condition precedent to claim freeship. It is accordingly contended that the absence was admittedly there on 14.05.2018 and an application had been submitted by her father on 12.06.2018 (Annexure R-1) wherein, the medical certificate had been submitted alongwith the medical record from the said doctor which had been duly forwarded on 13.06.2008 for necessary action to the Controller of Examinations. The case of counsel for University was that medical cases as

account of other exigencies were to be given an opportunity of passing the examination in the same year. Accordingly reliance was placed upon 5 candidates of the 4th and 6th semester of UILS who had been examined and approved by Dr. Deepak Kumar of BGJ Health Centre, Panjab University and who were to be given benefit of appearance in the missed paper on medical grounds, one of which was the writ petitioner (respondent herein). Necessary orders were accordingly passed on 25.06.2018 and reliance was placed upon the date sheet issued on 06.07.2018 whereby notification has been made by the Panjab University that the French-III examination was to be held on 14.07.2018, for which, it is the case of the university that intimation was given while placing reliance upon the endorsement on the request of the father himself and there was a telephonic information given on 25.06.2018. Admittedly, the writ petitioner did not appear in the said examination. Thereafter, the examination was again held on 17.05.2019 in which the respondent never appeared voluntarily and the explanation now given is that it was clashing with her 8th semester examinations whereas, there is no such averment made in the writ petition. Thereafter, there was a demand on 06.06.2019 regarding the tuition fee of the 8th semester and she was informed that she was eligible to appear. Resultantly, communication dated 06.06.2019 (Annexure P-2) was issued wherein she was informed that she would be eligible in April/May, 2020 to appear in the 6th semester reappear alongwith regular examination and she should submit the tuition fee for the 8th semester and later on when she was eligible for concession, her case would be forwarded to the competent authority for further necessary action. Reference was made to communication dated 24.06.2019 then received from

her father that sympathetic consideration be given on account of her bright

academic future and that she did not have enough money to pay the regular fees and that the request for holding the fee till the result comes in May, 2020 be accepted. Vide letter dated 26.06.2019, the institute was informed that the request of the father of the respondent had not been accepted for the session 2018-19 as it was not permissible under the Rules and Guidelines for refund of the tuition fees. Resultantly, on 10.07.2019, she was informed that the members of the Board of Control of the institute had rejected the request of holding the fees and she was asked to submit the fees at the earliest. On non-payment as such of the 8th and 9th semesters' fees, permission for doing her internship vide representation dated 19.07.2019 was rejected on the ground that she was not eligible for the concession. Resultantly, she successfully challenged the said action, as noticed above and it was accordingly argued that the recording of legal malice was without any justification as no individual had been arrayed as a respondent by name and only through designation, the Director of the Institute and the Clerk of the said institute apart from the Vice Chancellor and the DUI had been impleaded. It is submitted that without specific allegations of malafide and without impleading the necessary person, a finding could not be recorded as such and it would also amount to condemning the officials without giving them an opportunity to put forward their case. It was further submitted that there was no reason why any person should be personally prejudiced or biased against the student.

9. Thus, Mr. Ahuja has submitted that there was always conscious decisions taken at the earliest and, therefore, the finding as such recorded that she was never given an opportunity is without any basis. The finding

recorded that a compartment would only be in a case where the candidate had

appeared and failed would also amount to re-writing the rules as such as candidates had to necessarily clear the 5 year course in a maximum period 8 years and voluntarily abstinence would give them benefit as such to claim a larger period to complete the course on the ground that they had never appeared in the exam. It was also pointed out from the additional affidavit that there were other persons also whose freeship/EWS had been discontinued and it was not only in the case of the petitioner.

Arguments addressed by the respondent appearing in person:

10. The respondent appearing in person referred to the additional affidavit filed by the University to point out that it was their own case that no individual intimation had been given to the candidates for appearing in the exam which was held for the purpose of the special chance on 14.07.2018. The plea taken was that some person from the examination branch had telephonically informed the candidates and, therefore, the learned Single Judge was justified in coming to the conclusion that intimation had not been given. Clause 9 itself was challenged on the ground that it was arbitrary and reliance was placed upon various judgments namely ***Abhijit vs. Dean, Government Medical College, Aurangabad and another, (1987) 3 SCC 478; Shri Prashant Pravinbhai Kanabar and others vs. The Gujarat University and others, AIR 1991 Gujarat 23; Pramod Namdeorao Nawarkhede vs. Nagpur University and others, Master Mohammad Akaram Khan vs. Jamia Senior Secondary School and others; Sandeep Shenai vs. Mangalore University, Mangalore and another and Kum. M. Anuradha vs. Sri. Venkateswara University, Tirupati.***

11. It was accordingly contended that her case of freeship was always being processed and the system as such was that the fees should be

deposited firstly and the refund would thereafter be generated. Reliance was placed upon the document dated 02.05.2019 and two communications dated 06.06.2019, photocopies of which have been taken on record as Mark 'X', Mark 'Y' and Mark 'Z'. Resultantly, it was argued that non speaking orders Annexures P-4 and P-5 had been passed and no reasons were given and neither any reference to any Rule was made while also referring to Annexure A-4 dated 02.08.2019. It was further argued that the 7th semester fees had not been refunded and the writ petitioner had also deposited the balance fees in pursuance of the interim order passed in the writ petition on 01.08.2019 for the 9th semester vide bankers cheque dated 26.07.2019 but the same had not been encashed.

Reasoning by us:

12. From the above sequence of events, one aspect is clear that the writ petitioner (respondent herein) was claiming the benefit as such of freeship/EWS which is a concession granted to the students subject to fulfillment of certain conditions. The same provides that it is restricted to 5% of the seats for meritorious students belonging to economically weaker sections and it is not a matter of right as per Clause 9(ii). As per Clause 9(vi), the continuation of the freeship granted during the first year is subject to a rider which is to be continued in the subsequent years if the student passes the previous examination with a minimum of 60% marks in the aggregate for science students and 55% marks for students in departments other than science. Students were also required to pass the examination in the first attempt and should not have a reappear or compartment. The photocopy of the lower examination passed, detailed marks certificates were to be enclosed

with a refund form. Similarly, under Clause 9(vii), if the students were to

seek the concession, they had to enclose all relevant documents so that the cases could be decided at the time of admission. Under Clause 9(ix) if a candidate shifted from one course to another and if provided tuition fees concession in the previous course, would be entitled to claim the said concession only if the same was available in the latter course. The said guidelines read thus:-

“Guidelines for freeship and tuition fee concession.

(i) The University may provide five percent of seats freeship for meritorious students belonging to economically weaker sections of the society in all partially Self-Supporting courses/departments running in Panjab University Institutes/Regional Centres of the Panjab University.

(ii) Freeship would mean (tuition fee + Lab charges) concession only, not to be claimed by students as a matter of right.

(iii) At the first instance, the concerned Board of Control/Coordinator shall fill all the sanctioned seats by following the normal admission procedure.

(iv) The concerned Board of Control/Coordinators shall list out the candidates who are eligible for freeship concession.

(v) For the purpose of the above concession, candidates must have passed the qualifying examination in the first class (60 per cent marks-proof to be added) and the total family income from all sources not exceed Rs. 2.5 lac per year. For proof of family income from all sources should not exceed Rs. 2.5 lac per year, the income certificate shall be accepted when issued by the competent authority which shall mean the Tehsildar, SDM or the employers as the case may be. In addition

an affidavit duly attested by a Magistrate giving full details of total family income should be submitted. Candidates holding yellow cards/yellow ration cards would be given preference over other candidates provided other merit conditions remained the same.

(vi) For continuation of the freeship granted to students during the first year of admission to a course, the following rider be imposed:

“The freeship will be continued in the subsequent years only if the student passes the previous examination with a minimum of 60 per cent marks in the aggregate for science students and 55 percent marks for students in departments other than science. The student should have passed the examination in first attempt that is should not have a reappear/compartement. Photocopy of lower examination passed, detail marks certificate may enclosed with the refund form.

(vii) Those students whom intend to seek the concession enclose all the relevant documents along with the admission/counseling form so that cases be decided right at the time of admission. They are further required submit an affidavit along with the admission form that if any document is found to be false or any information found to be concealed their admission will be cancelled.

(viii) Seats equal to the number of candidates who have been given shall be filled up over and above the sanctioned seats of the concerned course in the same/subsequent counseling following the original merit list of general category.

(ix) On shifting from one course to another, a student, if provided tuition fee concession in the previous Course will be entitled to claim the said concession in the latter

course only if the said concession is available in the latter course.”

13. Thus, in our considered opinion, if the benefit was to be taken, it does not lie in the mouth of the student to say that the rule has to be read in a particular manner and it would not apply if the exam had not been given. Even otherwise, it is to be noticed that the rule was never subject matter of challenge before the learned Single Judge and the prayer was only to grant her scholarship and not to terminate her internship. The exercise which has now been conducted by the learned Single Judge was not a subject matter of consideration as such of the writ petition. It is settled principle that prospectus/hand book would have the force of law and it has been consistently held so by 6 Full Benches of our Court, which apparently could not be brought to the notice of the learned Single Judge. Reliance can be placed upon the judgment passed in ***Swati Bishnoi vs. Panjab University and another, 2016 (3) SCT 118*** wherein, reference has been made to ***Amardeep Singh Sahota vs. State of Punjab 1993(4) S.C.T. 328, Raj Singh vs. Maharishi Dayanand University 1994(2) S.C.T. 766, Sachin Gaur vs. Punjabi University 1996(1) S.C.T. 837, Rahul Prabhakar vs. Punjab Technical University, Jalandhar 1997(3) S.C.T. 526, Indu Gupta Vs. Director of Sports, Punjab 1999(4) S.C.T. 113 and Rupinder Singh and others vs. The Punjab State Board of Technical Education & Industrial Training, Chandigarh and others 2001(2) S.C.T. 726***. The relevant observations made in Rahul Prabhakar's case (supra) read as under:-

“7. A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab, (1993) 4 SLR 673 : 1993(4) SCT 328 (P&H) (FB) had to consider the scope and binding force of the provisions contained in the

prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In Raj Singh v. Maharshi Dayanand University, 1994 (4) RSJ 289 : 1994(2) SCT 766 (P&H) (FB) another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur v. Punjabi University, 1996 (1) RSJ 1 : 1996 (1) SCT 837 (P&H) (FB) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India.”

14. Thus, from the above, it would be clear that it is not permissible for the writ court to make any modifications in exercise of its powers under Article 226 of the Constitution of India. Therefore, for the learned Single Judge to have exercised his jurisdiction to read down the meaning as such of a compartment or reappear was not permissible. In similar circumstances, the

Apex Court in ***K. Sujatha vs. Marathwada University, 1995 (Sup1) SCC 155*** held that the ordinance provided that a candidate who was taking admission should have obtained 50% of the total marks in the 4 subjects together taken at one and the same attempt in the qualifying examination. Since the candidate did not pass the qualifying examination in the said terms, it was held that she was not eligible in terms of the said ordinance. In such circumstances, the writ petition of the candidates as such had been dismissed by the Bombay High Court and the Apex Court did not accept the argument but only in peculiar facts and circumstances allowed the candidate to continue her studies. The relevant observations read thus:-

“1. The appellant was admitted to the MBBS course commencing from October 19, 1992 in the Latur Medical College, State of Maharashtra. She was admitted against one of the seats filled by the management under its discretionary quota. The appellant joined the course in October 1992. The Marathwada University, Respondent 1, by its letters dated December 4, 1992 and January 15, 1993 cancelled the admission granted to the appellant. According to the University, the appellant was admitted in violation of Ordinance 211(a) of the University Ordinances and, as such, she was not entitled to continue her studies. The appellant challenged the said orders before the Bombay High Court by way of a writ petition under [Article 226](#) of the Constitution. The High Court dismissed the writ petition. This appeal by special leave is against the judgment of the High Court.

2. Ordinance 211 (a) of the University Ordinances is as under :-

"A candidate for admission against the open seats to the Medical Course must have obtained not less than 50 per cent of the total marks in English and the Science subjects (i.e. Physics, Chemistry and Biology) taken together at one and the same attempt in the qualifying examination. Candidates belonging to the Backward Class Communities (i.e. Scheduled Castes and Scheduled Castes converts to Buddhism, Scheduled Tribes including those living outside specified areas, Denotified Tribes and Nomadic Tribes and other Backward Communities) and applying for admission to reserved seats must have obtained not less than 40 per cent of the total marks in English and Science subjects (i.e. Physics, Chemistry and Biology) taken together at one and the same attempt in the qualifying examination."

3. It is not disputed that the appellant passed the qualifying examination in two attempts. Ordinance 211(a) clearly lays down that a candidate for admission against the open seat to the medical course must have obtained not less than 50 per cent of the total marks in the four subjects taken together at one and the same attempt in the qualifying examination. Since the appellant did not pass the qualifying examination at one and the same attempt, she was not eligible in terms of Ordinance 211 (a) of the University Ordinances."

15. The principle of estoppel as such also would apply and a candidate cannot be allowed to approbate and reprobate in the same breath. The benefit of concession on one hand cannot be claimed and on the other hand, the arbitrariness in the rule regarding concession which was accepted and was to be strictly applied. Reliance can be placed upon the judgment in

State of Punjab vs. Dhanjit Singh Sandhu, AIR 2014 SC 3004 wherein, it was held that having accepted the terms and conditions of allotment and the extension fees which was payable as per the terms of the allotment letter, it was not permissible for the defaulting allottees of plots who had firstly agreed to abide by the terms and conditions of allotment and later sought to deny their liability as per the agreed terms. Thus, a person who seeks a rule of equity is precluded by way of his actions and conduct from asserting the right and the writ petitioner would be also bound by the said principle. Reliance can also be placed upon the judgment passed in *Mehar Chand vs. State of Punjab, 1999 (3) SCT 162* wherein, the co-ordinate Bench held that the instructions on the basis of which regularization was sought could not be challenged on the ground that the date of regularization be counted as to the suitability as such and from the earlier date for the purposes of seniority. It was accordingly held that the entire instructions have to be applied to an individual as to from which date the service is to be counted while placing reliance upon two Division Benches in *CWP No. 9200 of 1993, Gurmail Singh vs. State of Punjab and others decided on 21.07.1994* and *CWP No. 14338 of 1997, Jacob vs. State of Punjab and others decided on 12.05.1998*.

16. Thus, in the teeth of the settled law, we are of the considered opinion that to hold to the contrary under Question No. 'A' that clause 9(vi) had to be interpreted in a particular manner was beyond the pale of jurisdiction of the learned Single Judge and is an exercise which should have not been endeavored and laboured on. It is settled principle that a writ of mandamus could only be sought if there was a legal right as such accruing. Reliance can be placed upon the judgment of the Apex Court in *Mani Subrat*

under:-

*“The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122; **State of Haryana v. Subash Chander Marwaha & Ors.**(1974) 1 SCR 165. **Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors.**, (1976) 3 SCR 58 and Ferris Extraordinary Legal Remedies paragraph 198.”*

17. Similarly, in **Maharshi Dayanand University vs. Surjeet Kaur, (2010) 11 SCC 159**, it was held by the Apex Court that the High Court cannot direct an authority to act in contravention of statutory provisions and directions issued as such would not be permissible. In the said case, the issue was whether the candidate who was pursuing regular course for examination in full subjects of the university could be simultaneously allowed to appear in another regular course of the same university or another university or Board. Accordingly, it was held that under Article 226 of the Constitution of India, the rule of law is to be enforced and directions contrary to what has been enjoined cannot be issued. Once the Handbook/Prospectus as such has been held to be having the force of law by the six Full Benches referred to above, it was not within the domain of the learned Single Judge to read it down otherwise.

18. Counsel for the University was also well justified in holding out that giving a supplementary examination only amounts to making up the deficiency and there is no doctrine of relation back while placing reliance upon three-Judge Bench judgment of the Apex Court in ***Council of Homeopathic System of Medicine, Punjab vs. Suchintan, 1993 (3) SCT 276***. In *Rupinder Singh's case (supra)*, the same position was also reiterated by the Full Bench that passing the supplementary examination would not relate back to the date of passing of the annual examination and there is no retrospective operation. A Division Bench of the Bombay High Court in ***Nikhil Arvind Bavdekar vs. Shivaji University, 1995 (2) BCR 686*** held that student cannot insist on any further chances for clearing the MBBS examination than what was provided, as a matter of legal right.

19. Resultantly, keeping in view the above reasoning, we are of the considered view that the judgments which are relied upon by the respondent regarding not appearing in the examination is not to be treated as compartment is not liable to be gone into, keeping in view the fact that once a concession is being accepted and taken, which is an exception to the general rule, it has to be strictly applied. Therefore, it would not lie in the mouth of the candidate as noticed above to claim the benefit without qualifying for the pre-requisite condition which had been prescribed.

The conduct of the respondent:

20. Thus, the argument as such raised that merely because the student had not appeared in the exam and is not to be treated as a compartment would run in the teeth of the concession which was granted which is for a purpose as such and conditional upon the fact that the

examination should have been passed in the first attempt. It is not disputed

that on account of the fact of illness, the writ petitioner could not appear in the first examination which was held for the 3rd year (6th semester) in French-III paper on 14.05.2018. Her application had been duly received on 12.06.2018 (Annexure R-1) wherein, on account of the medical certificate attached, a prayer was made that the said absence be accepted. The processing was done at the level of the University by forwarding the same on 12.06.2018 itself to the Controller of Examinations for further necessary action by the Director of the Institute which has been endorsed on the said document itself. The processing as such had taken place whereby the medical cases of the candidates had been examined and approved by Dr. Deepak Kumar of BGJ Health Centre, Panjab University, which would be clear from Annexure R-4 that cases of 5 candidates of the 4th and 6th semester were processed and the writ petitioner's name also figures in the same. The date sheet as such had been notified on 06.07.2018 also wherein students who had missed 2nd, 6th and 8th semesters theory papers due to clash/sports events/medical in May June, 2018 had been granted the benefit of the special chance. The exam as such was thus slated for 14.07.2018, which the petitioner chose not to appear in. The explanation though given is that she had not been intimated the same but it was also her duty as such to keep in check with the department as to when the special chance was being given as apparently she had been medically examined and approved by the concerned Doctor of the University in pursuance to her application given by her father itself. Therefore, it does not lie in her mouth as such to say that she was never aware of the special chance which was slated to take place. The only advantage she has is that there is no official record of communication and the

candidates. A perusal of (Annexure R-5) would go on to show that out of the 5 candidates, two had appeared in the special chance and, therefore, it cannot be said that candidates had not been intimated. However, the benefit of doubt as such can be given on account of the fact that she had not been intimated by any written communication. The story, however, does not end there since admittedly on 17.05.2019, in the next year, the said exam was held but the petitioner chose again not to appear. During the course of hearing, it has transpired that she chose not to appear due to clash of the examination with her 8th semester examination.

21. In such circumstances, we are of the considered opinion that it does not lie in the mouth of the candidate now to say that the university was acting with any malice towards her. Apparently, having not appeared on 17.05.2019, her father had filed an application dated 24.06.2019 (Annexure P-3) that her request for holding the fee till the result comes of French-III exam in April-May, 2020 be acted upon by giving sympathetic consideration. The same was rejected on 26.06.2019 itself, that it was not permissible under the Rules and guidelines thus reproduced above. The notice had also been put up on 04.07.2019 (Annexure P-10) for deposit of the fees, which she chose not to do so, which led the institute to reject her claim on 10.07.2019 (Annexure P-5) that her request had been rejected by the Board of Control of the Institute and she should submit the fees at the earliest. It was in such circumstances the fees was demanded from her on 10.07.2019 and resultantly on account of the non-payment, the impugned communication dated 19.07.2019 (Annexure P-8) was issued since she had not paid the requisite fee of the 8th semester as well as the 9th semester. The request of fee

concession had already been rejected and she was not allowed to continue

with her internship and resultantly, she was held not eligible for any concession. It is, thus, apparent that the petitioner was insisting as such to continue with her freeships on her own terms which was not permissible and on account of the non-payment of fees, the university was forced to take the drastic step. It has now also come on record that she cleared the said examination on the strength of the instructions issued by the University due to Covid-19 situation on the basis of the performance in the earlier years.

Whether finding of legal malice is recordable in the absence of any official respondent having been impleaded by claimant?

22. It is also to be noticed that in pursuance of the earlier directions, the University has placed on record an additional affidavit showing that as many as 5 students who were availing the benefit of freeship/EWS are no longer getting the benefit of freeship on account of the fact that they had re-appears and out of them, one did not apply for continuation of freeship. It has further been mentioned that now those students are studying by paying full fees of further course. Thus, it cannot be said that the University was only targetting the writ petitioner, as successfully argued before the learned Single Judge. The findings recorded by the Learned Single Judge are also without noticing the fact that no person had been impleaded by name against whom malafides had been alleged. Therefore, in the absence of the necessary exercise having not been done, it would not be justified to hold out that it is a case of legal malice against the person who was getting the benefit of EWS scholarship and that it was done with a particular aim or object. The writ petitioners cry for justice has to be juggled with parity that she was not heard and principles of natural justice were violated but the same principles would also apply to the officials of the Institute and the University, which fact

escaped the notice of the Learned Single Judge.

Findings:

23. Accordingly, we are of the considered opinion that the findings recorded by the Learned Single Judge as such are difficult to maintain in the facts and circumstances of the case.

24. However, the fact remains that by virtue of interim orders, she has continued and completed her law degree and has also been granted a provisional degree. Thus, in the above facts and circumstances, it would be appropriate if she deposits the full fees for the balance semesters as apparently for the 7th semester, the fees has not been refunded. Therefore, she is not entitled to finish her course without having paid the full fees having violated the conditions of the concession granted to her in spite of the fact that she had a chance to clear the examination in the subsequent year also.

25. Resultantly, the University shall raise a demand of the fee from the 8th semester onwards within a week and on deposit of the balance fee, the University shall issue the final degree in place of the provisional degree which has already been issued to her within a period of 2 weeks from the said deposit. The judgment of the learned Single Judge is modified to that extent and also the amount of damages of Rs.1,00,000/- as compensation are also held to be not payable in the above facts and circumstances as a natural corollary of the appeal being allowed.

(G.S. SANDHAWALIA)
JUDGE

30.01.2023
shivani/naveen

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes