



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO. 702 OF 2024

ATHARVA ANIL KSHIRSAGAR

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND  
OTHERS

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Mr. Vilas P. Savant, Advocate for the Petitioner.

Mr. P. S. Patil, Addl. GP for Respondent No.1.

Mr. K. P. Rodge h/f Mr. P. G. Rodge, Advocate for Respondent Nos.2 to 4.

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CORAM : SMT. VIBHA KANKANWADI AND  
S. G. CHAPALGAONKAR, JJ.

DATED : 30<sup>th</sup> JANUARY 2024.

**JUDGMENT (Per: S. G. Chapalgaonkar, J.):**

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India with following prayers:-

*"B. Issue writ of certiorari or any other writ, order or direction thereby quash and set aside the impugned office order dated 11.12.2023 passed by respondent no.3 Associate Dean, College of Veterinary and Animal Sciences, MAFSU, Parbhani and for that purpose issue necessary orders.*

*C. Be please held and declare that, the provisions of MAFSU academic regulations 2016, Rule No. 19(19) examination and evaluation, Rule No.22(4) Promotion and Rule No.26(6)(2) of Unfair means are unconstitutional and causing injustice with students and therefore required to be quash and direct the respondent university to modify those provisions and for that purpose issue necessary orders.*

*D. Issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus, thereby direct the respondent No.2 to consider and decide the application/ appeal submitted by petitioner dated 28.12.2023 and recall the*

*impugned order dated 11.12.2023 passed by respondent no.3 and for that purpose issue necessary orders.*

*E. Issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus, thereby direct the respondent no.2 & 3 to declare the result of second year and further allow the petitioner to appear for compartment examination of ensuing session and for that purpose issue necessary orders.”*

3. The petitioner contends that he is a student and admitted to the College of Veterinary and Animal Science, MAFSU, Parbhani in the academic year 2021-2022 through merit position in NEET examination. The petitioner passed 1st year of Bachelor of Veterinary Science and Animal Husbandry (B.V. Sci. and A.H.) course. The petitioner appeared for second year examination of academic year 2022-2023 in the month of December 2023. On 09.12.2023, he attended the written examination in the subject of Animal Genetics and Breeding - IAGB. While he was in the process of writing his paper, his answer sheet was seized by the Invigilator with allegation of malpractice. The petitioner received the impugned communication dated 11.12.2023 containing the order passed by the Associate Dean of the College declaring him to be failed in the subject of Animal Genetics further debarring him from appearing in the compartmental examination of ensuing session. The petitioner made representation in the form of appeal to the University, however, the same remained undecided. According to the petitioner, he has been subjected to double punishment. Firstly, he is declared as failed in the subject of Animal Genetics, secondly, he is deprived from appearing in the compartmental examination, which is contrary to Article 14 and 21 of the Constitution of India. The petitioner contends that the relevant Rules enabling double punishment are unconstitutional. The Action taken against the petitioner relying upon such Rules is invalid and liable to be quashed and set aside.

4. The respondent-University filed affidavit-in-reply and justified the action taken against the petitioner on the ground that the petitioner malpracticed during the conduct of the written examination. The enquiry was conducted. The petitioner was given due opportunity to put up his stand and on the basis of the findings of the enquiry, the petitioner has been dealt with in accordance with the relevant Academic Regulations framed by the University in consonance with the Veterinary Council of India – Minimum Standards of Veterinary Education – Degree Course (B.V.Sc. & A.H.) Regulations, 2016.

5. Mr. Savant, learned Advocate appearing for the petitioner vehemently submits that the petitioner has been wrongly punished. He is innocent student and victim of the wrong committed by some other students. He would submit that during the enquiry the petitioner tendered his explanation. Similarly, the material alleged to have been found in possession of the petitioner was unconcerned with the subject for which he was undergoing the examination. The concerned Professor has certified the said fact after comparing the question paper and the material found in possession of the petitioner. Mr. Savant would invite attention of this Court to the relevant Regulations to contend that Regulations, 2016 enables the student to appear for compartment examination, even if he fails in two subjects and on clearance of those subjects, he is entitled to sit in next class. As such, the provision is made to avoid the loss of Academic Year of the student, who failed to clear the subject. He would further invite attention of this Court to the Rule 22(4) that enables the student to continue his studies in the next higher class and clear backlog through compartment examination. He would, therefore, submit that the petitioner is subjected to dual punishment under the impugned order i.e. declaration as failed in the concerned subject and secondly, prohibition from appearing the compartment examination, which would result in loss of Academic Year.

He would submit that Rule 26(6) provides for such punishment in case student is held guilty of charge of use of unfair means during examination. As such, provision is arbitrary and irrational. No person can be condemned twice for one and same wrong.

6. Mr. Rodge, learned Advocate appearing for the respondent-University submits that since the petitioner was found adopting unfair means during the course of examination, the report of malpractice was made by the Invigilator. Consequently, petitioner was subjected to inquiry in accordance with law. Mr. Rodge while repelling submissions regarding unreasonableness of enabling provisions of regulation under the caption of “unfair means”, submits that the student failed in examination cannot be equated with the student who has been punished for unfair means. The student who failed in examination is given one more opportunity to clear the subject through compartment examination. However, the student who is punished for adopting unfair means is prohibited from appearing in the compartment examination of ensuing session. There is rational behind providing the punishment for unfair means. To buttress his submissions he would rely upon the observations of the Supreme Court of India in case of ***Yogesh Parihar Vs. Delhi Technological University and Others***<sup>1</sup> to contend that the integrity of the educational system has to be infallible to achieve the progress of the country. The student adopting unfair means in the examination required to be dealt with iron arm.

7. We have considered the submissions advanced on behalf of the respective parties. We have perused the relevant record tendered into service. Apparently, the petitioner was appearing in 2nd year annual examination of B.V. Sc. & A.H. course. On 09.01.2023 while he was attending examination in the subject of Animal Genetics, the Invigilator seized written material from the pocket of the petitioner.

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<sup>1</sup> 2022 SCC OnLine Del 4614.

Accordingly a report was made to Associate Dean. The enquiry was set up. The petitioner was given opportunity to make his representation. The statements of the Invigilators were recorded. On conclusion, report of enquiry came to be submitted. The enquiry report is indicative of the fact that the written material was seized from the pocket of the petitioner. On the basis of the report of the enquiry, the petitioner was declared as failed in the subject of Animal Genetics with further direction making him ineligible for appearing in the compartment examination of ensuing session vide MAFSU Academic Regulations for B.V.Sc. & A.H. degree course.

8. As far as the factual matrix of the matter is concerned, we are not inclined to delve into the arguments submitted on behalf of the petitioner that the material found does not pertain to the subject for which he was appearing in the examination. We have noted that both the Invigilators have stated that the chit was seized from the student and he was found attempting unfair means during the conduct of examination. We do not find any reason to interfere in the conclusion drawn after enquiry conducted by the University.

9. The main thrust of the contention on behalf of the petitioner is that the petitioner has been subjected to dual punishment quoting Rule 26(6) of the Regulation, 2016, which deals with the unfair means. The relevant sub-clause (6) of Rule 26 states as under:-

*“26(6). If the Associate Dean of the college holds that the student is guilty of the charge of preparation, attempt, abetment or actual use of unfair means, he/she shall award punishment to such student as per details given below:*

| <i>Sr. No.</i> | <i>Examination</i>         | <i>Punishment</i>                                                                                                                                                                  |
|----------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>1</i>       | <i>Internal Assessment</i> | <i>The student shall be given zero (0) mark in the particular assessment. He/she shall be eligible to appear in Annual Board examination of the reselective papers of subject.</i> |

|   |                                                        |                                                                                                                                                                          |
|---|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | <i>Annual Examination (theory or practical)</i>        | <i>The student shall be declared to have failed in the concerned subject. He/she will not be eligible to appear in the compartmental examination of ensuing session.</i> |
| 3 | <i>Compartmental examination (theory or practical)</i> | <i>The student shall be declared to have failed in the concerned subject &amp; reverted to the class from where he/she was conditionally allowed promotion.</i>          |

10. The aforesaid clause stipulates that the student found guilty of charge of misconduct can be awarded punishment of declaration to have failed and prohibition from appearing compartmental examination of ensuing session. Mr. Savant by inviting attention of this Court to Rule 19(19) alongwith Rule 24(4) submits that the provision is made for compartmental examination and candidate is allowed to provisionally seat in the next class, even though he failed in two subjects and on clearance of backlog, the candidate is entitled to continue his studies in next professional year. However, the candidate held guilty under Rule 26 is made liable to dual punishment i.e. failure in relevant subjects, so also prohibition from appearing in the compartmental examination, which ultimately results into loss of Academic Year.

11. We have given anxious consideration to the aforesaid submissions. What we find from the Regulations is that the student who failed in examination is treated differently than the student, who has been declared failed for adopting unfair means during the conduct of examination. Apparently, the student who failed to secure requisite passing marks cannot be treated at par with the student suffered punishment on account of unfair means. There is rational behind providing the stringent punishment to student found guilty of malpractices during examination i.e. declaring him failed in the concerned subject with prohibition to appear in the compartment examination. The student from the first category is merely failed to achieve requisite merit position due to deficit performance in the examination, whereas the student who is dealt under Rule 26 for unfair

means suffers punishment for scandalizing the process of examination. We do not find any substance in the contention of the petitioner that he has been subjected to double punishment. The University Regulations are framed based on universal system regarding conduct of examination. The punishment provided for unfair means has to be deterrent. If the student declared as failed in the subject while attempting unfair means in the examination and further debarred from appearing in the ensuing session cannot be branded as double punishment. In fact, it is a part of one and the same punishment that student has to suffer for his misconduct. At this stage, it would be apposite to refer to the observations of the Supreme Court of India in case of ***Dr. Ambedkar Institute of Hotel Management, Nutrition and Catering Technology Vs. Vaibhav Singh Chauhan***<sup>2</sup>, which reads thus:-

*“Copying and cheating in examinations is like Plague. It is a pandemic which can ruin society and the educational system of any country. If the same is left unchecked or if leniency is shown, the same can have a deleterious effect. For any country's progress, the integrity of the educational system has to be infallible. Whether it is paper setters maintaining utmost confidentiality, students not cheating, invigilators being vigilant, examiners doing their job with utmost alacrity knowing that the future of students is in their hands, Universities and colleges not tampering with results - the conduct of all stakeholders has to reflect commitment and also be unblemished”*

12. The aforesaid observations clearly stress on the need to maintain purity and strict discipline in the conduct of examination deeming it necessary for overall progress of the Nation.

13. If we look into the aforesaid observations of the Supreme Court of India, it is difficult to accede with the contentions of the petitioner that the punishment as provided under Regulations is arbitrary or exorbitant in any way. The relevant provisions appears to be in tune with the objects sought to be achieved. The differentiation of

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<sup>2</sup> (2009) 1 SCC 59.

the student, who failed in examination and the student whose performance is cancelled on account of adopting unfair means cannot be treated on equal platform. When it comes to unfair practice or malpractice in the examination, the University or examination authority are required to be give some latitude in regulating functions so as to maintain purity of the education system. The provision contained under the Regulations providing punishment for misconduct are apparently reasonable and consonance with object sought to be achieved. In that view of the matter, we do not find any force in the contention of the petitioner. Resultantly, Writ Petition fails and stands dismissed.

14. Rule is discharged.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**