



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 5830 OF 2024**

1) Sanket Mahdendrakumar Bhartiya

Age : 23 years, Occ. Student,

R/o at post, Aurala, Kannad

Dist.Aurangabad.

2) Krushna S/o Balasaheb Chame,

Age : 21 years, Occ :Student,

R/o Mahadevwadi, Latur,

Dist. Latur.

3) Shivraj S/o Kashinath Mokre

Age : 21 years, Occ. Student

R/o Gade Chowk, Eknath nagar,

Dist.Aurangabad.

4) Chaitanya S/o Sanjay Pallawe

Age : 24 years, Occ. Students

R/o Plot No. A-45, Gallli No.6,

Pundlik Nagar, Garkheda Parisar,

Dist. Aurangabad.

5) Ganesh Pandurang Hiwale,

Age : 21 years, Occ. Students

R/o Parbhani,

Tq.Dist.Parbhani

6)Amit Sunil Patil,

Age : 24 years,Occ. Student

R/o. AIP rethare Dharan, Tq.Wala,

Dist.Sangali.

7) Ashish Amol Mahadik

Age : 23 years, Occ: Students

R/o A/P Islampur, Tq.Walwa,

Dist.Sangli

8) Arpan Hemant Chavan

Age : 22 years, Occ. Student

R/o AIP Punadi, Tq.Palus

Dist.Sangli.

9) Santoshkumar Raghunath Patil

Age : 39 years, Occ. Students

R/o AIP Punadi, Tq.Palus

Dist.Sangli.

10) Irtaza Hussian Faruk Ssakheblal

Age : 22 years, Occ. Student

R/o Plot No.2, Mumtaz Nagar, Puntha Naka,

Tq.Dist. Solapur.

11) Harshvardhan Vinayak Dhawane

Age : 21 years, Occ. Student

R/o Plot No. 120, Laxmi Nagar,

Garkheda Parisar, Soot Girni Chowk,

Aurangabad.

12) Zuber Mahemoob Himone

Age : 21 years, Occ. Student

At Post Hotgi Station,

Tq. South Solapur, Dist.Solapur.

13) Sahil Sunil Chavan

Age : 22 years, Occ. Students

R/o. At Khumpur Post. Ozerde, Tq.Wai

Dist.Satara.

14) Prathmesh S/o Deepak Warang  
Age : 22 years, Occ. Student  
R/o. Shri Akeri, Sawantwadi  
Dist Sindhudurg.

15) Ansari Mohd Arafat Iqbal  
Age : 21 years, Occ. Student  
R/o Kadrabad Plot, Near Civil Hospital,  
Parbhani, Tq.Dist.Parbhani.

16) Rakesh Anilkumar Patil  
Age : 22 years, Occ. Student  
R/o. Narmada Park, Mangalwedha,  
Tq.Mangalwedha Dist.Solapur.

....Petitioners

**Versus**

1) The State of Maharashtra  
Through its Principal Secretary,  
Department of Higher and Technical Education,  
Mantralaya, Mumbai.

2) Dr. Babasaheb Ambedkar Technological University,  
Through its Vice Chancellor,  
Lonere, Tal-Mangaon, Dist. Raigad.  
Maharashtra (India).402103

3) The Registrar  
Dr. Babasaheb Ambedkar Technological University  
Lonere, Tal-Mangaon, Dist. Raigad.  
Maharashtra (India).402103

4) The Controller of Examinations  
Dr. Babasaheb Ambedkar Technological University,  
Through its Vice Chancellor,

Lonere, Tal-Mangaon, Dist. Raigad.  
Maharashtra (India).402103

5) Hitech Institute of Technology, Aurangabad,  
Through its Principal,  
P-119, Bajaj Nagar, MIDC, Waluj,  
Aurangabad-431136

...Respondents

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Advocate for the Petitioners : Mr. P.D.Jarare  
AGP for Respondent No. 1 : Mr. S.K.Tambe  
Advocate for Respondent Nos. 2 to 4 : Mr. Avinash R.Borulkar  
Advocate for Respondent No. 5 :Mr. R.R.Shinde  
h/f Mr. Sambhaji S.Tope

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**CORAM : S.G.MEHARE &**

**SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 09 DECEMBER 2024**

**PRONOUNCED ON : 19 DECEMBER 2024**

**JUDGMENT** [ Per Shailesh P. Brahme, J. ] :

. Rule. Rule is made returnable forthwith with the consent of the parties.

2. Heard both sides finally at the admission stage considering exigency in the matter.

3. Petitioners the students of Computer Science and the Engineering faculty have approached this Court for direction to

conduct remedial examination for odd and even semesters and they are consequently questioning the notification dated 27.03.2024 of the respondent/University discontinuing remedial examination for the engineering students except for those appearing for final year examination.

4. The petitioners are taking education in the different colleges/technological institutions including the respondent no.5 which are affiliated to respondent no.2 Dr. Babasaheb Ambedkar Technological University. They had appeared for winter 2023 examination. However could not clear few subjects. They wanted to appear for remedial examination, but the respondent/university did not arrange it. Surprisingly supplementary examination was declared to be scheduled on 12.06.2024. The respondent/university issued notification dated 27.03.2024 and proposed to conduct remedial examination for the final year students only. They are deprived of the remedial examination which is in the nature of Multiple Choice questions (MCQ's). It is the cause for them to approach High Court.

5. Both parties are relying on The First Rules and Regulations of 2016 (hereinafter referred to as 'Rules of 2016'), Dr. Babasaheb Ambedkar Technological University Act of 2014 (In

short 'Act' of 2014) and Statutes for Constitution, Appointment, Powers and Duties of the officers of the university ( in short 'Statutes')

6. It is the case of the petitioners that Rules of 2016 were in force which were founded on decision of academic council dated 23.12.2016. These rules provided for remedial examination. Even statutes also provided for remedial examination vide Statutes S2.1d, S2.28 and 2(e) Upto winter-2023, respondents were regularly conducting the remedial examinations. The perspective plan also provides for policy of the remedial examination. There was wide and open publicity and representation for the remedial examination. But abruptly banking upon notification dated 27.03.2024. The respondent/university decided not to go for remedial examination.

7. Learned Counsel for the petitioners submits that a long standing practice of conducting remedial examination has been discontinued midway without any prior intimation. The decision in question amounts to change of rules retrospectively. Hence it is arbitrary. The petitioners were all the while represented that till their completion of the courses, facility of remedial examination would be available. The remedial examination is

their legitimate expectation.

8. Learned Counsel submits that the impugned decision based on the notification dated 27.03.2024 has no sanctity of law. After coming into force of the Statutes, the practice of conducting remedial examination continued which can be reflected from notification dated 26.10.2023. The perspective plan of the University from 2020-2025 also reflects remedial examination. Without following any procedure, the decision in question has been taken by the university. The special supplementary examination proposed by communication dated 25.09.24 awaits assent from Vice-Chancellor.

9. Learned Counsel for the petitioner relies on the judgment of **Army Welfare Education Society New Delhi Vs. Sunil Kumar Sharma and Others** reported in 2024 SCC Online SC 1683.

10. *Per contra*, Mr. Avinash Borulkar, learned counsel appearing for Respondent no. 2 to 4 places reliance on the affidavit-in-reply to advance his submission. He would submit that the provision for remedial examination in Rules of 2016 has no sanctity of law. The approval of Chancellor as per Section 43 of the Act was not obtained. The proposal to that effect was submitted on 20.07.2023 but it is still awaited. He would submit

that Statute S3.52 1-g empowers Board of Examinations to reform the pattern of examination or to evaluate the same for more efficiency. Under the powers conferred under the Act and the Statutes, the Academic Council proposed the changes in the remedial examination from Winter-2023. Thus the notification dated 27.03.2024 was issued and relying on the same impugned decision has taken by the University.

11. Learned Counsel Mr. Borulkar vehemently submits that it is the prerogative and the wisdom of the respondent/university to change the pattern and eliminate remedial examinations. The experts have found it fit not to resort to M.C.Q. type examination for the engineering students. He would submit that no right is conferred upon petitioner to insist for remedial examination. The University has provided alternative special supplementary examination to them. He relies on the judgment of Hon'ble Supreme Court **Indian Institute of Technology and Others vs. Sourtik Sarangi and Others** reported in (2021) 17 SCC 79.

12. The petitioners are the students of engineering/computer science faculty from first year to third year. They are undergoing the under graduation since prior to 2023. The Rules of 2016 were provided for the remedial examination.

13. The perspective plan of the University for 2022-25 refers to the remedial examination. The Joint Directors would be responsible for online examination for remedial examination. Following is the purport which can be gathered from perspective plan.

**Remedial Examination**

It is unlikely that all students shall pass the examination in one go. There is small section of students who find it difficult to pass the examination. They have difficulty to clear the tests and many cannot cope with the pressure of expectations. Since the examinations are conducted only at the end of semesters, some of the students may lost out on the time and most importantly, they cannot concentrate on the next semester courses because of backlog. It is proposed that such students shall be given supplementary examinations which shall be conducted online in the form of objective type multiple choice questions. The students appearing for the supplementary test and scoring minimum 40% in the test shall get pass grade in the subject. This will reduce substantially the number of students with backlog and ATKT. Those who cannot clear the supplementary examination, will have to appear the semester examination in the said subject a year later.

14. In the third meeting of the Academic Council held on 23.12.2016 resolution no. 7.6 was passed approving remedial examination for the weaker students which is as follows :

6.1 A A proposal for special Remedial Examination was proposed from the next academic year 2017-18 for the students who fail to pass regular examination with an intention to provide an immediate opportunity to clear the backlog courses and to take the admission in higher semester without wasting a year. The nature of the proposed remedial examination will be Multiple Choice Question (MCQ) preferably conducted in online mode to avoid delays caused in paper-based mode of evaluation. The proposed examination will be conducted for full syllabus with similar difficulty level as that of regular examination. Students securing above 40% marks will be declared as passed in the same subject and will be awarded only Pass grade irrespective of the marks scored above 40% level. The proposed examination will be an optional examination and students may opt either MCQ based remedial examination with Pass grade or a regular examination to be conducted in the subsequent year.

After detailed deliberation, the Council approved the proposal with the following.

6.1.1 Instead of PP grade students be offered minimum passing grade.

6.1.2 Student's internal assessment will be null and void and he has to earn 40% marks in objective test alone.

6.1.3 If student has to improve grade, s/he has to appear for regular examination.

The Council resolved that the above item be confirmed with the above suggestions.

6.2A A proposal was put to the Academic Council to use 'Not Cleared (NC)' phrase instead of 'Fail(F)' in a subject to avoid psychological pressure and social stigma to the students who fail to clear a subject. The Council resolved to accept the proposal and approved the same.

15. Banking upon above resolution, the provision was made in Rule 2 of 2016 which is as follows :

**(6) Remedial Examination**

The candidate will have an option of appearing for an Online Remedial Examination, after the declaration of each End-semester examination results, to pass the subject head where he/she has failed in regular end-semester examination of the semester. The candidate will get only EE grade if he clears the remedial examination and can continue with the next semester. However, for improving his grade in the same subject head, the candidate will have an option of appearing in the 'same' subject in the Supplementary Examination before the regular end-Semester examination.

16. The respondent/University has been conducting remedial examination since the petitioners commenced their under graduation upto winter-2023. Pertinently after introducing the Statutes the practice continued. To corroborate this the petitioner has rightly referred to the Letter dated 26.10.2023, Notification dated 12.10.2023, the resolutions, examination fees semesters grade reports and the hall tickets.

17. The petitioners have been represented that there is a facility of remedial examination by the University through perspective plan as well as Educational institutions. Statutes 2.20 a (d) and 2.28 provide for Powers, Duties of Director and that of Joint Directors, respectively. That discloses the power of conducting online remedial examination. Thus there is consistent and long standing practice being followed by the respondent/university for conducting remedial examination. The petitioners relied on the facility of remedial examination.

18. The University is estopped from contending that it was without the approval of the Chancellor as contemplated by Section 43 of the Statutes or there was no sanctity of law. It has not been explained by the University as to how it indulged into conducting remedial examinations if there was no approval or when the proposal for approval was awaiting. No steps have been taken by the officers of the university to solicit the approval of the Chancellor. It is not open for the University to turn round and challenge its own rules of 2016 for remedial examination.

19. The provisions made in Statutes 2.20, 2.28 corroborate the contention of the petitioner that there existed practice of conducting remedial examination. The Rules of 2016 providing

for remedial examination *de facto* were governing the field till its discontinuation. We do not approve the submission of learned counsel for the respondent that those rules have no sanctity of law or for want of approval.

20. The facility of online remedial examination stands discontinued after winter-2023 examination. The petitioners are deprived of the facility which has been in force since the commencement of their under graduation. We do not find that the discontinuation is with effect from any future date so as to have the students concerned intimation in advance. Learned Counsel for the petitioner is right in contending that there is a legitimate expectation of the petitioner that they would get the facility of remedial examination. He relies on the judgment of **Army Welfare Education Society** (supra). The ratio laid down in following paragraphs is aptly applicable to the case in hand.

46. In *Trigun Chand Thakur v. State of Bihar*, reported in (2019) 7 SCC 513, this Court upheld the view of a Division Bench of the Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management.

47. In *Satimbla Sharma* (supra), this Court held that the unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not “State” within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority private schools.

48. The Full Bench of the Allahabad High Court in *Roychan Abraham v. State of U.P.*, AIR 2019 All 96, after taking into consideration various decisions of this Court, held as under:-

“38. Even if it be assumed that an educational institution is imparting public duty, the act

complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which Civil Appeals @ SLP (C) Nos. 3138-3141/2021 & 3133-3137/2021 confers a right upon the aggrieved to invoke extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element." (Emphasis supplied).

21. Our attention is adverted by learned counsel Mr. Borulkar to Statutes 3.52 to make out a case that power vest with the Board of Examination. He refers to following relevant provision of Statute for Constitution, Qualifications, Appointment, Powers and Duties of Officers of The University which is as follows :

**S3.52 Powers and duties of the Board of Examinations**

g) to undertake examination and evaluation reforms in order to make examination and evaluation system more efficient.

22. There is no dispute that the respondent/university and its authorities are sole repositories of evaluation reforms in conducting the examinations. The objection is to the manner in which the decision has been taken. The power of discontinuing remedial examination has been misused. The contention of the Mr. Borulkar that M.C.Q. would not be proper to judge an Engineering student and therefore conscious decision has been taken cannot be accepted for the reason that the time and the mannerism are not in consonance with fair play and principles of equality. The long standing practice can be done away with

only by following due procedure of law which is lacking.

23. The special supplementary examination scheduled on 12.12.2024 cannot be substituted to the remedial examination. The respondent/University can resort to due procedure for discontinuing the remedial examination.

24. Learned Counsel Mr. Borulkar relies on the judgment of **Indian Institute of Technology** (supra) and more specifically paragraph no. 21. to buttress the submission that the judicial review in the educational matters has very limited scope. Learned Single Judge of the High Court interfered with the decision of the educational institution by permitting the student to register for Joint Entrance Examination and to appear for the same. It was held by Supreme Court that there was no arbitrariness in the decision of the educational institutions. In the said backdrop, the observations in paragraph no. 21 to 24 were recorded. The facts of the case before the Supreme Court are distinguishable from present case. We have already recorded that in the case at hand, we find arbitrariness and denial of legitimate expectation, on the face of record. Hence this judgment would not assist the respondent.

25. For the aforementioned reasons, we allow the Writ Petition

by directing the respondent to conduct the remedial examination. We therefore pass following order :

**ORDER**

- i) The respondent no.2 to 4 shall conduct remedial examination of odd as well as even semesters of the students including the petitioners who were admitted prior to Academic year 2024 by taking necessary steps.
- ii) They shall permit the petitioners and the eligible students to appear for the remedial examination.
- iii) It is clarified that we have not taken away the powers of the Competent Authority to make the amendments or change the examination pattern prospectively.
- iv) Rule is made absolute in above terms.

**[ SHAILESH P. BRAHME, J.]**

**[ S. G. MEHARE, J.]**

*V.S.J.*