



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7619 OF 2024

Swapnil s/o Shivaji Deshmukh
Age 29 years, Occ. Private job
R/o. Gat No.156, Plot No.07, 'B' Wing
Siddhant Vishwa Housing Society,
Alok Nagar, Satara Parisar, Beed Bypass
Chhatrapati Sambhajinagar,
Taluka and Dist. Chhatrapati Sambhajinagar ...Petitioner

Versus

1. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad 431 004
Taluka and district Aurangabad
Through its Registrar
2. The Director,
Board of Examination and Evaluation,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad 431 004
Taluka and district Aurangabad
3. The Section Officer,
(Engineering Unit) Examination section,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad 431 004
Taluka and district Aurangabad
4. The Section Officer,
M.K.C.L. Department
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad 431 004
Taluka and district Aurangabad
5. The Principal,
Hi-Tech Institute of Technology
Office at P-119, Bajaj Nagar,
MIDC Waluj,
Chhatrapati Sambhajinagar 431136 ...Respondents

.....
Mr. S.V. Suryawanshi, advocate for the petitioner
Mr. K.M. Suryawanshi, advocate for respondent Nos. 1 to 3
Respondent no. 4 – served - absent
.....

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATED : 15 OCTOBER 2024**

JUDGMENT (MANGESH S. PATIL, J.) :-

Heard. Rule. Rule is made returnable forthwith. Learned advocate Mr. K. M. Suryawanshi, waives service for respondent Nos. 1 to 3. With the consent of both sides, the matter is heard finally at the stage of admission.

2. The petitioner is seeking writ of *mandamus* directing the respondents, who are the University, its Board of Evaluation, the officers of the examination department of the University and Principal of the institute of technology, wherein he was taking education a degree course in engineering.

3. He is praying for grant of three grace marks in Transportation Engineering - II (paper Code CED-355) of B.E. Civil-Regular-Revised 2011-12, 3rd year, second semester examination. Since he had cleared all other examinations including 4th year examination, he prays that the respondents be directed to issue him the degree certificate of B.E. Civil. He is also claiming damages against the University for not awarding grace marks though he was entitled to, adversely affecting his career.

4. Learned advocate for the petitioner would submit that as per the regulation of the respondent University, he was entitled to have three grace marks and had those been awarded timely, he could have cleared the degree course successfully within the stipulated time. Due to their inaction and abdication of the duty he had to suffer gravely and is entitled to have not only the degree certificate but even the damages.

5. *Per contra*, learned advocate for the respondents, by referring to the affidavit in reply filed by the Professor and the in charge Director of Board of Examination and Evaluation of the respondent - University, would submit that there is no dispute on facts, however, the petitioner was not entitled to have the grace marks according to Ordinance no. 95. It could have been awarded to him only in case if grant of grace marks would have resulted in passing the entire examination of semester/year. He would further advert our attention to the revised syllabi for all branches of T.Y. (B.E.), which was made effective from the academic year 2013-14. According to Rule 1864 of the revised syllabus, the score of a student is considered in aggregate for passing. For passing examination, a candidate must obtain minimum 40% marks in each theory paper and class test taken together, however, the candidate must obtain minimum 35% marks at the University theory examination and in

aggregate must score 45% of the total marks obtainable at the third year semester I and II examination together. He would submit that the petitioner had scored 46% marks in the first semester of the third year and 30.13% marks in the second semester of the third year. The aggregate percentage of both these marks taken together for I and II semesters, were not sufficient to clear the entire semesters/year even if he would have been awarded grace marks under Ordinance no. 95. Consequently, no fault was committed by the respondents in not awarding him the grace marks which were not admissible. The petitioner should blame himself and cannot claim damages.

6. We have considered the rival submissions and perused the papers. There is no dispute about the fact that the petitioner had scored 46% and 30.13% marks in the first and second semesters of third year respectively.

7. The relevant portion of Ordinance 95 reads as under:-

"0.95 GRACE MARKS FOR PASSING IN EACH HEAD OF PASSING (THEORY / PRACTICAL / ORAL / SEASONAL) (EXTERNAL/ INTERNAL)

The examinee shall be given the benefit of grace marks only for passing in each head of passing (Theory / Practical / Oral / Seasonal) in external or internal examination as follows:-

<i>Head of passing</i>	<i>Grace Marks upto</i>
<i>Up to 50</i>	<i>2</i>
<i>051 to 100</i>	<i>3</i>
<i>101 to 150</i>	<i>4</i>
<i>151 to 200</i>	<i>5</i>
<i>201 to 250</i>	<i>6</i>
<i>251 to 300</i>	<i>7</i>
<i>301 to 350</i>	<i>8</i>
<i>351 to 400</i>	<i>9</i>
<i>and 401 and above</i>	<i>10</i>

Provided that the benefit of such grace marks given in different heads of passing shall not exceed 01 percent of the aggregate marks in that examination.

Provided, further that the benefit of grace marks under this Ordinance shall be applicable only if the candidate passes the entire examination of semester/year”.

A careful reading of this Ordinance and particularly, the proviso makes it abundantly clear that award of grace marks is possible only if the candidate passes the entire examination of semester/year.

8. R.1864 of the revised syllabus of B.E. Civil of the respondent University reads as under:-

“R.1864

RULE FOR COMBINED PASSING

1) *To pass the examination a candidate must obtain minimum 40% of Marks in each Theory paper & class test taken together however, the candidate must obtain minimum 35% of Marks at the University theory Examination. The candidate must obtain a minimum aggregate of 45% of the total marks obtainable at the T.E. Semester – I & II Examination taken together.”*

9. Ordinance no. 95, if read conjointly with R.1864 of the revised syllabus, makes it abundantly clear that a candidate must obtain a minimum aggregate of 45% of total marks obtainable at the third year semester I and II examination taken together.

10. When there is no dispute that the petitioner had scored 46% marks in the first semester examination and having scored 30.13% marks in second semester examination, even if, as per Ordinance no. 95, he was awarded maximum grace marks awardable thereunder i.e. 10, his aggregate percentage for semester I and II of the third year taken together would not have crossed 45% which was the bare minimum aggregate of the marks according to R.1864 of the revised syllabus.

12. In the light of above, no fault can be found with the respondents, in not acceding to the request of the petitioner for awarding grace marks much less he would not be entitled to claim any damages. Rather, the petition seriously suffers from grave delay

and laches inasmuch as though he had appeared for the second semester of the third year way back in the year 2018-19, he has been remiss for all these years till he woke up from long slumber in filing this petition on 18.07.2024.

13. There is no merit in the petition. It is dismissed.

14. Rule is discharged.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL , J.)

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