

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 13061 OF 2022

Mr. Abhijit Bhagwat Khedkar

Age :- 27 years, Occupation : Student and business

24 B, Sadguru Park, Avahlwadi,

Wagholi, Pune – 412207.

...Petitioner

Versus

1. State of Maharashtra

[Summons to be served on the Learned
Government Pleader appearing for State of
Maharashtra under Order XXVII, Rule 4
of the Code of Civil Procedure, 1908]

2. The Registrar

Deccan College, Post graduate and research institute
Deemed to be University Yerwada, Pune 411 006

3. The Vice-Chancellor

Deccan College, Post graduate and research institute
Deemed to be University Yerwada, Pune 411 006

4. The Controller of Examination

Deccan College, Post graduate and research institute
Deemed to be University Yerwada, Pune 411 006

5. Director of Higher Education,

Central Building, Near Sasoon Hospital
Pune – 411 001

6. The Joint Director of Higher Education,

Pune Region,
17, Dr. Ambedkar Road, Pune Division,
Pune – 411 001

...Respondents

Mr. Mrunal Surana i/b Mr. Deepak Pote, Advocate for Petitioner.

Mr. J. S. Kini a/w Mr. Aum Kini i/b Ms. Sapna Krishnappa, Advocate for
Respondent Nos. 2 to 4.

Mr. N. K. Rajpurohit, AGP for Respondent Nos. 1,5 & 6 – State.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

DATE : 15th APRIL 2024.

Judgment (Per Jitendra Jain, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner seeks appropriate directions against Respondent Nos. 2 to 4 to declare the result of the Petitioner of the class improvement exam held during the period from 18th June, 2021 to 1st July, 2021 and for revising marksheet to reflect the correct and improved marks. The Petitioner has not advanced any submissions on prayer Clause (B) during the course of hearing which deals with Respondent Nos. 2 to 4 conducting Ph.D courses contrary to UGC regulations.

Brief facts are as under:-

3. In July 2017, the Petitioner took admission in the college of Respondent Nos. 2 and 3 for two years course of M.A. On 27th February, 2020, the Petitioner cleared M.A. exam with 49% marks and since the Petitioner wanted to pursue Ph.D. course, he decided to avail benefit of Class Improvement Scheme (CIS) by appearing again in M.A. final exam. The Petitioner appeared first time for the class improvement exam conducted during the period from 18th January, 2021 to 28th

January, 2021 but the Petitioner could not improve his previous score of 49%. Therefore, the Petitioner once again made a second attempt by appearing in exam conducted during the period 18th June, 2021 to 1st July, 2021. In the said exam, the Petitioner choose to appear for all the 7 papers but in actual he could appear only for 6 papers on the ground that on account of COVID – 19 he was unwell and could not attempt one paper. On 11th October, 2021, Respondent No. 2 informed the Petitioner that he has not improved his class.

4. On 22nd July, 2022, Respondent No. 2 – College issued admission notice for Ph.D. course and the last date for submission of online application was 30th September, 2022. The Petitioner applied for the said course on 13th August, 2022 to Respondent No. 2 - College under the category Nomadic Tribes (NT). The cut-off percentage for the Ph.D. course is 55% unless a candidate is from a reserved category, which is not the case of the Petitioner. It is on this backdrop that the Petitioner is before us.

5. We have heard learned counsel for the Petitioner and the Respondents and with their assistance have perused the documents annexed to the Petition and the reply affidavits filed by the Respondents.

6. The first issue which arises for our consideration is whether the Respondent Nos. 2 to 4 are justified in not issuing and not declaring

the result of the Petitioner of the class improvement exam held during the period 18th June, 2021 to 1st July, 2021 and not issuing revised improved marksheet.

7. In this connection it is relevant to reproduce Class Improvement Scheme of the Respondent Nos. 2 to 4.

“C) Class Improvement Scheme (CIS)

A Student who has already passed M.A. examination held by the Institute in A.I.H.C. and Archaeology / Linguistics but wishes to improve class obtained by him by way of re-appearing for the same examination will be permitted under following circumstances:

1. The student will not be required to keep any terms.

2. He shall be permitted to improve his class in two attempts and within three academic years of his having passed the M.A. degree final examination. The two attempts shall be treated separately for calculating the improvement of class. A student will improve his Grade as shown below:

- i. from Grade E to a higher grade (D,C,B,A,O,)*
- ii. from Grade D to higher Grade (C,B,A,O,)*
- iii. from Grade C to Higher Grade (B,A,O,)*
- iv. from Grade B to Higher Grade (A,O,)*
- v. from Grade A to Higher Grade (O)*

3. A student shall be permitted to improve his earlier performance of the semester examination (out of 60 marks) only. He will choose and appear for the papers, from the semester end examination combination in which regular examination is being held at one given time, i.e. the combination of papers shall be from Sem. I and III and/or Sem. II and IV. He shall not repeat the semester options. The Internal Assessment marks shown in the M.A. degree final examination marksheet (out of 40 marks) shall be carried forward for calculating marks out of 100.

4. The examination will be held according to the syllabus currently in existence. He shall appear in at least three papers (excluding dissertation) from amongst the papers he has appeared earlier. In case there is a change in the syllabus the student will opt for a new paper from the existing syllabus. In such a case the marks for the Internal Assessment for that particular paper will be calculated on average, based on the marks scored by him at the semester examination under the Class Improvement Scheme.

5. While accounting for the class obtained by the student under this scheme, the overall result shall be calculated on the following basis:

- a) marks (out of 60) obtained by him in the semester examination in all the papers he has reappeared;
- b) marks (out of 40) obtained by him in the Internal Assessment as shown in the M.A. degree final marksheet for all the papers he has reappeared in (a) above;
- c) marks (out of 100) obtained by him in the rest of the papers as shown in the M.A. degree final marksheet.

6. In case a student does not improve his class, he will be declared to have failed under the Class Improvement Scheme. The M.A. degree final marksheet, passing and degree certificates issued to him earlier will be valid.

7. If in the overall result at the Class Improvement examination, a student obtains a higher grade/class, he shall be given a revised marksheet, passing and degree certificates. In the revised statement of marks mention shall be made of his having improved the class under this category.

8. In the Class Improvement Scheme a student will not be entitled to the benefit of grace marks nor will he get the benefit of verification / revaluation of the answer paper. He shall also not be entitled to get any prize, medal, award etc.”

8. As per Clause (3) of CIS scheme a student will choose and appear for the papers for improving his score, the phrase **“choose and appear”** would mean that a candidate has to appear in all those papers for which he had selected and chosen to appear, in the examination form. If a candidate does not appear in any of the papers which he had opted then he cannot avail the benefit of the CIS. The phrase “choose and appear” are separated by “and” which is conjunctive and therefore a candidate is compulsorily required to appear for all the papers which he had chosen. In the instant case, admittedly, the candidate did not appear in one of the papers out of 7 papers he had chosen to appear in. Therefore, the Petitioner is not entitled to the benefit of the CIS.

9. Clause 4 of the CIS provides that a student shall appear in atleast 3 papers from amongst the papers he had appeared earlier. The Petitioner is not justified in contending that since he has appeared in 6 papers out of 7 which he chose, he can be entitled to the benefit of CIS by placing reliance on Clause 4 of CIS. In our view, on a conjoint reading of Clauses 3 and 4 of CIS it would mean that a candidate has to choose atleast 3 papers from amongst the papers he had appeared earlier and appear in a fresh exam. Clause 4 only provides for a student to appear in atleast 3 papers but that does not mean that if a candidate chose to appear in all 7 papers but in effect has appeared only in 6 papers then he could have said to have complied with Clause 3. Both Clauses 3 and 4 of CIS operate in different fields. The harmonious constructions of both the clauses would mean that a student in order to avail CIS benefit should choose and appear in atleast 3 papers form amongst the papers he had appeared in earlier and once he chooses the number of subjects which cannot be less than 3 then he has to appear in all the subjects which he chose. However, if he chooses to appear in 7 papers but actually he appears for only 6 papers then he cannot avail the benefit of CIS.

10. Clause 6 of CIS provides that unless a student improves his class he will be declared to have failed under the CIS and the M.A. final marksheet issued to him earlier will be valid. In the instant case,

assuming that the contention of the Petitioner is accepted then also since there is no improvement in the CIS by the Petitioner the percentage obtained by the Petitioner in November, 2019 exam of 49% is to be reiterated.

11. The whole attempt of the Petitioner to avail the benefit of CIS is to pursue Ph.D. course but for which the minimum percentage required is 55%. Assuming the Petitioner's score in CIS exam held is to be considered then his percentage would improve marginally from 49 to 51.6 % which is less than 55% required for pursuing the Ph.D course. Therefore even on this count the attempt of the Petitioner becomes infructuous.

12. Clause 7 of the CIS provides for issuing revised marksheet only if in class improvement exam a student obtained a higher grade or class. In the instant case, admittedly, the Petitioner has not obtained higher grade or class in the class improvement examination and therefore, is not entitled to the revised marksheet as prayed for.

13. For the reasons stated above, the Petitioner is not entitled to any relief.

14. Writ Petition is dismissed with no order as to costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]