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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 2 May 2024

Pronounced on : 6 May 2024

+ W.P.(C) 1506/2024, CM APPL. 6220/2024, CM APPL. 6221/2024 and CM APPL. 6222/2024

RAJ GANGWANI Petitioner

Through: Ms. Mrinal Ekta Mazumdar,
Ms. Aarushi Gupta and Mr. Divyansh Singh,
Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS.

..... Respondents

Through: Mr. Pritish Sabharwal,
Additional Standing Counsel for GGSIPU
Mr. Apoorv Kurup and Ms. Gauri
Goburdhan, Advs. for R-5

+ W.P.(C) 1508/2024, CM APPL. 6225/2024, CM APPL. 6226/2024 and CM APPL. 6227/2024

DURGESH MOHAN MISHRA Petitioner

Through: Ms. Mrinal Ekta Mazumdar,
Ms. Aarushi Gupta and Mr. Divyansh Singh,
Advs.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Pritish Sabharwal,
Additional Standing Counsel for GGSIPU
Mr. Apoorv Kurup and Ms. Gauri
Goburdhan, Advs. for R-5



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**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR**

**JUDGMENT
06.05.2024**

W.P.(C) 1506/2024

The writ petition

1. The issue in controversy in the present writ petition is whether the Petitioners are entitled to be awarded grace marks or to a “mercy chance” so as to tide over having failed in the Communication Sciences paper in the first semester of their B. ASLP¹ course undertaken with the Respondent 1 University (hereinafter referred to as “the University”).

Facts and rival contentions

2. Consequent to clearing the Common Entrance Test (CET) 2020 held by the University with a rank of 248, the petitioner joined the B. ASLP course in the Ali Yavar Jung National Institute of Speech and Hearing Disabilities (Divyangjan) [hereinafter referred to as “the Institute”]. The course spans four years. The petitioner is therefore a student of the 2020-2024 batch.

¹ Bachelor in Audiology and Speech Language Pathology Course



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3. In August 2021, the petitioner appeared for his first semester regular examinations. He failed his Communication Sciences paper in which he scored 30 marks against the minimum pass marks of 37.5. He re-appeared in the said paper on 18 June 2022, the result of which was declared on 9 November 2022. He again failed, scoring 32 marks this time. He undertook his third attempt of his first semester in his Communication Sciences paper in June 2023. As per the result which was announced on 28 July 2023, the petitioner again failed, scoring 34 marks against the requisite 37.5 pass marks.

4. As a result of the University refusing to award him grace marks, the petitioner is unable to appear for the fifth semester exams and to transcend to the sixth semester of the B. ASLP course.

5. It is also pointed out that the petitioner has been unable to clear the subjects “Diagnostic Audiology Physiological Tests”, “Child Language Disorders” and “Implantable Hearing Devices” in his fourth semester examination. His next chance at the said papers would be with his sixth semester examinations. However, if the petitioner is not awarded 3.5 grace marks and is not promoted to his sixth semester, he would never be able to re-appear in the said papers thereby rendering nugatory the provision for three attempts at every paper, specified in Clause 8.1 of the norms of the Rehabilitation Council of India (hereinafter referred to as ‘RCI’) for the B. ASLP course, which reads thus:



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“8.1 Carry-over of papers

Each paper should be successfully completed within 3 attempts including the first one.

Students can start internship after the 6th semester exams. However, students who fail in their clinical exam of 6th semester will have to discontinue internship. The candidates are permitted to carry over the theory courses until the end of the program.”

6. The first prayer of the petitioner in this writ petition is that he be granted 3.5 grace marks for his Communication Sciences paper in his third attempt. If he were to be granted 6 grace marks either in his second or third attempt of his Communication Sciences paper, there is no doubt about the fact that he would have cleared it.

7. The award of grace marks, at the relevant time, was regulated by the “Regulation for Grace Marks in the University Examinations” of the University, circulated on 19 December 2013 (hereinafter referred to as “the 2013 Regulations”) as approved by the Board of Management of the University in its 55th meeting held on 24 September 2013. Regulations 1, 4, 5 and 6 of the 2013 Regulations are relevant and may be reproduced thus :

1. **Applicability:** This regulation shall apply to students, who do not qualify the University Examinations of that particular programme (for which enrolled) in the stipulated time of "n" years for award of degree barring those pursuing programmes approved by Medical Council of India.

4. The grace marks may be awarded (maximum up to six marks) only to the regular semester/annual examinations. However, in programme(s) governed by a National Statutory Body, the norms,



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if prescribed for grace marks, will be applied.

5. Grace marks in End Semester/Annual Examinations after n years, $n+1$ years and $n+2$ years may be awarded for one or more papers/courses of the regular end semester/annual examinations, ensuring that the total marks (including the grace marks), for such papers/courses does not exceed the minimum passing marks.

a) **After n years:**

Six grace marks may be awarded after completion of the normal duration of the course (n semester/annuals etc.), only if this enables the student to become eligible for the award of degree (i.e. after n semesters/years).

b) **After $n+1$ years:**

Nine grace marks to be awarded after $n+1$ year, only if this enables the student to become eligible for the award of degree.

c) **After $n+2$ years:**

Twelve grace marks to be awarded after $n+2$ years, only if this enables the student to become eligible for the award of degree.

6. If a student appears in a subject, his/her best marks will be retained and made operational only when situation enumerated in clause (a), (b) or (c) arises.”

8. Ms. Mrinal Mazumdar, learned counsel for the petitioner relies on Regulations 4, 5 and 6 of the 2013 Regulations. She submits that the University, in rejecting the petitioner’s prayer for grant of grace marks, relies on Regulation 4 of the 2013 Regulations. According to Ms. Mazumdar, Regulation 4 would cover, and not defeat, her case. She submits that Regulation 4 entitles award of upto 6 grace marks in the regular semester/annual examinations. There is no concept of a re-



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appear exam either in the Indraprastha Vishwavidyalaya Act, 1998 (hereinafter referred to as “the IPU Act”) or in the 2013 Regulations. A re-appear exam, she submits, cannot be likened to a compartment examination, as is conducted by the Central Board of Secondary Education (CBSE). A re-appear exam is a second attempt, by the candidate concerned, to undertake the paper. In the absence of any concept of a re-appear exam to be found in the IPU Act or in the 2013 Regulations, Ms. Mazumdar’s submission is that a re-appear exam would also fall within the ambit of the expression “regular semester/annual examination”.

9. Thus seen, Ms. Mazumdar submits that the petitioner was entitled to be awarded upto 6 grace marks in his second as well as in his third attempt in his Communication Sciences paper of his first semester. In either event, he would have cleared the paper.

10. Ms. Mazumdar also relies on Regulation 5 of the 2013 Regulations. Though it uses the expressions “after n years”, “after n+1 years” and “after n+2 years”, Ms. Mazumdar submits that the Regulation cannot be made applicable only at the fag end of the student’s academic career in that particular course. She acknowledges the fact that “n years” represents the number of years spent in the course. However, she submits that if Regulation 5 is to be read literally and made applicable only when the student concerned has reached the end of his course, and is on the verge of obtaining a degree, a student such as the petitioner would never be able to



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complete his course as, he if is not awarded grace marks in his Communication Sciences paper, he will never be able to proceed to the sixth semester or reach the stage when he would be entitled to award of a degree.

11. Reading Regulation 5 literally, therefore, it is submitted, would result in an absurd and anomalous consequence in which a candidate would not be entitled to any grace marks in his first, third or fifth semester papers so that he would not move into the sixth semester and no occasion for applying Regulation 5 would arise.

12. In this context, the petitioner relies on the fact that, in his first attempt at his “Anatomy, Physiology and Hearing” paper in his first semester, the petitioner had obtained only 35 marks but was granted 2.5 grace marks, thereby enabling him to pass the paper. This, submits Ms. Mazumdar, indicates that grace marks could be awarded even before the student reached the n^{th} year at the end of his course. It would not therefore be permissible to interpret Regulation 5 as allowing awarding of grace marks only when a student reaches the end of his course and is on the verge of obtaining a degree. If that were so, the petitioner could not have been awarded 2.5 grace marks in his “Anatomy, Physiology and Hearing” paper in his first semester.

13. Ms. Mazumdar also relies on the fact that another student, Akash Patel, was awarded 6 grace marks in his second semester re-appear exam held in January 2023. This, therefore, indicates that grace



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marks can be awarded in re-appear exams and not merely in the marks obtained in the first attempt.

14. For her contention that “re-appear exams” are also entitled to be treated as regular exams, Ms. Mazumdar places reliance on Clause 12 (iii) of the Ordinances governing the IPU, which reads thus:

“(iii) A student who has to reappear in a year-end examination in terms of clause 10(i) above shall be examined as per the syllabus which will be in operation during the subsequent years. However, in case the student(s) claimed that there are major modifications in the syllabus which is in operation as compared to the syllabus which was applicable at the time of his/her joining the concerned programme and the Director/Principal of the institution is satisfied, the examination may be held in accordance with the old syllabus, provided that Controller of Examination shall be informed at least 3 weeks prior to commencement of year-end examination.

Students who are eligible to reappear in an examination shall have to apply to the Director / Principal of the Institution to be allowed to reappear in an examination and pay the fees prescribed by the University.

Further, the successful candidates will be placed in Divisions as below:

1. Second Division : A candidate obtaining a Cumulative percentage at the end of the programme of 50 and above but below 60, shall be placed in Second Division.
2. First Division : A candidate obtaining a Cumulative percentage at the end of the programme of 60 and above but below 75 shall be placed in the First Division
3. First Division with Distinction : A candidate obtaining a CPI at the end of the programme of 75 and above shall be placed in First Division with Distinction, provided, the candidate has passed all the courses, in the first attempt.”



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15. Ms. Mazumdar also relies on Regulation 6 of the 2013 Regulations. Regulation 6, she submits, indicates that all attempts undertaken by a student would be taken into account, whether regular or re-appear and the pass marks would be considered. It is further submitted that there is no rational basis for awarding grace marks only in the terminal examinations at the end of the final year of the student's course and not in any examinations undertaken in the earlier years.

16. Having attempted his first semester Communication Science paper thrice, the last attempt having been in June 2023, the petitioner has not been permitted to undertake his fifth semester exams in December 2023, as a result of which he has been unable to proceed to the sixth semester.

17. It is for this reason that the petitioner seeks that he be awarded grace marks in his second re-attempt at his Communication Sciences paper as he falls short of the pass marks only by 3.5 and upto 6 grace marks can be awarded as per the 2013 Regulations.

18. In the alternative, the petitioner seeks an additional "mercy chance" to attempt the Communication Sciences paper. The case of one Harsh Thakur, a senior of the petitioner, also undertaking the B. ASLP course has been cited. It is averred that Harsh Thakur was given a substantial chance beyond the number of permissible chances to



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attempt his papers. However, the petition is devoid of any further specific particulars. No other example has been cited by the petitioner. Nonetheless, as Harsh Thakur was granted another chance, the petitioner submits that he also deserves to be extended another chance so that he is able to proceed to the sixth semester and complete his course.

19. From the averments that emanate from the counter-affidavit filed by the University by way of response to the writ petition, Ms. Mazumdar seeks to contend that, though the additional chances given to Harsh Thakur were sought to be justified on the ground that his studies had been negatively impacted by the COVID-19 Pandemic, the petitioner's studies were equally impacted, as the petitioner was a student of the 2020-2024 batch. Ms. Mazumdar submits that Harsh Thakur was allowed to appear in Paper Code 202 four times and Paper Code 301 three times whereafter *vide* letter dated 22 June 2022, he was given a special chance to appear once again in each of the said papers, so that he appeared five times in Paper Code 202 and four times in Paper Code 301. In as much as Harsh was a student of the 2016-2020 batch, Ms. Mazumdar submits that his first three years were already over in 2019 and therefore, there was no justification for granting him any benefit on the basis of COVID-19 Pandemic. In granting a mercy chance, Ms. Mazumdar submits that the University cannot discriminate between student and student. Though the University was seeking to distinguish the case of Harsh Thakur from that of the petitioner on the ground that Harsh Thakur was covered by



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the RCI Guidelines of 2009, while the petitioner's case was covered by the RCI Guidelines of 2017-2018. There was no basis for this distinction as neither of the RCI Guidelines envisaged grant of any mercy chance or special chance.

20. Ms. Mazumdar further submits that if there is no ambiguity in the Regulations, the benefit of the ambiguity has necessarily to be given to the students. On the right of the petitioner to be granted a mercy chance, Ms. Mazumdar relies on the judgment of the Division Bench of the High Court of Punjab and Haryana, authored by Sanjay Kishan Kaul, J. (as he then was) in *Rahul Kapoor v. Guru Ravidas Ayurved University*². The grant of a mercy chance to Harsh Thakur and denial of a mercy chance to the petitioner, she submits, violates Article 14 of the Constitution of India. She, however, acknowledges that there is no rule, regulation or binding guideline or circular envisaging grant of a mercy chance or special chance. She further places reliance on the judgment of the High Court of Punjab and Haryana in *Gurmeet Singh v. Guru Ravidas Ayurved University*³, and of a learned Single Judge of this Court in *Major Amandeep Singh v. University of Delhi*⁴.

21. Ms. Mazumdar also relies on the judgment of the Supreme Court in *P.K. Velson v. UOI*⁵.

² 2014 SCC Online P&H 5306

³ 2014 SCC Online P&H 21478

⁴ 2015 SCC Online Del 14584

⁵ (2005) 11 SCC 192



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22. Responding to the submissions of Ms. Mazumdar, Mr. Prithish Sabharwal, learned counsel for the University, first places reliance on Regulation 1 of the 2013 Regulations. He points out that Regulation 1 itself clarifies that the 2013 Regulations apply to students who do not qualify the University Examinations of that particular programme, in the stipulated time of “n” years for award of degree. The reliance by Ms. Mazumdar on the 2013 Regulations is, therefore, according to Mr. Sabharwal, completely misplaced.

23. Besides submits Mr. Sabharwal, Regulations 4 and 5 are clear and categorical. Regulation 4 permits awarding of grace marks only in regular semester / annual examinations. No grace mark can therefore be awarded in re-appear examinations. He submits that it would be completely impermissible to treat re-appear exams at par with regular examinations. Regular examinations, he submits, are undertaken by students with all others. A student who fails in a particular paper, should he desire to attempt a re-appear examination, has to specifically apply to the University for that purpose. The re-appear examination is not held with all other students or simultaneously with the regular examinations. It is a special examination which is held only for students who have failed in those papers. It cannot therefore be equated with regular examinations.

24. Mr. Sabharwal further submits that the petitioner’s case is conclusively demolished even by the guidelines issued by the RCI for



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the B. ASLP course, Clause 8.1 of which specifically requires every paper to be successfully completed within three attempts. There can therefore be no question of the petitioners staking a right to a fourth attempt as that would clearly infract Clause 8.1 of the RCI Guidelines.

25. Regulation 5 of the 2013 Regulations is also, submits Mr. Sabharwal, clear and unequivocal. It applies only to students who are at the verge of obtaining their degrees and have failed papers after n years, $n+1$ years or $n+2$ years. The rule makes it clear that after n years, 6 grace marks could be awarded, after $n+1$ years, 9 grace marks could be awarded and after $n+2$ years, 12 grace marks could be awarded to the students. The provision, therefore, clearly applies only at the end of the third year and not to the petitioner, who has yet to enter the sixth semester and is seeking award of grace marks in the third attempt at his first semester Communication Sciences paper.

26. The reliance by Ms. Mazumdar on Regulation 6 is also according to Mr. Sabharwal, misplaced. Regulation 6 applies only where clauses (a), (b) or (c) of Regulation 5 apply. As none of these clauses apply in the present case, Mr. Sabharwal submits, Regulation 6 would also not be applicable.

27. Apropos the petitioner's request for being permitted one more chance at the Communication Sciences paper, Mr. Sabharwal, apart from clause 8.1 of the RCI Guidelines also refers to clause 12(i) of the Ordinances governing the University, which reads thus :



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“12. CRITERIA FOR PASSING COURSES, MARKS AND DIVISIONS

- (i) Minimum marks for pass in each Course and Clinical practicum will be 40%. Aggregate will be 50%.

Each Course must be successfully completed in 3 successive attempts including the first one. Internship will start only after the candidate has successfully completed all the papers including clinical practicum.”

28. Thus, as Clause 12(i) of the University Ordinances requires each course to be successfully completed in three successive attempts including the first one, there can be no question of fourth attempt.

29. In fact, even in the case of Harsh Thakur, Mr. Sabharwal points out that the RCI, on being queried by the University in that regard, specifically clarified, *vide* letter dated 5 December 2023, that the maximum attempts for appearing in the Exam for the B. ASLP Programme has been exhausted by Mr. Harsh Thakur and no further attempt could be awarded to him. It was also noted in the said communication that the University, exercising its prerogative in that regard, had given one special chance to Mr. Harsh Thakur. As such, Harsh Thakur’s request for one more chance – like Oliver Twist – was rejected. He has invited my attention to communication dated 10 July 2023 from the University to the Institute which reads thus:

“F. No: GGSIPU/Exam/R4/2023/4419

Dated: 10.07.2023

Principal/Director,
Ali Yavar Jung national Institute



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of Speech and Hearing Disabilities
(DIVYANGJAN) Regional Centre
NIEPID Building, Plot No. 44A,
Block-C. Sector-40,
Noida-201301

Sub: Regarding representation of Mr. Harsh Thakur BASLP
programme (Batch 2016-20).

Sir,

This is in reference to an application dated 19.04.2023 received from
Mr. Harsh Thakur (Enrollment No. 03120209616), student of BASLP
programme duly forwarded by your Institute of the subject cited
above.

The representation of Mr. Harsh Thakur, BASLP was forwarded to the
Rehabilitation Council of India (RCI) vide letter dated 08.05.2023.
The RCI vide its letter no. F.No.7-91/Policy/2023-RCI dated
05.06.2023 has informed that as per RCI Norms. the maximum
attempts of reappearing in the exam for BASLP programme have been
exhausted. The RCI also informed that the University has also
completed its prerogative by giving one special chance to the candidate
in the professional programme (copy annexed).

In view of above, the request of Mr. Harsh Thakur can not be acceded
to.

This issues with the approval of the Competent Authority

Dr. Neelima Markanday
(In-charge, Result-IV)"

30. Mr. Sabharwal further submits that the case of Harsh Thakur is
distinguishable from that of the petitioner even for the reason that the
RCI Guidelines of 2009 were applicable to Harsh Thakur, a student of
the 2016 batch, whereas the petitioner was governed by the RCI
Guidelines of 2017-2018. When Harsh Thakur undertook his third
attempt in Paper Code 202, he was already in the third year of his



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programme which was annual and not semester based. There was, therefore, no question of further promotion of Harsh Thakur, unlike the petitioner who has to clear the papers of previous semesters in at least three attempts to be promoted to the next semester. The B. ASLP Programme being pursued by Harsh Thakur being year based, and that being pursued by the petitioner being semester based, Mr. Sabharwal submits that they cannot be compared with each other. Besides, as 2020-2021 were COVID-19 pandemic years, the University took a lenient view and granted Harsh Thakur one more chance.

31. The case of Harsh Thakur cannot, therefore, be cited by the petitioner as an example to justify the prayer for a mercy chance at attempting the examination.

32. The judgment of the High Court of Punjab and Haryana in *Rahul Kapoor* (*supra*), submits Mr. Sabharwal, is distinguishable from the present case. That was a case in which the petitioner had not appeared at all in the paper, not a case in which the petitioner had undertaken the maximum number of three attempts and failed in all of them. The decision in *Rahul Kapoor* cannot, therefore, help the petitioner.

33. Mr. Sabharwal places especial reliance on para 15 of the judgment of the Supreme Court in *Maharashtra State Board of*



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*Secondary and Higher Secondary Education v. Amit*⁶, which reads thus:

“15. Before parting with the judgment we may observe that the grant of grace marks being a matter of concession and which tends to dilute academic standards, regulations dealing with grant of grace marks should not be generously and liberally construed. We have noticed that several concessions are given to candidates by way of grace marks. A candidate may qualify under different clauses of the regulation for the grant of grace marks. It is doubtful if a candidate can claim grace marks under more than one clause even if he may be eligible for the concession under several clauses. It has been contended before us with considerable force that a candidate may be granted grace marks under only one of the clauses under the relevant regulation, and that in no case shall he be entitled to the award of grace marks under more than one clause even if under the regulation he may be eligible for grant of grace marks under more than one clauses. It is quite possible that a candidate may have taken part in games at the State level and may have also participated in the Republic Day Parade and in the President's Rally, which are covered by sub-clauses (d), (e) and (f) of clause (2) under Note 1. If the benefit under all the three clauses is extended to a failing candidate, it would really reduce the examination conducted by the Board to a mockery.”

34. Thus, submits Mr. Sabharwal, the Court has to abide by the wording of the applicable regulations when dealing with a prayer for grant of grace marks. There is no scope for undue leniency.

35. The petitioner's prayer for grant of a mercy chance is also, according to Mr. Sabharwal, unjustified, as the petitioner's case is not one in which, owing to unavoidable circumstances, he was not in a position to attempt the papers. The petitioner attempted the Communication Sciences paper not once but thrice and failed each time. There can, therefore, be no question of grant of any mercy

⁶ (2002) 6 SCC 153



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chance to him.

36. Even otherwise, the grant of a mercy chance to the petitioner is a matter of the discretion of the Vice Chancellor. The discretion in that regard has been conferred on an authority as high as the Vice Chancellor only to ensure that it is not misused or abused.

37. Mr. Sabharwal has also referred to the file noting on the basis of which one time exemption by way of one additional chance was granted to Harsh Thakur which was entirely premised on “the prevailing COVID-19 Pandemic for the last two years”.

38. He finally refers to the following passage from the judgment of the Supreme Court in the *Punjab University, Chandigarh v. Sunder Singh*⁷ :

“5. We must indicate our disapproval of the position obtaining in the Punjab University that in respect of post-graduate degrees grace marks are being awarded. A master's degree in any speciality is considered to be the highest qualification in the normal run. It is very much necessary that such a degree should be conferred only on the deserving students who having studied the subject and taken the appropriate examination conducted by the University at the end of such studies have deserved the degree on the basis of their performance. There should be no scope for looking for grace marks at such level and the sooner the Punjab University abandons the practice of awarding grace marks in respect of post-graduate examinations the better it would be in the interest of higher education in this country.”

Analysis

⁷ AIR 1984 SC 919



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Re. Award of grace marks

39. The Supreme Court, in para 15 of the decision in *Maharashtra State Board of Senior Secondary and High School Education*, has clearly cautioned courts from exercising undue leniency in the matter of awarding of grace marks. The Supreme Court has observed that grace marks dilute academic standards and that, therefore, any direction to award grace marks has to strictly abide by the terms of the Regulations applicable in that regard. The Court cannot, on the basis of any interpretative calisthenics, seek to read into the regulations relating to award of grace marks, something which is not to be found therein.

40. Though Ms. Mazumdar referred to the 2023 Regulations of the University relating to award of grace marks, those regulations are not applicable to the petitioner; ergo I do not intend to make any reference thereto. There is no manner of doubt that the present case has to be decided in the context of the 2013 Regulations.

41. Regulation (1) of the 2013 Regulations itself states that it applies only to students who do not qualify University examinations of the programme in which they are enrolled within the stipulated time of “n” years to entitle them to award of degrees. Read in isolation, therefore, Regulation 1 would seem to except the applicability of the Regulations to students who have yet to reach the nth year, when they



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are at the verge of obtaining a degree.

42. That said, Regulation 4 states that upto 6 grace marks may be awarded only to the regular semester / annual examination.

43. To my mind, it would be difficult to hold that re-appear examinations are also regular examinations. If such a view is to be adopted, there would be no difference between re-appear and regular examinations and all examinations would become regular. In that event, the word “regular” in Regulation 4 would be rendered a redundancy. This interpretation is fortified when one notes that the expression used in Regulation 4 is “Regular Semester/Annual Examinations”, and parallelly, Regulation 5 uses the expression “Regular End Semester/Annual Examinations”. The regular examination as envisaged by the 2013 regulations is, therefore, apparently the examination which is held at the end of the semester or at the end of the year. Intermediate re-appear examinations which are held only to enable a candidate a second or third chance to appear in a paper cannot, therefore, be regarded as regular examinations.

44. These examinations are only held for the candidates who desire to re-appear and the candidate who desires to re-appear has to specifically reapply for a chance to do so. They, therefore, cannot be regarded as “regular examinations”, much less “regular semester/annual” or “regular end semester/annual” examinations.



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45. There is no reason, therefore, for this court to substitute any other view for the view of the university that the petitioner could have been permitted grace marks only in the first attempt at the Communication Sciences paper undertaken by him in August 2021. In that attempt, the petitioner scored 30 marks in the paper. Even if 6 grace marks would have been awarded, therefore, the petitioner's score would have only increased to 36, which would still not suffice for the petitioner to pass the paper.

46. As such, the prayer of the petitioner to be awarded grace marks in the second or the third attempt at the Communication Sciences paper, therefore, cannot be granted, and the university cannot be said to have acted illegally in refusing the said request.

47. Regulation 5 of the 2013 Regulations, is, on its face, completely inapplicable. It clearly states that it applies only to "*award of grace marks in end semester/Annual examinations after n years, n+1 years, n+2 years.....of the regular end semester/annual examinations*". It makes matters clearer by specifying the number of grace marks that could be awarded at the end of n years, at the end of n+1 years and at the end of n+2 years. If a candidate is seeking grace marks for papers attempted at the end of n years, he is entitled to 6 marks; after n+1 years, he is entitled to 9 marks and at the end of n+2 marks, he is entitled to 12 marks.

48. In each case, the grace marks would be awarded only *if it*



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renders the candidates eligible for award of degree. These stipulations conclusively establish that Regulation 5 has no application to the case in hand. A candidate becomes eligible for award of a degree only at the end of n years. It is only then, therefore, that Regulation 5 can apply.

49. The petitioner admittedly has yet to enter the sixth semester. He has not reached n years of the B. ASLP course. Regulation 5, therefore, cannot apply to him.

50. If Regulation 5 does not apply neither does Regulation 6. Regulation 6 clearly states that it applies only where the situation is covered by Clauses (a), (b) or (c) of Regulation 5.

51. Viewed any which way, therefore, the petitioner cannot be stated to be entitled to award of grace marks under the 2013 Regulations which are the only Regulations applicable to the present case.

52. Mr. Sabharwal has also in this context drawn my attention to clause 12.0 of the RCI Guidelines, 2017-2018 which read thus:

“12.0 Others

On all other issues not mentioned in these rules and regulations like the pattern of question paper, grading, award of grace marks, and declaration of rank, among others, the rules and regulations of the respective University shall prevail.”



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53. In so far as award of grace marks is concerned, therefore, the rules and regulations of the University prevail. Under these rules and regulations, the petitioner cannot be regarded as entitled to any grace marks.

54. In so far as the judgment in *Rahul Kapoor* (*supra*) is concerned, the facts of that case are clearly distinguishable. That was a case in which, there was a statutory provision giving the Vice Chancellor to grant mercy chance at his discretion. That apart, the High Court was persuaded to hold in favour of the appellant before it keeping in mind the fact that an identically situated student had been granted a mercy chance. The other factors which operated to persuade the Division Bench to hold in favour of the appellant Rahul Kapoor were that he lost his first chance at appearing in the paper on account of the health problem faced by his father and that the two papers which remained to be cleared by the appellant were the papers in Sanskrit and History of Ayurveda. The Division Bench observed that the nature of the remaining subjects itself could have been a reason to exercise discretion in favour of the appellant.

55. As against that, in the present case, the petitioner has undertaken the Communication Sciences paper thrice. Unlike Rahul Kapoor, he has not missed a single attempt. He has failed in all three attempts. There is a statutory mandate that the examination has to be cleared in three attempts.



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56. The case of Harsh Thakur is clearly distinguishable. Harsh Thakur attempted the papers under the earlier annual examination system under which the examination had to be attempted at the end of the year. He did not, therefore, have to pass the papers in one semester to proceed to the next semester. He had already entered the third year of his course so that there was no further examination which he would have required to pass except the final examination. As against this, the petitioner seeks a mercy chance when he has yet to attempt his fifth semester paper. The present system under which the petitioner is studying being semester based, the inability of the petitioner to clear his Communication Sciences paper despite having undertaken three attempts acts as a statutory embargo on the petitioner proceeding to the sixth semester. That apart, the petitioner undertook his second attempt at his Communication Sciences paper in June 2022 and his third attempt in June 2023, both of which took place after the COVID-19 Pandemic had abated. The considerations which applied in the case of Harsh Thakur cannot, therefore, be applied to the petitioner.

57. Ordinarily, where a lenient view is taken in respect of a particular student, in exercise of discretion that is vested in the highest authority in that regard, the Court would not interfere unless the exercise of discretion is capricious or whimsical. Ordinarily, the Court would also not step in of its own to direct a similar discretion to be exercised for others unless they are in identical circumstances and the authority could be said to have acted in a discriminatory fashion in exercising discretion in favour of the candidate in one case and



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refusing to do so in favour of the other. In the present case, the facts which applied to Harsh Thakur including the Regulations under which he was pursuing his course are different from those which apply to the petitioner.

58. The petitioner, therefore, cannot seek benefit of a mercy chance by analogizing his case with that of Harsh Thakur.

The Sequitur

59. The sequitur of the above discussion is that both the counts on which the petitioner seeks relief i.e. by awarding of grace marks as well as by granting mercy chance cannot sustain in law.

Conclusion

60. For all the above reasons, this Court finds itself unable to grant relief that the petitioner seeks. The writ petition is accordingly dismissed with no orders as to costs.

61. The pending miscellaneous applications do not survive for consideration and are disposed of accordingly.

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62. The facts in this case are identical to the facts in WP (C)



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1506/2024. The relief claimed by the petitioner, Durgesh Mohan Mishra is also identical to the relief claimed by Raj Gangwani.

63. Accordingly, following the above judgment, this writ petition is also dismissed, with no order as to costs.

64. The pending miscellaneous applications do not survive for consideration and are disposed of accordingly.

C.HARI SHANKAR, J

MAY 6, 2024/yg