

(1999) 12 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 6140 to 6144 of 1999

A. Girija and others

APPELLANT

Vs

University of Mysore

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

University Regulations to appear at the next University examination — Regulation 2, 5, 6

Citation : AIR 2000 Kar 283 : (2000) ILR (Kar) 3558 : (2000) 5 KarLJ 209 : (2000) 2 KCCR 34 SN

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri B.H. Kaleel Khan, for Sri M. Ram Bhat, for the Appellant; Sri S.G. Bhagwan, for the Respondent

Judgement

1. A common question arises -for consideration in these writ petitions which shall stand disposed of by this common order. The answer to the question turns on a true and correct interpretation of the regulations framed by the respondent-University governing declaration of ranks in the examinations offered by it. The controversy arises in the following circumstances.

2. The petitioners have passed their B.E. final examinations in different disciplines in the year 1998. Their grievance is that looking to the marks secured by them in VII and VIII Semester examinations conducted by the University, they were entitled to ranks in terms of the regulations framed by the University. Instead of doing so the University has chosen candidates who had secured lesser marks and thus deprived the petitioners of the distinctions which was rightfully theirs. They have prayed for a mandamus directing the respondents to allot to them proper ranks in accordance with the regulations and to rectify the list already published.

3. Ranks are declared by the respondent-University in terms of regulations published under notification dated 16th December, 1991. Regulation 1 envisages

declaration of ranks equal to 10% of the total number of candidates appearing for any final or semester examination subject to minimum of one and maximum often, provided that at least five candidates were registered for the examination. Regulation 2 is for our purpose relevant and may therefore be extracted in extenso:

"Ranks shall be based on the total marks of examinations of the entire degree/diploma programme or the marks of a limited set of particular years or semesters like the final year or the last two/four semesters on the basis of which classes are declared at the end of final examination, as per regulations governing the course".

It is evident from a plain reading of the above that ranks may be declared by the University on the basis of total marks secured by the candidates in respect of the entire degree/diploma programme. They can also be declared on the basis of the marks secured by candidates in a limited set of particular years or semesters like the final year or the last two/four semesters on the basis of which classes are declared at the end of final examination. Regulations governing the Bachelor Degree course in Engineering framed by the respondent-University inter alia deal with the declaration of classes of successful candidates. Regulation F. 8 is in this regard relevant and reads as under:

"F. 8: For the final declaration of classes of successful candidates for the entire course, marks obtained by a candidate in the first appearance taking all the subjects of the semester and getting the benefit of exemption in one or more subjects of VII to VIII Semester examinations will be considered for declaration of class".

A conjoint reading of the two regulations extracted above would show that ranks can be declared by the University on the basis of the performance of the candidates in the VII and VIII Semester examinations only. That is because ranks have to be declared either on the basis of the marks obtained for the entire examination or on the basis of performance of the candidates in the examinations relevant for declaring the classes. It is not disputed that for a number of years in the past performance of the candidates in VII and VIII Semester examinations only has been made a basis for declaration of classes and ranks. This is evident even from the rank list published by the University for the B.E. Examination held in September/October 1998. The said list shows that marks obtained by candidate for the VII and VIII Semester examinations alone have been taken into consideration. Suffice is to say that for purposes of declaring classes and ranks the relevant examinations as per the regulations and the practice followed by the University have been limited to the VII and VIII Semesters only.

4. The question then is, whether the petitioners were unjustly deprived of the benefit of ranks under the regulations. The University has sought to justify denial of the said destruction by reference to Regulation 6 which reads as under:

"Repeaters at the University Examinations and those who take the same examination once again for the sake of improvement of class shall not be eligible for ranking".

It was argued by Mr. Bhagwan, Counsel appearing for the respondent that since the petitioners had repeated the examinations at different stages of the course, they were disqualified from being considered for allotment of a rank.

5. Mr. Khan, Counsel appearing for the petitioner, on the other hand contended that the petitioners were not repeaters in the true sense of that expression. He submitted that under the scheme of the regulations only those who were required to repeat the studies in a given semester could be described as repeaters. The petitioners had not repeated the studies at any stage of the course and were not therefore repeaters within the meaning of Regulation 8. A candidate who failed to qualify in an examination for any given semester had in terms of Regulation 5(2) of the University Regulations to appear at the next University examination. Any such appearance without repetition of the studies for the semesters was not, according to the learned Counsel tantamount to repeating the course so as to disqualify the students in terms of Regulation 6.

6. The expression "Repeaters" appearing in Regulation 6 supra has not been defined. It has, therefore, to be given its ordinary meaning having regard to the context in which the same appears in the regulation. Websters in its II Edition explains the meaning of the term "Repeater" thus:

""Someone or something that repeats/a repeating watch or clock which strikes the last hour, quarter hour and the subsequent number of minutes when a spring is released/a rifle, shotgun or pistol which can fire a number of times without reloading/a person who repeats in an election/a student who has to repeat a class or term/(telegraphy) an automatic relay for switching a message from a weak circuit to a strong one".

It would therefore appear that anything done or undergone on account of a previous failure would amount to repeating and the person undergoing the experience would be a repeater. Repetition of an examination by a student on account of his previous failure regardless whether or not the same is accompanied by repetition of the course or studies would thus make him a repeater.

7. The next and perhaps, more important question is whether a person who repeats an examination relevant for the award of a class or rank should alone be said to be a repeater within the comprehension of Regulation 6. In other words, can a person who repeats an examination other than the one relevant for declaration of classes and ranks be held to be disqualified for the award of a rank. My answer is in the negative and I say so for two reasons. Firstly, because the University has, out of the options available to it chosen to declare the ranks by reference to the performance of candidates in the VII and VIII Semester examinations only. Although it could have declared ranks on the basis of the

performance of the candidates in the entire training programme, yet it has in its wisdom chosen to confine the determination of ranks by reference to the last two examinations alone. The other examinations and performance of the candidates in the same are for purposes of declaration of ranks and class irrelevant. If that be the position, the expression "repeater" at the University examinations must logically be limited to examinations relevant for the purpose of declaration of classes or ranks. Consequently the candidates who have repeated an examination relevant for declaration of ranks or classes would stand disqualified for purposes of inclusion in the rank list regardless of the marks that they may score at any such examination. Repetition of any examination other than those relevant for declaration of ranks would then be insufficient for the University to exclude such candidates from consideration. Secondly, because the University has understood the regulation in the manner indicated above it is admitted by the University in the additional affidavits filed on its behalf, that candidates who had repeated the examinations at various semester levels had been considered and allotted ranks in the previous years. That is according to Mr. Khan, Counsel for the petitioner because none of those who had been allotted ranks in the previous years had failed in the qualifying VII and VIII Semester examinations. Their failures were all related to previous examinations like the petitioner which are not considered for purpose of inclusion in the rank list. That position is not disputed before me nor is there any material to show that declaration of ranks for the previous years included persons who had repeated the examination even in VII and VIII Semesters also. It would therefore mean that the University has consistently understood and interpreted Regulations 2 and 6 to mean that any candidate who had not repeated the examination either for improvement of class or otherwise for VII and VIII Semester examinations would qualify for allotment of a rank. Having taken that view and applied that interpretation for all these years, it was not permissible for the University to alter the same in the case of the petitioners. Indeed if the intention is to disqualify all such candidates as repeaters an examination at any stage of the course, it is possible to make the same explicit by incorporating in the regulation an appropriate amendment. So long as that is not done, all such persons as have not repeated the VII and VIII Semester examinations which qualify for the award of classes and ranks shall be entitled to a consideration of their claims.

8. These writ petitions accordingly succeed and are hereby allowed. The respondent-University shall examine the claim made by the petitioners for award of a proper rank in accordance with the Regulation 2 keeping in view the observations made hereinabove. The needful shall be done within three months from the date a copy of this order is received by the respondent.

9. No costs.