

(1999) 09 AHC CK 0197
In the Allahabad High Court
Case No : C.M.W.P. No. 33157 of 1999

Abhishek Rathore

APPELLANT

Vs

Director, Institute of Engineering and Rural Technology,
Allahabad

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Citation : (1999) 4 AWC 3181 : (1999) AWC 3181 : (1999) 3 UPLBEC 2377

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : O.P. Singh, for the Appellant; Dinesh Kackker, S.C. and Rahula Sripat, for the Respondent

Final Decision : Disposed Off

Judgement

Yatindra Singh, J.—The Institute of Engineering and Rural Technology, Allahabad (the institute) awards diploma in different branches of the engineering. It has three years diploma course, which is to be completed in six semesters. The petitioner was admitted in the year 1996 in the institute for diploma in electronics. He appeared in second semester in April, 1997 in which he failed. Thereafter he appeared as an ex-student in the second semester in April, 1998, when he passed in all subjects except one. Petitioner was promoted to the third semester and was asked to appear in the examination of subject in which he failed in the second semester along with the fourth semester. Petitioner cleared all subjects in third and fourth semester but failed again in the second semester paper. The institute has not promoted the petitioner to the fifth semester, hence the present writ petition for a direction to the institute to permit the petitioner to join regular classes of the fifth semester and to permit him to appear in subject of the second semester where he had failed as an ex-student.

2. I have heard Sri O. P. Singh, learned counsel for petitioner, Sri Rahul Sripat, learned counsel for the institute and Sri Dinesh Kackkar who has assisted the Court as Amicus Curie. Sri Sripat for the institute has argued that the case is

governed by the table given in Rule 7 of Chapter "Rules for Registration and Examination under MPECS". Whereas Sri Singh for the petitioner has argued that the Rule 7 applies only to a student who fails in odd semester and not to a student who fails in even semester and in such a situation Rule 6 is applicable.

3. The Rule 6 states that a student who has failed in more than two subjects in any semester will be declared failed and has to repeat the same semester in the subsequent years. It is applicable to all semester. The petitioner had appeared in second semester for the first time in April. 1997. He had failed in more than two subjects and it is for this reason he had to appear again in April. 1998 as ex-student. This Rule does not deal with the situation if a person has failed in less than two subjects.

4. A person failing in less than two subjects is dealt with in Rule 7. It is true that use of the word "odd" in the first line of Rule 7 is rather odd. This gives an impression that as if this Rule is applicable only so far as first, third and fifth semesters are concerned. But the reading of the entire Rule 7 shows that the intention of the Rule is that it is not limited to first, third and fifth semester but it is applicable to all semesters. The word "odd" though never used in the sense of "any" perhaps in this Rule has been awkwardly used in that sense, namely--"any".

5. The last line of Rule 7 along with table clarifies the point raised in this writ petition. The first row is of headings. The first heading of the first column of this table is "For promotion to examination and thereafter, different semesters are mentioned below it in that column. Then the next heading is "Max. Permitted number of carry over subjects of semester I. 11, III. IV, V. VI" is mentioned. Below this heading, in different column different papers are mentioned and after the table in as trick it is mentioned "Students not fulfilling conditions as laid down in above table shall be declared "NOT PROMOTED" and shall not be promoted to next semester." This shows that in the fifth semester, students can carry only 2 papers of the third and two papers of the fourth semesters. No papers of the first or the second semester can be carried to the fifth semester. If the students have not cleared all papers of the first, or the second, semester then they cannot be promoted. The last item in the first column is "Special Supplementary" semester. In this special semester, any student can appear in four papers but these four papers could only be residue of the fourth, fifth and sixth semesters, i.e., in special supplementary also a student cannot appear if he has not cleared all papers of second semester. In view of this, the petitioner is not entitled to be promoted to the fifth semester as a regular student.

6. Sri Rahul Sripat counsel for the Institute has made a statement that the petitioner is entitled to appear in the paper of second semester as an ex-student and in case he passes the same, he would be entitled to register as regular student in the fifth semester. In view of this, the writ petition is disposed off with the observation that the petitioner may be permitted to appear in the paper of second semester as an ex-student and in case he passes, then he would be

promoted to the fifth semester as a regular candidate.

7. With these observations the writ petition is disposed off.