
(2022) 10 DEL CK 0002

In the Delhi High Court

Case No : Letter Patent Appeal No. 392 Of 2022

Ali Humam

APPELLANT

Vs

Jamia Millia Islamia University & Ors

RESPONDENT

Date of Decision : 06-10-2022

Acts Referred:

Citation : (2022) 10 DEL CK 0002

Hon'ble Judges : Vibhu Bakhru, J; Amit Mahajan, J

Bench : Division Bench

Advocate : Pritish Sabharwal, Sanjeet Kumar

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

Introduction

1. The appellant – a student of Jamia Millia Islamia University (Respondent no.1, hereafter 'JMIU') – has filed the present appeal, inter alia, impugning an order dated 23.05.2022, whereby his petition being W.P.(C) 7801/2022 captioned Ali Humam v. Jamia Millia Islamia University & Ors., was rejected. The appellant also seeks that this Court pass an order directing that the appellant be promoted to 9th Semester of B.A. LLB (H) course and permit him to appear in the 10th Semester examination, which was scheduled to commence on 05.06.2022.

2. By an ad interim order dated 13.06.2022, the appellant was permitted to appear for his 10th Semester examination, albeit subject to the condition that no equities would be claimed.

3. The appellant had filed the aforesaid writ petition [W.P.(C) 7801/2022], inter alia, praying that directions be issued for the respondents to correct the technical fault resulting in not releasing the appellant's result for the 5th Semester examination. The appellant's result for the 5th Semester examination was withheld and released on completion of the 7th Semester examination. The

appellant had not cleared the 5th Semester examination. Since the result for the 5th Semester examination was declared after the 7th Semester examination, the appellant claims that he was effectively prevented from re-appearing in the said examination – which was otherwise permissible – along with the 7th Semester examination. As a consequence, the appellant was also declared unsuccessful in the 6th Semester examination as the marks for the 6th Semester examination were computed partly by taking into consideration the 5th Semester examination.

4. The appellant was not promoted to the 9th Semester and is, essentially, aggrieved by his promotion being withheld.

Factual context

5. The relevant facts necessary to address the present appeal are as under:

5.1 The appellant cleared his entrance examination for being admitted to the B.A. LLB (H) course with JMIU and joined the said course in the month of July 2017. The B.A. LLB (H) course is a five years course spread over 10 semesters.

5.2 Ordinance 15-C of JMIU is relevant and set out below:-

“5. Promotion Scheme

i) A student shall be promoted automatically from an odd semester to next even Semester.

ii) Provided that a student shall not be promoted from an even Semester to next odd Semester, if he/she has failed in more than four courses/subjects.

iii) Every student who has failed in more than four courses at the end of a given academic year or who has failed to clear requisite number of courses of the preceding years before being eligible to be promoted to the next odd Semester, shall be entitled to appear as an ex-student for the same year in respect of the courses to be cleared by paying such fee as may be prescribed from time to time.

In respect of such students there will be no requirement of compulsory attendance in such courses. However, such students will have to complete all other requirements of the course/courses as prescribed for the regular students.”

[Emphasis supplied]

5.3 In terms of the said Ordinance 15-C, a student would be automatically promoted from an odd semester to an even numbered semester (mid-year semesters) irrespective of the examination papers cleared by him. Thus, the student would not be withheld in the 3rd, 5th, 7th or the 9th Semester and would be automatically promoted to the next semester. However, the promotion from an even numbered semester to an odd numbered semester is contingent upon a student having not failed in more than four examination papers. Thus, if a student has not cleared five examination papers, he would not be promoted to the next academic year.

5.4 The appellant was sought to be detained in the 5th Semester on account of shortage of attendance. According to JMIU, the appellant had not completed the 5th Semester and therefore, he was not eligible to be promoted to the 6th Semester. However, the appellant was permitted to appear in the 5th Semester examination but his results were withheld.

5.5 It appears that the Dean, Students' Welfare had condoned the shortage of attendance and the appellant was promoted to the 6th Semester. The studies of students were adversely affected in the 6th Semester (the first half of 2020) on account of outbreak of the Covid-19 pandemic.

5.6 However, the appellant was promoted to the 7th Semester in view of the UGC Policy to not hold back students on account of the mitigating circumstances.

5.7 The appellant did not clear his two papers from the 7th Semester. Nonetheless, he was promoted to the 8th Semester. According to JMIU, the appellant had failed in fifteen papers as at the end of the 7th Semester. This included two papers from the 4th Semester, six papers from the 5th Semester, and five papers from the 6th Semester.

5.8 A student can re-appear for the examination papers of an odd semester, which he/she has failed to clear, along with the examination held for an odd semester. In other words, the students can re-appear for the 3rd Semester paper along with the 5th Semester (regular), the 7th Semester (regular), or the 9th Semester (regular), examination. It is not open for the student to re-appear for examination of papers of an odd semester along with the regular examination relating to an even semester. Similarly, a student can re-appear for an even semester paper along with examinations relating to even semesters.

5.9 Thus, the appellant was entitled to re-appear for his 5th Semester papers along with the 7th Semester (regular) examination but he did not do so. According to the appellant, this was because his results had not been declared at the material time.

5.10 It is also material to note that in terms of the Guidelines issued by the University Grants Commission (UGC), the students for the session ending May, 2020 were assessed on the basis of internal assessment and past performance in view of the disruption caused by the outbreak of the pandemic. Thus, JMIU assessed the students for the 6th Semester (session ending May, 2020) on the basis of 50% weightage to the results of the 5th Semester examination and 50% on internal assessments. Since the appellant's result for the 5th Semester had been withheld, the same also affected his results for the 6th Semester. Nonetheless, in terms of the UGC Policy, he was promoted to the 7th Semester.

5.11 The appellant was not promoted to the 9th Semester as, according to JMIU, he had not cleared backlog of thirteen papers in which he had failed.

5.12 Aggrieved by not being promoted to the 9th Semester, the appellant filed the afore-mentioned writ petition.

Reasons and Conclusion

6. At the outset, it is relevant to note that the appellant's grievance, as articulated in the writ petition is, essentially, two-fold.

6.1 First, that his 5th Semester result was arbitrarily withheld. The same was declared on 12.02.2021, after the 7th Semester examinations were over. Resultantly, the appellant was prevented from re-appearing in the 5th Semester examination along with his papers for the 7th Semester.

6.2 Second, that his assessment for the 6th Semester was incorrectly made by reducing the marks by 50%. According to the appellant, JMIU has misread the UGC Examination Guidelines and it was not necessary to assess the performance of the students on the basis of the performance in the past examination.

6.3 The appellant further claims that although he had not been promoted to the 9th Semester, he had taken the 9th Semester examination as the same was available on the online examination portal.

7. The present appeal along with the interim application was listed on 03.06.2022. The appellant had also filed an interim application, praying that he be permitted to appear for his 10th Semester examination, which was scheduled to be held on 14.06.2022. The said prayer was not acceded to. However, this Court directed that all results of the appellant, which were withheld, be declared. Consequently, the results of the appellant relating to the 5th Semester examination were declared on 29.06.2022. The appellant had passed in four papers. Although, strictly speaking, the benefit of the same may not be available for the assessment of the 6th Semester examination, JMIU granted the benefit of his results for the 5th Semester examination to evaluate the assessment of the 6th Semester examination. After providing the said benefit, the appellant was declared as having cleared four papers of the 6th Semester examination. He had also re-appeared in two papers of his 7th Semester and cleared the same.

8. In view of the above, the appellant was promoted to the 9th Semester for the academic session 2022-23. This was informed to the Court during the hearings held in the month of July, 2022.

9. In view of the above, the principal question that requires to be addressed is whether the decision of the JMIU to withhold the appellant's promotion to the 9th Semester examination, for the session 2021-22, can be faulted.

10. In compliance with the order dated 03.06.2022, JMIU had filed an affidavit enclosing therewith a tabular statement indicating the appellant's performance in various semesters. The said tabular statement is reproduced below:

"Case of Mr. Ali Humam, Student of B.A.LL.B. (Hons.) Roll No 17BLW007 Dated 12.07.2022

S.

No.

Session

Examination

Semester

Date of Examination

Declaration of Result

Result Declared

Mode of Exam.

Background

Papers

1.

Dec- 2017

Dec-2017

I

(Regular)

07.12.2017

to 01.01.2018

09.02.2018

Passed

Offline

Nil

2.

May- 2018

May-2018

II (Regular)

07.05.2018

to 29.05.2018

02.07.2018

Passed

Offline

Nil

3.

Dec- 2018

Dec-2018

III

(Regular)

Untraceabl e

20.02.2019

Failed in BLW-305, BLW-306,

Promoted

Offline

02

4.

May- 2019

May-2019

IV

(Regular)

06.05.2019

to 24.05.2019

20.06.2019

Failed in BLW-305, 306,

BLW-403, BLW-404,

Promoted

Offline

04

5.

Dec- 2019

Jan-Feb 2020

III

(Back papers)

28.01.2020

to 14.02.2020

06.04.2020

Passed with 2GM

Offline

Nil

6.

Dec- 2019

Jan-Feb 2020

V (Regular) Appeared in 3 papers only

28.01.2020

to 14.02.2020

Detained due to shortage of attendance 12.02.2021

Allowed by

DWS &

referred to Exam Committee.

Permitted to declare result.

Detained due to shortage of
attendance

Failed BLW-403, 404 501,

502, 503,

504, 505,

506

Promoted

Offline

08

7.

May- 2020

Assignment based

IV

(Back)

Assignment based

26.07.2020

Failed in BLW-403, BLW-404

Not appeared

Assignment based

02

8.

May- 2020

Assignment based

VI

(Regular)

Assignment based

23.02.2021

Failed in BLW-403, BLW-404, 501, 502,

503, 504,

505, 506, BLW-601, 602, 604,

605, 606.

Promoted as per UGC

Policy

Assignment based

13

9.

Dec- 2020

Jan-Feb 2021

V (Back papers)

19.01.2021

to 12.02.2021

Not appeared in back papers

Not appeared in back

papers

Open book

08

10.

Dec- 2020

Jan-Feb 2021

VII

(Regular)

19.01.2021

to 12.02.2021

08.07.2021

Failed in BLW-403, 404,

BLW-501, 502, 503,

504, 505,

506, 601,

602, 604,

605, 606,

704, 705.

Promoted

Open book

15

11.

May- 2020

June 2021

IV (Back papers)

07.06.2021

to 29.06.2021

18.11.2021

BLW-403, BLW-404

Appeared & Passed

Open book

Nil

12.

May- 2020

June 2021

VI (Back papers)

07.06.2021

to 29.06.2021

24.12.2021

Failed in BLW-501, 502, 503,

504, 505,

506,

BLW-601, 602, 604,

605, 606.

Open book

11

13.

May- 2020

June 2021

VIII

(Regular)

07.06.2021

to 29.06.2021

30.12.2021

Passed (Sem-8)

Failed in BLW-501, 502, 503,

504, 505,

506, 601,

602, 604,

605, 606,

704, 705.

Result

Declared "FAILED"

Open book

13

14.

Dec- 2021

Jan-Feb 2022

V ((Back papers)

06.01.2022

to 05.02.2022

29.06.2022

Passed BLW-501, 502, 504,

505

Failed in BLW-503

& 506

Open book

09

15.

Dec- 2021

Jan-Feb 2022

VII (Back papers)

06.01.2022

to 05.02.2022

27.06.2022

Passed

BLW-704, 705

Open book

07

16.

Dec- 2021

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VI (Back)

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Passed BLW-601, 602, 605,
606

Failed in BLW-604

By giving 50%

formula in V semester

as per UGC policy

03

17.

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VIII

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Failed in BLW-503, 506, 604 PROMO

TED to Sem-IX in the session

2022-23

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03"

11. There is no dispute regarding the material facts as stated in this
aforementioned tabular statement.

12. It is seen from the aforesaid chart that the appellant's performance for the
first year (Semester-1 and Semester -2) was satisfactory and he had cleared all
the papers. However, he failed to clear two papers of the 3rd Semester (Paper
nos. 305 and 306). Notwithstanding the same, he was promoted to the 4th
Semester in view of the Ordinance 15-CUGC, which did not permit withholding
promotions from odd semesters to even semesters. Further, the numbers of
examination papers in which the appellant had failed to appear were not more

than four.

13. The appellant appeared in his 4th Semester examination that was held between 06.05.2019 to 24.05.2019. He failed to clear two papers (Paper nos. 403 and 404). Notwithstanding the same, he was promoted to the 5th Semester as his backlog was only four papers and not more.

14. The appellant appeared only in three papers of the 5th Semester examination that was held during the period 28.01.2020 to 14.02.2020. His attendance during the 5th Semester was short and therefore, his results for the 5th Semester were not declared. The appellant had also re-appeared for two papers of the 3rd Semester along with the 5th Semester examination and had cleared the same albeit with some grace marks. The appellant's backlog at the end of the 5th Semester included two papers of the 4th Semester (Paper nos. 403 and 404) apart from the six papers of the 5th Semester, the results of which had been withheld. Notwithstanding the above, the appellant was promoted to the 6th Semester.

15. The assessment for the 6th Semester was on assignment basis and the appellant had not cleared five papers of the 6th Semester. He could not be assessed in respect of the backlog of two papers of the 4th Semester (Paper nos. 403 and 404) as no assignments had been submitted. Thus, at the end of the 6th Semester, the appellant had a backlog of thirteen papers (Paper nos. 403, 404, 501, 502, 503, 504, 505, 506, 601, 602, 604, 605 and 606). However, in view of the UGC Policy, the appellant was promoted to the 7th Semester.

16. The examinations of the 7th Semester were held during the period of 19.01.2021 to 12.02.2021. The results of the said examination were declared on 08.07.2021. The appellant had not cleared two papers of the 7th Semester (Paper nos. 704 and 705). The results of the appellant's 5th Semester examination were declared on 12.02.2021, that is, after examination for the 7th Semester was over. The appellant could have re-appeared for his 5th Semester examination along with 7th Semester examination but did not do so. According to the appellant, he was prevented from re-appearing for the 5th Semester examination papers along with 7th Semester as his results for the 5th Semester had not been declared as of that date.

17. It is material to note that the appellant had appeared only for three examination papers of the 5th Semester in the regular examination that was held during the period 28.01.2020 to 14.02.2020. He had not appeared in the remaining three papers. Thus, in any event, the appellant was fully aware that he could not have cleared the three papers as he had not sat for the said examination papers. It was open for the appellant to thereafter, request the authorities to permit him to re-appear for the three papers (for which he had not appeared along with his 7th Semester papers) but he did not pursue JMIU for the same.

18. At the end of the 7th Semester, the appellant had a backlog of fifteen papers,

which included two papers from the 4th Semester and two papers from the 7th Semester as well.

19. The appellant re-appeared for his 4th Semester papers along with examinations of the 8th Semester and cleared the same. Thus, at the end of the 8th Semester, the appellant had a backlog of thirteen papers: eleven papers relating to 5th and 6th Semesters and two papers from the 7th Semester. The appellant was, thus, detained in the 8th Semester and not promoted.

20. The appellant did suffer some disadvantage on account of his results of the 5th Semester not being declared prior to the 7th Semester examinations being held. There is merit that the appellant could have re-appeared in the 5th Semester papers along with the 7th Semester examinations, if the results of the 5th Semester were declared prior to the said examinations (which were held during the period 19.01.2021 to 12.02.2021). However, this Court is unable to accept that the appellant is entitled to be promoted to the 9th Semester notwithstanding that he had not cleared his 5th Semester examination. As noted above, the appellant had not appeared in three papers for the 5th Semester examination. Thus, in any event, he was aware that he had not cleared three papers of the 5th Semester examinations. He was also aware that he had failed in two papers of the 4th Semester examination (403 and 404). In addition, the appellant had not cleared two papers of the 7th Semester examination (704 and 705). Thus, even if the examinations of the 5th Semester for which the appellant had appeared as well as the backlog of the 6th Semester examination is ignored, the appellant had not cleared at least seven papers as at the end of the 7th Semester. He had, subsequently, appeared and cleared two papers of the 4th Semester along with the 8th Semester examination. Thus, at the end of the 8th Semester, the appellant had a backlog of at least five papers, which he was clearly aware of even if the three papers of the 5th Semester in which he had appeared and the five papers of the 6th Semester are ignored.

21. In view of the above, JMIU's decision to detain the appellant in the 8th Semester, cannot be faulted.

22. The appellant had, thereafter, re-appeared for his 5th Semester examination and 7th Semester examination held during the period 06.01.2022 to 05.02.2022. The appellant had cleared four papers from the 5th Semester and two papers of the 7th Semester (501, 502, 504, 505, 704 and 705).

23. As noted above, the assessment for the students of the 6th Semester had been done by including a 50% weightage for the performance of the 5th Semester.

24. At the time of the assessment of the 6th Semester, the appellant's result for the 5th Semester examination (three papers for which he had not appeared and three papers in which he had appeared) were withheld. Consequently, the appellant was also declared as having failed the papers of the 6th Semester. However, with the appellant subsequently re-appearing and passing in four

papers of the 5th Semester (501, 502, 504 and 505), JMIU had decided to also grant the benefit of the said marks in the appellant's assessment for the 6th Semester. Consequently, the appellant was declared as having cleared four subjects of the 6th Semester (601, 602, 605 and 606).

25. The results for the 5th Semester and 7th Semester papers for which the appellant had re-appeared during the period 06.01.2022 to 05.02.2022 were declared on 29.06.2022 and 27.06.2022 respectively. In view of the said results and the consequent benefit granted to the appellant in respect of the 6th Semester papers; the appellant's backlog reduced to three papers (Paper nos. 503, 506 and 604). Consequently, the appellant has now been promoted to the 9th Semester for the session 2022-23.

26. In view of the above, the decision of JMIU to detain the appellant in the 8th Semester examination for the academic year 2021-22, cannot be faulted.

27. Before concluding, it is also necessary to mention that the appellant had moved the present appeal on 03.06.2022 (the last working day, prior to the Court closing for the summer vacation). On that date, the appellant had also requested for interim relief to permit him to appear for the 10th Semester examinations, which was scheduled to be held shortly. This Court had not acceded to the said request as the appellant had not been promoted to the 9th Semester at the material time. Although the appellant's request was not acceded to, the appellant once again filed an application seeking the same relief. This application was moved before the Vacation Bench and was taken up on 13.06.2022. On that date, the Court passed an interim order permitting the appellant to appear in the 10th Semester examination while making it clear that the results would not be disclosed until further orders and would be subject to the final outcome of the appeal.

28. The appellant was not entitled to appear for the 10th Semester examination and therefore, the said results are of no material relevance and are not required to be declared.

29. It is also relevant to state that during the course of the proceedings, the learned counsel for JMIU submitted that despite the appellant being promoted to the 9th Semester, he is not attending classes. This Court had, during the course of the proceedings, put the appellant to notice that in the event he did not attend the classes, the necessary consequences would follow.

30. It is, thus, apposite to clarify that pendency of the present appeal would not be accepted as an excuse for the appellant to not attend the 9th Semester classes.

31. The present appeal is, accordingly, dismissed with the aforesaid observations.