
(1986) 03 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 598 of 1985

Alok Goyal

APPELLANT

Vs

University of Jodhpur and Others

RESPONDENT

Date of Decision : 07-03-1986

Acts Referred:

Citation : (1986) WLN 84

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—This matter has a chequered history and syllabus of the University has given rise to the series of litigation by several candidates one after the other.

2. I may state a few relevent facts to appreciate the real controversy in the present writ petition. The petitioner took admission in the B.E. Course on October 30, 1981 and appeared in the First Year Examination held in June 1982 but failed in two subjects and did not obtain 45% marks in aggregate. He was not promoted to the Second Year B.E. and was not allowed to keep terms. He approached this Court by way of Writ Petition No. 484 of 1983 and under the orders of the court, he was granted admission in the Second Year B.E. provisionally and to take exemination of the Second Year B.E. with the facility to clear the papers of the First Year B.E. The make-up examination of the First Year was held in April 1983. The petitioner was declared passed in the First Year make-up examination on 24-8-1983/1-9-1983. The petitioner appeared in the Second Year B.E. Examination held in October, 1983 but failed. The Second Year special examination of 1984 was not taken up by the petitioner. In November 1984, the petitioner took the examination of Second Year B.E. in which he failed in two units but obtained 45% marks in aggregate. In view of the decision of the Supreme Court in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, the petitioner"s writ petition was dismissed but it was ordered that the petitioner will be allowed to take advantage in pursuance of

the interim order passed by this Court. Against the order passed in a similar writ petition, the University preferred a Special Appeal No. 40 of 1985 University of Jodhpur v. Mahendra Kewalia (1985 WLN 31). After the decision of that appeal, the University passed an order dated March 4, 1985. It was stated in that order that the petitioner has not passed the Second Year B.E. Examination, so, he is entitled to appear as an ex-student in the Second Year B.E. Examination. The petitioner approached this Court for clarification and this application was disposed of by me on March 6, 1985. The position was considered in that order as under :

In the IInd Year B.E. examination, the petitioner has secured 623 marks, which are more than 45% and he has failed in two units Chemistry-III and Mathematics-V. From the marksheet, it appears that the petitioner took up all the papers in B.E. IInd Year Examination of November 1984, whereas he had passed the make up examination of the 1st Year in 1983 and it is stated at the bar that the petitioner appeared in the IInd Year B.E. Examination in 1983 but he failed. Having failed in IInd Year B.E. Examination, he appeared in all papers in the same examination in November, 1984. When he has failed in the Second Year B.E. Examination, there was no question of giving him advantage or benefit under the order of this Court and it is proper for him to have appeared in all the papers of Second Year B.E. Examination of 1984. Having failed in Second Year B.E. Examination of 1983 it was not required on the part of the University to have passed its order dated 4-3-1985 on the basis of the interim order passed by this Court or the observations made by the Division Bench. For the year 1983, he shall be considered to have failed as in fact he has failed in the IInd Year Examination. The petitioner had appeared in all papers in IInd Year B.E. Examination, 1984 and has obtained 45% marks in aggregate and has failed only in two units. It is for the University to decide as to whether the petitioner is entitled to keep the terms in view of his result of IInd Year B.E. Examination of 1984. He had already passed his First Year B.E. Examination in 1983. However, it may be observed that the order dated 4-3-1985 Could not have been passed on the basis of the interim order of this Court. The application, in my opinion, does not require any further consideration and no clarification is needed in view of the facts considered above.

3. The University then passed a fresh order dated March 30, 1985 wherein it was stated that as the petitioner has not passed the Second Year B.E. Examination in the year 1984. He can, therefore, appear as an Ex-student in the Second Year B.E. Examination. The petitioner by this writ petition has challenged the order of the University dated March 30, 1985. The writ petition has been resisted by the University.

4. I have heard Mr. R. Balia, learned Counsel for the petitioner and Mr. H.M. Parekh, learned Counsel for the University.

5 The contention raised on behalf of the petitioner is that under an interim order of this Court, the petitioner took up the First Year make-up examination and was

also allowed to keep terms, so, he appeared in the Second Year B.E. Examination held in October, 1983. He cleared the First Year B.E. Examination by obtaining the requisite marks in each paper and by also obtaining the requisite aggregate marks. He having failed in the Second Year Examination held in October, 1983, so, he took up the Second Year B.E. Examination held in November, 1984. According to the petitioner, in November, 1984 examination of the Second Year, he failed in two units and obtained 45% marks in aggregate. As such he is entitled to keep terms under the provisions of the Syllabus. Clause 11 of the Syllabus reads as under:

Clause 11. Provision for allowing to keep terms.

(a) If a candidate fails in not more than four units in the main examination, he shall be allowed to keep terms in the next higher class. For the purpose of this Clause, each theory paper shall be counted as one unit and each practical and sessional be counted as one unit;

(b) There shall be a first make up examination, held each year in the middle of the Session. A candidate who has been permitted to keep term in the next higher class as per Clause 11(a) above only shall be eligible to appear at the first make up examination;

Note: A candidate, who was unable to appear at some paper(s) at the main examination due to some reasons shall be considered as having failed in that paper(s), for this purpose, and will be permitted to take up the winter examination in that paper(s) provided the number of units in which he has failed inclusive of those in which he was absent in the main examination does not exceed four;

(c) There shall be a second make up examination held each year during summer. Only those candidates, who fail in the first make up examination will be permitted to take up the second make up examination.

6. It would appear from the above Clause that if a candidate fails in not more than four units in the main examination, he shall be allowed to keep terms to the next higher class. In the examination scheme of the First Year B.E., a candidate is required to obtain minimum marks, which are 30% in written papers, 30% in Home Examination, 50% each of the practicals and Sessionals and 45% in grand total for a pass. When the petitioner has been declared passed in the First Year make up examination, it would mean that he secured the requisite marks in the First Year. As such, the petitioner is entitled to take up examination in second Year. Having failed in the Second Year B.E. in 1983, the petitioner took up the Second Year B.E. Examination in 1984 after having passed the First Year Examination and in the Second Year, he failed in two units and obtained 45% marks in aggregate, then under Clause 11, the petitioner is entitled to keep terms.

7. On behalf of the University, it is urged that the petitioner did not take up fresh

admission in the Second Year B.E. after having failed in the Second Year Examination of 1983. His status was that he was allowed to keep terms under the orders of this Court and he did not take fresh admission in Second Year. The petitioner was not entitled to keep terms and could not appear in the Second Year B.E. Examination and so, the University was justified in making an order that having failed in the Second Year Examination in 1983 and 1984, he can only appear as an Ex-student. Had he passed the Second Year Examination after obtaining the minimum marks in each paper and after obtaining 45% marks, he could have taken up the Third Year B.E. Examination, but having failed in the Second Year Examination his only right is to appear as an Ex-student. Mr. H.M. Pareekh, learned Counsel for the University submitted that the judgment of the Division Bench of this Court in Mahendra Kewalia's case (supra) covers the present case and, so, the petitioner is not entitled to keep terms from the stage of the Second Year Examination.

8. It may be mentioned that the observations made in Mahendra Kewalia's case (supra) do not fully apply to the present case. The petitioner passed the First Year make up examination in the year 1983 and simultaneously, appeared in the Second Year B.E. Examination in 1983 but failed. Then, he took up the Second Year second time in 1984 having passed the First Year. From that stage, the petitioner's status, in my opinion, would be that he would be entitled to keep terms in view of the provision contained in Clause 11 of the Syllabus. It appears that the Division Bench proceeded to consider the question with regard to the first higher examination undertaken by the candidate. In the first higher examination, if the candidate had passed, that perhaps the Division Bench would have taken into consideration but if in the first higher examination under the orders of the court on keeping terms, the candidate had failed, then he cannot take the benefit of that examination. In the instant case, the petitioner appeared in the first higher examination and failed. The petitioner is not taking the benefit of that first higher examination. As a matter of fact, he could not take advantage at all as he had failed. He simply took the Second higher examination to which otherwise he was entitled to appear as he had cleared the First Year Examination in 1983 after having passed the make-up examination. It may be that the petitioner may not have taken fresh admission in 1983 after having passed the First Year Examination in 1983. In 1983, he did not take fresh admission because he was allowed to keep terms and with that status, he took up the Second Year Examination in 1984. It may be mentioned that by the time, the legal position was not clear else the petitioner would have taken fresh admission soon after passing the First Year Examination. When the petitioner has been allowed to take benefit of the make up examination of 1983 under the orders of this Court, then, in my opinion, the petitioner should not be deprived of the advantage under the provisions of the ATKT simply because he did not take up fresh admission after passing the First Year Examination. As already stated, if the position would have been clear, then the petitioner would have taken fresh admission in the Second Year. In the above view of the matter, in my opinion, the order of the University

dated March 30, 1985 deserves to be quashed and the petitioner is entitled to keep terms Under Clause 11 of the Syllabus with respect to the Second Year B.E. Examination.

9. Accordingly, to the writ petition is allowed, the order of the University dated March 30, 1985 is quashed and petitioner is permitted to take the make up examination of Second Year B.E. in respect of the papers in which he failed in 1984 of the B.E. Examination

10. The parties shall bear their own costs.