
(2013) 10 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : CWP. No. 2489 of 2013

Anil Jindal

APPELLANT

Vs

Thapar University

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0060

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : R.D. Anand, for the Appellant; V.M. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner joined Two Years (4 Semesters) M.E. Programme in Mechanical Branch, CAD/CAM & Robotics Course in the academic session 2009-10 in the respondent-University. In terms of Regulation 1.2 of the University Regulations, a student is required to obtain a minimum CGPA of 4.50 for UG & MCA and 5.50 for ME/M.Tech./M.Sc/M.Phil. programmes to make him eligible for award of the degree. According to the petitioner, he did not score 5.50 CGPA and was allowed to improve his score in two subjects, namely, Computer Control of Machine Tools-PCD-101 and Statistical Methods & Algorithms-PCL-105, in which he obtained Grade `D" in the first attempt. He was allowed to attend summer semester regular classes in the aforesaid two subjects on payment of fee. His application dated 26.05.2011 for admission to the summer semester was allowed with the endorsement "may be allowed please as the candidate is having CGPA < 5.50". The petitioner attended regular classes from 01.06.2011 to 15.07.2011 and after completing his studies in the summer semester, took examination of the aforesaid two subjects and earned Grades `A" & `B" respectively improving his score from Grade `D". Thereafter, he made representation to the University to reflect his Grade in the final result and on the information sought by his father under the Right to Information Act, 2005, it was disclosed by the University that the norms of the University provides opportunity

only to such students to improve their CGPA who are unable to attain minimum CGPA, but the petitioner was permitted to improve his CGPA on the representation of wrong CGPA as he has mentioned in his application that his CGPA is 5.17 after passing 3rd Semester which would become 5.39 after passing re-appear exam, whereas he had secured 5.70 CGPA and was ineligible for improvement and eligible for grant of M.E. Degree without any improvement, therefore, the two courses taken by him for improvement were not taken into consideration. The University thereafter issued certificate to the petitioner stating that the CGPA having been secured by the petitioner is 5.70. Counsel for the petitioner has submitted that there is no misrepresentation on the part of the petitioner in the application dated 26.05.2011 in which he has alleged that his CGPA was 5.17 which became 5.39 after passing his re-appear in subject CAD (PCD-202) with the allotment of `B" Grade in that subject after final evaluation which does not make him eligible to get his M.E. Degree and the said application was duly verified by the Dean of Academic Affairs (DOAA), who granted him permission to attend the summer semester and accordingly the petitioner improved his score by taking examination. It is further submitted that after having passed 2 subjects with `A" & `B" Grade, the CGPA of the petitioner has increased to more than 6 points which will make him eligible to seek admission in the Ph.D. programme in view of Clause 7.1 of the Eligibility (Prospectus: p. 16). It is, thus, submitted that denial of showing the improvement in the result in his Degree is going to adversely affect the future prospectus of the petitioner and has prayed for a direction to the respondents to act in accordance with Regulation 15.6 of the University Regulations which provides that "when a student repeats a course the new grade will replace the earlier one in the calculation of the SGPA and CGPA".

2. On the other hand, counsel for the respondent-University has submitted that in the Two Years (4 Semesters) M.E. Programme starting from December 2009 to July 2011, the petitioner appeared in all of his semesters and earned the following grades and CGPA:-

FIRST SEMESTER HELD IN DECEMBER, 2009

SECOND SEMESTER HELD IN JUNE, 2010

THIRD SEMESTER HELD IN DECEMBER, 2010

FOURTH SEMESTER HELD IN MAY, 2011

3. It is further submitted that as per Schedule C-V of General Regulations of the University, a student is deemed to have completed the requirements for a programme and is eligible for the award of degree if he/she has earned a CGPA of greater than or equal to 5.50 and if, after obtaining pass grades in all the courses at the end of the programme, he/she obtains a CGPA less than minimum CGPA required for the award of degree, he/she may be allowed by DoAA to improve the CGPA by studying the course(s) in which he/she has earned "D" grade(s) provided that the said courses are offered in the semester under

consideration. It is, thus, submitted that the petitioner had earned Grade "E" in one of the subjects of second semester which was treated as a "backlog course" in which he appeared in May, 2011 and after his result was declared, his CGPA was 5.17 at the end of third semester which was improved to 5.70 which is more than the minimum required for award of degree after clearing the backlog. It is submitted that the petitioner applied for improvement in two subjects in May, 2011 summer term i.e. before the declaration of his result of backlog course. In this application, he mentioned that even after clearing the backlog, his final CGPA will become 5.39 which is less than 5.50, minimum required for award of degree. Thereafter, on the basis of his statement made in the application, the University permitted the petitioner to appear in two courses in order to improve his CGPA as minimum CGPA required for awarding the degree was 5.50. However, after clearing the fourth semester, since CGPA earned by the petitioner was 5.70 which was more than the minimum required CGPA of 5.50, therefore, the result of two papers in which he re-appeared for improvement in order to improve the CGPA was withheld. It is, thus, submitted that there is no error on the part of the respondents in withholding his result as the petitioner was not eligible to take the exams for improvement of the aforesaid two subjects.

4. Counsel for the petitioner has not disputed that when the application was filed on 26.05.2011 seeking permission to join the summer semester course for the purpose of taking improvement examination of the two subjects, the petitioner was not having the CGPA of 5.39 but had obtained CGPA 5.70 as by that time he had cleared his backlog exams in which he had failed but still it is submitted that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved as it is neither a case of *suggestio falsi* or *suppressio veri*. In this regard, he has relied upon a decision of the Supreme Court in the case of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, and a judgment of this Court in the case of *Smt. Giyarshi v. Kurukshetra University and others*, 2010(3) SCT 456.

5. Counsel for the respondent has submitted that the judgments relied upon by the counsel for the petitioner are not applicable to the facts and circumstances of this case because the petitioner himself is a student of M.E. who could have calculated his CGPA by applying a simple formula, known to all the students but in order to improve his grade in two subjects, he misrepresented to the respondent that earlier his CGPA was 5.17 till 3rd semester which became 5.39 after passing his re-appear in subject CAD (PCD-202). It is submitted that it is a case of misrepresentation/*suggestio falsi* on the part of the petitioner which could not be deciphered at the time when DoAA granted him permission to attend summer semester in two subjects.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. As per the chart of performance of the petitioner, in all the 4 semesters, which is reproduced here-in-above, his CGPA was 5.17 till 3rd semester but after

passing his re-appear in subject CAD (PCD-202), his CGPA was increased to 5.70. He has also been awarded Degree in M.E. with the CGPA of 5.70 of the 10 point scale. The petitioner being the student of M.E. was very well aware of the method to calculate his CGPA. He himself gave in writing to the University in so many words that "I am the student of M.E. CAD/CAM & Robotics (4th Sem.) under Roll No. 800981002 studying in Thapar University, Patiala. I have my CGPA as 5.17 after passing of 3rd Sem. which will become 5.39 after passing my reappear subject CAD/(PCD-202) with the allotment of "B" Grade in that subject after final evaluation which is still not make me eligible to get the M.E. Degree. So, Sir, Kindly please allot me the undergiven two subjects in summer semester for the sake of my CGPA & Degree". On this representation, the DOAA allowed him to attend the summer semester in two subjects. Had he not represented the University in the manner referred to above, the respondent would not have allowed him as it is debarred under the University Regulations which provides that in case of securing minimum CGPA of 5.50 in the post graduate programme, the degree is awarded and no improvement is allowed. The petitioner knew very well that for the purpose of doing Ph.D. course or even for getting better prospects, he need to improve his CGPA from 5.17 to more than 6.00 and for that matter, he misrepresented to the respondent that his CGPA is 5.39 instead of 5.70 and obtained opportunity for appearing in the improvement tests which he qualified by improving his "D" Grade to "A" & "B" Grade. Thus, it does not lie in the mouth of the petitioner to submit that he is not at fault and the respondent should have acted with due diligence and once the permission has been granted, a right has been vested with the petitioner.

8. Insofar as the judgment of the Supreme Court in Shri Krishan's case (supra) is concerned, in that case, the petitioner was not having enough lectures to appear in the L.L.B. Part II examination. In the said case, the University statute prescribed that "(b) that he has attended a regular course of study for the prescribed number of academic years. Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course of lectures before the end of his term." In this background, it was held by the Supreme Court that "the last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear". Thus, it was a case where the petitioner was suffering from shortage of lectures and rightly or wrongly, was permitted to take the examination.

9. In Smt. Giyarshi's case (supra), the University issued prospectus for the State Level Common Entrance Test for admission to B.Ed. (Regular) Course, 2008-09. The petitioner, who belongs to B.C. Category, passed her graduation i.e. B.A. by

securing 527 out of 1200 marks having 43.91 percentage in the year 2004. She was ineligible having less than 45% marks prescribed as the eligibility condition in the prospectus. She applied for the entrance test and the respondent issued admit card to her. She passed the entrance test, granted admission and regularly attended the classes. On completion of the course, when she was to appear in the final examination on 30.06.2009, she was refused roll number on the ground of ineligibility to take admission in B.Ed. course having less than the prescribed qualifying marks for the common entrance test. The case of the petitioner in the said case was that she never misrepresented any fact at the time of filling up the form as she truly and correctly mentioned the percentage of marks secured by her in the examination (B.A.) but the University did not reject her application on account of ineligibility rather the petitioner was issued the admit card and allowed to participate in the entrance test. Moreover, the petitioner got admission in the very first counselling and allotted the college. All documents were verified and once she has completed the course, at this stage, the respondent cannot prevent her to appear in the examination at this belated stage on the ground that she had less percentage than the prescribed percentage for the entrance test.

10. However, the facts of the present case are altogether different as in Smt. Giyarshi's case (supra), she allegedly disclosed her correct percentage of 43.91 in qualifying examination of B.A., whereas the minimum prescribed percentage was 45, but still she was allowed to take the entrance test, meaning thereby she did not conceal the relevant facts about her ineligibility from the respondents, but in the present case, the petitioner, who had cleared Master of Engineering, had himself mentioned his CGPA to be 5.39 which otherwise was 5.70 at that time, making him ineligible to even apply for improvement in the subject in which he had secured "D" Grade. He was required to mention the correct facts and cannot be allowed to take the advantage of his own wrong. Keeping in view the aforesaid discussion, in my considered opinion, the entire fault is of the petitioner in misrepresenting the facts to the respondent who had relied upon his representation and allowed him to appear in the summer semester for improvement in two subjects. Hence, the present writ petition is found to be without any merit and hence the same is hereby dismissed.