
(2013) 02 P&H CK 0226

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22254 of 2012

Davinder Pal Singh and Another

APPELLANT

Vs

PEC University of Technology (Erstwhile Punjab Engineering College) and Others

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Citation : (2013) 4 SCT 379

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : H.S. Saini, for the Appellant; Amit Sharma and Mr. Sanjay Kaushal, for the Respondent

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—The petitioners challenge the order dated 03.8.2012 (Annexure P-4) issued by Dean Academic Affairs, order dated 13.8.2012 (Annexure P-6) passed by the Senate, as the appellate authority, and the order dated 28.9.2012 (Annexure P-8), conveyed by Dean Academic Affairs of the respondent-University. The brief facts of the case are that the petitioners appeared in All India Engineering Entrance Examination (AIEEE), held in the year 2010 and on the basis thereof, both the petitioners were admitted in the Bachelor of Engineering course for the duration of 2010 to 2014. Petitioner No. 1 belongs to S.C. category and he was admitted in the branch of B.E. (Mechanical) whereas petitioner No. 2, who belongs to S.T. category was admitted in the branch of B.E. (Electronics & Electrical Communication). When the petitioners could not perform well in their academic pursuits, the respondent-University terminated the B.E. programmes of the petitioners. One such order of terminating the B.E. programme of petitioner No. 1 is appended at Annexure P-4.

2. Dissatisfied with the order Annexure P-4, petitioners filed appeal dated 7.8.2012 (Annexure P-5). However, after reexamination of the entire record, appeal of the petitioners was also dismissed vide decision taken by the Senate,

i.e. appellate authority in its 49th meeting, held on 13.8.2012 and the relevant extract of minutes thereof is Annexure P-6. Petitioners again moved a mercy appeal dated 4.09.2012 (Annexure P-7). The petitioners were intimated about the decision of the Senate that their appeal was considered and was not found worth acceptance. This communication is dated 28.9.2012 (Annexure P-8).

3. Feeling aggrieved against the above said orders, the petitioners have approached this Court by way of instant writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned orders. That is how, this Court is seized of the matter.

4. While issuing notice of motion on 8.11.2012, this Court passed the following order: -

Seeks parity with some of the students, who have been granted the concession to appear in mercy chance despite having not completed CGPA.

Notice of motion for 16.11.2012.

On the asking of Court. Mr. R.S. Bains, Advocate accepts notice on behalf of the respondents and prays for time to have instructions.

5. In compliance of the above said order passed by this Court, respondents filed their joint written statement dated 6.12.2012. They raised objections relying upon the statutory provisions contained in the Rules and Procedures for Undergraduate Programmes, (applicable to students, admitted from academic sessions 2010-11 onward). Reliance is placed on Rule 8.1. (Minimum Level of Performance for Movement on Higher Semesters), Rule 8.2 (Academic Probation/Warning), Rule 8.4 (Termination of the Programme) and Rule 8.5 (Appeal against Termination). In nutshell, the case set up by the respondents in their pleadings, is that since the petitioners were casual in their studies, did not perform well and could not score even the minimum required marks, the respondent authorities were left with no other option, except to pass the impugned orders after giving repeated opportunities to the petitioners and giving due consideration to all the aspects of the matter.

6. Learned counsel for the petitioners submits that after completion of one year duration of the course, petitioner No. 1 secured 2.7. CGPA out of 5 and he secured the credit of 22. Likewise, petitioner No. 2 secured 4.33. CGPA out of 5 and credit of 35. However, each of petitioners failed in two subjects of their respective first semester. After completion of duration of two years of their courses, petitioner No. 1 could not pass Physics-I and Introduction of Computing. Similarly, petitioner No. 2 could not clear Mathematics-II and Engineering Graphics, both the subjects being of first year course. Petitioner No. I moved an application (Annexure P- 3) for holding summer classes for Physics-I, under regulation 5.2. and 5.6. However, he was denied this opportunity, saying that summer classes were not running. Course of petitioner No. 1 was terminated vide impugned order dated 3.8.2012 (Annexure P-4). Appeal was filed vide

Annexure P-5 and the same was dismissed vide Annexure P-6.

7. Claiming parity, learned counsel for the petitioners submits that other similarly situated students were given the chance, but the petitioners were denied. A representation filed by the petitioners vide Annexure P-7 was also not properly considered and a non speaking order was conveyed to the petitioners vide Annexure P- 8. He next contended that the petitioners were entitled for another chance as granted to the other similarly situated students. Finally, he prays for acceptance of the writ petition and setting aside the impugned orders. To substantiate his arguments, learned counsel for the petitioners relies upon a judgment of this Court passed in CWP No. 17849 of 2010 (Sumit Gahlawat v. PEC University of Technology and others).

8. On the other hand, learned counsel for the respondents submits that since the prospectus issued by the University is binding between the parties, action against the petitioners have been taken strictly in accordance with relevant provisions of law, contained in regulations of the University. He further submits that the specific and categoric averments taken in the written statement filed on behalf of the respondents, minutely explaining each and every aspect of the matter have gone unrebutted as petitioners have not filed any replication. He relies upon the rules and procedure contained in Annexure R-2, to contend that the petitioners had no case either on facts or in law.

9. He next contended that repeated chances had been given to the petitioners, but still they failed. He also contended that the petitioners were not sincere in their studies. They have not been attending classes regularly. They could not make the benchmark for permitting them to continue with the course any further. He submits that all the courses are not meant for every student. Petitioners were given option of an alternative course but they did not avail that opportunity. He contended that neither the relevant rules and regulations of the University were under challenge, nor any malafide was alleged by the petitioners, because of which there was hardly any scope of interference in the present case. He prays for dismissal of the writ petition.

10. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present one is a case wherein no interference is warranted at the hands of this Court, while exercising its writ jurisdiction. To say so, reasons are more than one, which are being recorded hereinafter.

11. A close examination of the pleadings of the parties will clearly show that the respondents have categorically stated that the petitioners were not serious students. They had been proceeding on a casual approach by not attending their classes regularly. They could not pass all the subjects of first year even after spending two years in the respondent university. They could not secure even the minimum required CGPA. These facts are undisputed. Having said that, this

Court feels no hesitation to hold that the impugned orders do not suffer from the vice of arbitrariness nor these can be said to be unreasonable, as per the stand taken by the respondents in their written statement.

12. The written statement filed by the respondents has gone unrebutted, as learned counsel for the petitioner did not file any replication thereto. However, since both the parties are relying upon Rules 5 and 8, it will be useful to refer to the relevant extract thereof which reads as under:--

5.2 Registration of a Deficient Student.

A deficient student is one who has either not taken or has taken but failed in course(s) of previous semester(s). The deficiency may be due to poor grades, not registering course(S) for health and/or other reason(s), etc.

The programme of a deficient student must be framed by DUGC in such a manner that as many backlog courses as are available are included. Further, backlog courses must be arranged as far as possible in the sequence of their accumulation.

The registration of the deficient students is done as per the recommendations of the respective DUGC.

5.6 Summer Term Registration.

The Summer Term is essentially for removal of backlogs of deficient students. A list of courses to be offered in the Summer Term is brought out during the second semester, normally before March 15 every year. Students register for these courses at the beginning of the Summer Term on the advice of the SUGC or DUGC.

8. Academic Performance

8.1 Minimum Level of Performance for Movement to Higher Semesters.

(a) No restriction on movement of a student from odd to even semester in a year.

(b) (i) Promotion to 3rd semester of the programme during his/her second academic session in the institute only if the student has a CGPA? 5 and he/she does not have a backlog of more than two courses excluding non-credit course (three courses excluding non-credit in the case of a student who had been on one semester leave during the first year)

(ii) Promotion to 3rd semester of the programme after spending two years in the institute only if the student has completed all course work requirements (including non-credit courses) of the first two semesters with a CGPA? 5. For fulfilling this condition, a student during his/her second academic session in the institute will be allowed to register for the courses, of the first and second semesters in which he/she has F/N/X grades, and if required, repeat a couple of courses in which he/she has D grades, provided his/her programme has not been terminated at the end of first year as per provisions of section 8.4.

8.2. Academic Probation/Warning

The academic performance of each student shall be reviewed at the end of each regular semester. A student who fails to secure an SGPA of at least 4.5. and/or fails to earn a minimum of 15 credits during any semester will be considered to be on academic probation and a letter of warning shall be issued to him/her with a copy of the same being sent to the student's parents/guardian. This letter will also remind the student/parents/guardians of the conditions under which the programme of the student may be terminated.

8.4. Termination of the Programme.

For the purpose of continuation/termination of the B.E. programme, the performance of a student after completion of every academic session (including summer term) will be considered.

A student's programme may be terminated by the Senate on any of the following grounds and he/she will have to leave the institute (without degree):

- a) if a student fails to earn at least 24 credits after spending one year in the institute (including summer term). However, a relaxation of five credits will be given to students belonging to SC/ST categories.
- b) If a student fails to complete all course work requirements (including non-credit courses) of the first two semesters of the programme with a CGPA? 5.0 in a maximum period of two years spent in the institute (including summer terms).

8.5. Appeal against Termination

- a) A student, whose programme is terminated at any stage, can appeal once to the Chairman Senate within 15 days of the issue of termination letter. In this appeal the student must fully justify as to why he/she should be allowed to continue. The Senate, if convinced of the reasons, may allow the student to continue with his/her programme.
- b) In no case will a second appeal by the same student be entertained for this purpose, in case his/her first appeal is not upheld by Senate.

13. The above said relevant provisions, which are not under challenge and are part and parcel of the relevant prospectus issued by the respondent-university for the degree course in question, have the force of law. It has been so held in Full Bench judgments of this Court in *Amardeep Singh Sahota v. Maharishi Dayanand University*, 1994(2) S.C.T. 766 : 1994 (2) PLR 32 *Sachin Gaur Vs. Punjab University, Patiala and others*, and *Rahul Prabhakar Vs. Punjab Technical University and Others*, Neither the petitioners have challenged the constitutional validity of any of the regulations, reproduced above, nor any malafide has been alleged against anybody.

14. Further, the petitioners have also chosen not to file any replication denying the specific and categoric factual averments taken by the respondents in their

joint written statement. Once the petitioners could not pass all the subjects of first year despite spending two years in the university and they have not been found to be similarly situated with the other students, neither any case of arbitrariness nor of discrimination is made out against the respondents. Thus, it is unhesitatingly held that the respondents have committed no error of law while passing the impugned orders.

15. A close scrutiny of facts narrated by the respondents in their written statement would show that the petitioners have not been treated with discrimination. Thus, they cannot claim any parity, which was their star argument. In this regard, the relevant extract of clause B at page 32-33 of the paper book, reads as under:--

(B) Students admitted in the year 2010 who have failed to fulfill the requirements to move to 3rd semester (Annexure 49.1.2)

I. The students at Sr. Nos. 1, 2, 3, 4 and 10, namely

i. Sukhpreet Singh (SID 10103027)

ii Kanika Saraswat (SID 10105032,

iii Om Prakash (SID 10108023)

iv Davinder Pal Singh (SID 10107021), and

v Kulbhushan Bhandari (SID 10105034)

have more than one course of 1st year pending even after spending two years in the institute. Their B.E. Programmes stands terminated.

ii Each of the students at Sr. Nos. 5, 6, 7, 8, 9, 11, 13, 14 and 16, who have either one course (maximum of 5 credits) of 1st year pending with CGPA 4.6, or have cleared all the courses of 1st year but have a CGPA between 4.6 and 5.0, may be given a special recovery opportunity with an option to continue subject to their accepting the following conditions:

1. The status of such a student will be that of a terminated student with a special recovery opportunity to continue.

2. During the current semester (12131), such a student must take up the course(s) of 1st year which is (are) pending or in which he/she has a "D" grade. In addition, he/she can take up some courses of 2nd year subject to the total number of credit courses (registered during the semester) not exceeding 5.

3. He/she clear that 1st year course (s) during this semester itself and attain a CGPA of at least 5.0.

To facilitate these students, the Applied Sciences Department shall offer the course MA-102 (Mathematics-II) during the current semester. A student may not accept this option and in that case his/her programme stands terminated

16. The respondents have taken a specific averment in this regard in para 3 of the preliminary submissions about the overall performance of petitioner No. 1 and the relevant extract thereof, reads as under:--

3. The petitioner No. 1 joined B.E. Mechanical Branch in the year 2010 and he registered himself for 5 courses in the first semester and at the end of first semester he just managed to clear one course with "C"-Grade and two courses with "D" Grade in one course he got "F" Grade and in the last one he received "N" Grade.

17. As per the grading system, N Grade stands for "Not Eligible." Further relevant averments taken about petitioner No. 1, read as under:--

The grading system is mentioned at Rule 6.3 of the above said Rules. The performance of the petitioner No. I in the 1st semester is measured by Semester Grade Point Average (SGPA) came to 2.8. and his cumulative grade point average (CGPA) came to 2.8. and total credit earned were 12. it is relevant to mention here that the performance of the student in a particular semester is measured by semester performance index, which is weighted average of the grades secured in all the courses taken in a semester and scaled to a maximum of 10. In the nutshell, the first semester of the petitioner No. 1 was well below average as he only managed to secure satisfactory performance only in one course and in two courses his performance was marginal, in one course he was failed and in the remaining one he was graded not eligible due to shortage of minimum attendance requirement.

In the second semester, petitioner No. 1 registered himself for 7 courses and managed to clear one course with "A" Grade, one course with "C" Grade, one course with "D" Grade, in three courses he got "F" Grade and in last one again he got "N" Grade meaning thereby he only managed to secure excellent in one course, satisfactory and marginal in two courses and in three courses he remained failed and in one course he was graded not eligible due to shortage of minimum attendance requirement. After 2nd Semester his SGPA was 2.22, CGPA was 2.7 and he earned total 22 numbers of credits after completion of two semester i.e. one year.

It is relevant to mention here that as per Rule 8.4. (a) of the above said rules which governs the terms and conditions for termination of programme of a student lay down that if any student fails to earn at least 24 credits.

In the 2nd semester he registered himself for 5 courses and managed to clear 2 courses with "C" Grade one course with "D" Grade and he remained failed in 2 courses. After the completion of 2nd semester (1st year Programme) in the 2nd year his SGPA was 3.05 CGPA was 4.19 and he earned 39 credits.

Petitioner No. 1 also registered himself for summer term courses where again he cleared one course with "D" Grade and one courses with "F" Grade. After the completion of two years in the institute petitioner No. 1 could not clear the 1st

year of the B.E. Mechanical Programme and accordingly as per rules and procedure laid down for under graduate programme applicable to the students admitted from academic sessions 2011 onwards the programme of the petitioner was terminated under Rule 8.4. (b).

18. Further relevant averments in this regard, read as under:--

As petitioner No. 1 manage to earn 22 credits after the completion of two semester i.e. One year which were less than required minimum of 24 credits, a relaxation of 5 credits were given to him being student of S.C./S.T. Category and keeping the future of the petitioner in mind he was allowed to repeat 1st year as per rule 8.4. (a).

That being deficient student case of the petitioner No. 1 was considered under Rule 5.2 of the above mentioned Rules whereby a deficient student who has either not taken or has taken but failed in a course(s) of the previous semester(s). The deficiency may be due to poor grades, not registering course (s) for health and or because of other reason(s) etc. The registration of deficient student is done as per the recommendation of the respective DUGC. Accordingly petitioner No. 1 was allowed to repeat two semesters of the 1st year programme.

5. That this time petitioner No. 1 registered himself for four courses in the 1st Semester and managed to secure "D" Grade in one course "F" Grade in two courses and "N" Grade in one course meaning thereby he was failed in two courses and not allowed to sit in one course due to shortage of minimum required attendance. After the completion of 1st Semester (1st Year Programme) in the 2nd year his SGPA was 1.11, CGPA was 27 and he earned 22 credits.

19. The above said averments taken by the respondents have gone undisputed on record. Similarly, the relevant extract of the averments taken about the performance of petitioner No. 2 in para Nos. 7, 8, 9 and 10 of the preliminary submissions, read as under:--

That petitioner No. 2 namely Kulbushan Bhandari registered himself for B.E. Electronics and Electric Communication Programme in the year 2010. In the first semester, he registered himself for 7 courses and managed to clear one course with "A" Grade, two courses with "C" Grade, one course with "D" Grade and he remained failed in three courses. After completion of the 1st Semester his S.G.P.A. was 3.11, CGPA was 3.11 and he managed to earn 14 credits.

In the second semester petitioner No. 2 registered himself of 5 courses and manage to clear one course with "C" Grade, two courses with "D" Grade and in remaining two courses he remained failed. After the completion of 2nd semester his SGPA was 2.9. CGPA was 3.3. and he earned 26 credits.

Petitioner No. 2 also registered himself for summer term for two courses which he managed to clear with "C" & "D" Grades. After the completion of two semesters i.e. One year, his CGPA was 4.33 and he earned total 35 credits.

As per the rule 8 of the Rules and Procedure laid down for undergraduate programs a student needs minimum to have minimum level of performance for movement to higher semester. A student is only promoted to 3rd Semester only if/he she has a CGPA? 5.0 and does not have backlog of more than two courses C.G.P.A. Of petitioner No. 2 was 4.33. which was less than required 5 points.

8. That accordingly petitioner No. 2 was allowed to repeat his 1st year programme as a special recovery opportunity and to clear his backlog courses with the promotion to 3rd semester. This special chance was given by the senate on 26.8.2011 with the following conditions:--

His/her status will be that of a student detained in 1st with a special recovery opportunity to move to 2nd years.

He/she shall take up all his/her pending courses of 1st year being offered during the current semester.

He/she shall clear at least all his/her courses of 1st year registered for during the current semester, and achieve CGPA? 5.0 at the end of this semester.

9. That petitioner No. 2 accepted the above mentioned conditions and he was allowed to register for 3rd semester alongwith courses of 1st year programme. Petitioner No. 2 registered himself for five courses, two courses of 1st year and three courses of 2nd year. But he only manages to clear one course with "D" Grade, in three courses he remained failed and one course he was not allowed to sit in the exam due to shortage of minimum required attendance. After the completion of 1st semester in the 2nd year, he S.G.P.A. was 0.8. CGPA was 3.67 and he earned 39 credits.

As per the condition No. 4 mentioned above which was accepted by the petitioner, his promotion to the 4th semester was stopped as he could not clear courses of 1 st year during the current semester of 2nd year.

10. That thereafter petitioner No. 2 again registered for three courses of 1st year and managed to clear one course "B" Grade, one course with "D" Grade and in the remaining one he was not allowed to sit due to shortage of minimum required attendance. After the completion of this semester his SGPA was 4, CGPA was 4.25 and he earned total 43 credits. Petitioner No. 2 also registered for summer term for one course of 1st year in which he remained failed. After the completion of 2 years in the institute his CGPA was 4.46 and he earned total 39 numbers of credits. Accordingly as petitioner No. 2 failed to clear 1st year courses in maximum 2 years spent in the institute and his CGPA was? 5.0 his B.E. Electronics and Electrical Communication Programme was terminated on 28.9.2012 (Annexure P-8) by the senate committee of PEC University.

20. During the course of arguments, learned counsel for the petitioners failed to point out any patent illegality or perversity in the impugned orders passed by the respondents. So far as the judgment relied upon by learned counsel for the petitioners is concerned, the same is of no help to the petitioners, it being

distinguishable on facts. In the cited judgment, the student was denied the chance whereas in the present case it has been given to the petitioners, but they still failed. Further, it is also the settled proposition of law that sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon"ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others,

21. After filing of the appeal by the petitioners, the matter was again considered by the Senate and minutes of emergent meeting of Senate, held on 28.9.2012, read as under:--

Agenda comprising of the requests of Mr. Kulbushan Bhandari (SID 10105034) and Mr. Davinder Pal Singh (SID 10107021) for allowing them to re-start their BE Programmes was discussed and following decision was taken:

These two students were admitted in the year 2010 and at the end of the session of 2010-11, both of them had failed to clear their 1st year courses and their CGPA was also below 5.0. They were allowed to continue during the session 2011-12 and as per rules, by the end of the session they were required to clear all their courses of 1st and 2nd semester with a CGPA? 5.0 to continue further with their BE Programmes. Having failed to do so, their BE Programmes have been terminated in accordance with the rules.

Since they have already spent one extra year but still failed to complete the first year of their respective BE programmes, the Senate felt that they cannot be given another opportunity. Their appeals to restart their BE programmes afresh, after already spending two years, were not accepted by the Senate.

22. The relevant extract of the pleadings and the stand taken by the respondents has been reproduced here-in-above for the reason that it includes the facts and figures pertaining to both the petitioners and also the technical part thereof, coupled with the fact that these averments have gone unrebutted, because the petitioners did not file any replication denying these facts.

23. Once the Full Bench of this Court in Amardeep Singh Sahota"s (case) has held that the provisions of the prospectus have the force of law and the same are not under challenge in the present case, there is no scope left for this Court to interfere and issue directions, which would be contrary to the provisions contained in the rules and regulations of the prospectus, reproduced above. Further, the Senate of the respondent-University has reconsidered the matter again while passing the impugned appellate order, reproduced above which was conveyed vide Annexure P-8.

24. Learned counsel for the petitioners also could not point out the violation of any of the rules and regulations. In this view of the matter, it is held that the respondents have committed no error of law, while passing the impugned orders.

No other argument was raised.

25. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is misconceived, devoid of any merit and without any substance, thus, it must fail. No case for interference has been made out. Resultantly, the instant writ petition stands dismissed.