
(2019) 07 UK CK 0172

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2972 Of 2018

Devank Nagar

APPELLANT

Vs

IMS Unison University & Others

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0172

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Menka Tripathi, Ramji Srivastava, Vikas Pande

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. The petitioner before this Court is a student of B.B.A.-LL.B. which is a five year integrated course presently being done by the petitioner from IMS Unison University, Dehradun. Since the petitioner could not get the required CGPA for the second semester, he was not promoted to the 3rd semester. Aggrieved, the petitioner has filed the present writ petition before this Court.

2. On 11.10.2018, this Court had passed an order which is reproduced here:-

"The petitioner before this Court is a student of B.B.A.-LL.B. which is a five years integrated course presently being done by the petitioner from IMS Unison University, Dehradun. The petitioner has obtained 4.49 CGPA in his B.B.A.-LL.B. 1st year, however, he is not being promoted to the 2nd year, as according to the University a student having less than 4.50 CGPA will not be admitted.

2. This provision is contained in Clause 3.4 of the Semester Based Five Year Dual Degree and Integrated Programs (Examinations and Miscellaneous Provisions) Ordinances, 2013 of the said University, which reads as under:

"3.4 In order to clear a year and promotion to the next year of the program, a

student must obtain:

At least pass marks, each in the End Term (final) Examination & its Sessional (Continuous Evaluation) and also a combined "D" grade in the subject, "D" grades in purely Sessional and Practical subjects, and CGPA of at least 4.50. Provided further that a student shall have backlog of more than Four courses/subjects of previous years (s) to qualify for promotion to the next year subject to meeting the CGPA requirement.

Provided further that, if a student is not eligible for promotion to the next year of the program due to not fulfilling above conditions, he/she shall be required to repeat the previous semester first (as and when available). In case, no such semester is available to repeat, the semester concerned shall be treated as "Idle" and shall not be counted for the purpose of prescribe duration for completion of the Program.

However, a student may not repeat the semester, which he/she has already passed, provided further that if such a student desires to re-study the semester already passed, his/her previous performances in all subjects/courses including continuous assessment shall be treated as cancelled and in no case shall be taken into account for the purpose of examination results of re-registered semester."

3. A bare reading of the aforesaid provision shows that a student having less than 4.50 CGPA will not be promoted to next year. All the same, there is a different condition at clause 2.1 of the Semester Based Five Year Dual Degree and Integrated Programs (Examinations and Miscellaneous Provisions) Ordinances, 2013, which stipulates as under:

"Each student shall be required to get himself/herself registered on the scheduled date of registration in each semester. Registration thereafter may be done with a late fee as decided/notified from time to time.

Provided that no student shall be eligible for registration in the next Semester, if he/she

(a) has been debarred from appearing in the End Term (final) Examination of the previous Semester(s) on Disciplinary or other grounds.

In all such cases, student concerned shall be required to re-register in previous Semester(s) first (as and when available) subject to fulfillment of other conditions of the Ordinances.

Provided further that no student will move to III Year of study without clearing all subjects of I Year, IV year of study without clearing all subjects of I and II year and V year of study without clearing all subjects of I, II and III year.

Further, no relaxation will be given on attendance requirement for late registration on any account."

4. As per the proviso which has been highlighted above, a student cannot be moved to third year for registration if he has not cleared all subjects of 1st year. There is no such embargo or condition that a student should not be registered for 2nd year in case he has not cleared all the subjects of 1st year. In other words, the petitioner as per the provisions for registration i.e. Clause 2.1 is still eligible for registration in 2nd year, yet as per the learned counsel for the University, apparently he cannot be promoted!

5. Mr. Ramji Srivastava, learned counsel for the University submits that the two provisions have to be read together, however, the condition given in Clause 2.1 does not clearly states that the student of 1st year will not be promoted to 2nd year if the CGPA is less than 4.50.

6. The Registrar of the University in its order dated 27.09.2018, to this apparent contradiction has stated as under:

"Clause 2.1 of the Ordinance refers to the process of registration and the exclusions therein. It does not relate to annual promotions, the rules for which are very specifically defined in Clause 3.4. At the same time the Clause 3.4 adds a further restriction to the promotion policy in the sense that any student who has not cleared any paper of the 1st year of any year shall not move to the year after the subsequent year. The objective of this restriction is to ensure that the students are prevented from carrying back papers of year one to the third year and likewise. Therefore, in a way this part of Clause 2.1 adds to the contents of the Clause 3.4 and is complementing it rather than being in contradiction. In any case the provisions of the Clause 2.1 do not relate to the case of the concerned student as they impose further restrictions on promotion to the 3rd year and beyond the provisions of Clause 2.1 and 3.4 should therefore be read together."

7. However, a different and a beneficial meaning in favour of the petitioner can also be derived on reading of these two provisions i.e. Clause 2.1 and Clause 3.4.

8. In view thereof, purely as a provisional measure, it is directed that the petitioner shall be given a provisional registration for 3rd semester in 2nd Year, which shall be subject to final outcome of the writ petition.

9. List this case after three weeks in the daily cause list.

10. Let a certified copy of this order be issued today itself on payment of usual charges."

3. On the basis of the aforesaid order, this Court has been informed that the petitioner has been allowed to appear in the third semester and fourth semester as well. According to the petitioner, he has cleared third and fourth semester but he is not being given registration in the fifth semester because of the pendency of the present writ petition before this Court.

4. Since it is a student matter and with the consent of the parties, the writ petition is disposed of with the direction to the respondent-college to take a

decision on the eligibility of the petitioner in accordance with law and in view of the findings of this Court recorded in the order dated 11.10.2018. Let the decision be taken by the respondent-college in the matter as expeditiously as possible.