

(1993) 05 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.P. No. 330 of 1993

Rakesh Mishra

APPELLANT

Vs

Jiwaji University and Another

RESPONDENT

Date of Decision : 07-05-1993

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 37

Citation : (1993) JLJ 481

Hon'ble Judges : S.K. Dubey, J;S.K. Chawla, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; J.P. Gupta, for the Respondent

Judgement

S.K. Dubey, J.—Petitioner is a student of M. Sc. in Chemistry in the School of Studies, Jiwaji University, Gwalior, and for getting a degree he has to clear four examinations in the semester system. Petitioner complains that he cleared first semester, while in second semester, because of his illness, he could not appear in one paper and failed in other paper, but, cleared two papers of that semester and was allowed to attend the classes of third semester, but now, the University has taken a turn and is not allowing the Petitioner to attend the classes of fourth semester, and has directed the Petitioner to first clear the whole examination of second semester and, then of third semester, then only he can be allowed to attend the classes of fourth semester and to appear in the examination of fourth semester.

2. Shri J.P. Gupta, learned Counsel for the University, took this Court through Clause 10 of the Ordinance No. 38, framed u/s 37 of the M.P. Vishwavidyalaya Adhiniyam 1973, and submitted that Clause 10 in clear terms does not authorise the University to allow a student for attending the classes of fourth semester and to appear in the examination of fourth semester, unless a student clears the whole examination of second and third semesters.

3. Before we deal with this petition, we may make it clear that in semester

system ideally a student is judged on the basis of his performance throughout the entire period of his study of the full course, which amongst other things ensures that a student is not judged by his performance on an inadequate sample of questions at a particular moment of time, but, is judged on the basis of a large number of questions spread over a certain span of time so that the mode of assessment does not work to his disadvantage, and for that syllabous lays down the details of work of each semester, the permissible combination of courses and the number of courses required to be passed to gel a degree. Each course remains a self-contained unit. After each semester there is an examination. A student who fails in a course is required to pass only that course/paper and not all the courses of that particular semester. There are two basic advantages of this system; one is that the work-load of the student is even throughout the year and, secondly, practically no one fails. This does not suggest that everyone who starts a course is passed as a result of the test. It only means that failure in one course does not put the student back by six months or a year. If a student has failed he sits for that examination at the end of the next semester or the one after that.

4. The Jiwaji University has laid down the manner in Ordinance No. 38 of holding examination of semester system for M.A., M. Com. and M. Sc. This Ordinance contains 18 Clauses. For the purposes of present petition, Clauses No. 10 and 11 are relevant, we reproduce--

Clause 10 -- A candidate failing in any of one course/paper/laboratory work of first semester examination, shall be allowed to continue in the second semester. In second-semester, he will be allowed to appear in that course of first semester (in which he failed in first semester) as an ex-student along with the examination of second semester. For such additional attempt, the University shall charge additional examination fee as notified.

Provided further that candidates failing in any one course of the second semester, shall be promoted to third semester, subject to the condition that he has passed all the courses of first semester.

Provision of this clause shall be applicable to third and fourth semesters also. He/she will be allowed to appear as an ex-student in the whole examination of that semester in which he/she thus failed. Such candidate (if passed in that examination) will be entitled for admission as a regular student in the next semester, if any.

Clause 11 - No candidate shall be allowed more than two attempts (including the original attempt) as an ex-student in a particular semester. If that candidate does not succeed in two attempts too, he/she will have to leave that course.

5. The Petitioner submits that there is no controversy to Clause 11, which in Clear terms lays down that a candidate shall not be allowed more than two attempts (including the original attempt) as an ex-student in a particular semester. If such candidate does not succeed in two attempts too, he/she will

have to leave that course. However, the Petitioner submits that under Clause 10 he cannot be compelled to first appear in the whole examination of second semester, but he is to be allowed to appear only in the courses of the second semester, which he has not cleared. Indeed, this is the controversy which rests on the interpretation of Clause 10.

6. A reading of Clause 10 shows that if a student fails in first semester, he/she is allowed to appear in first semester as an ex- student alongwith the examination of second semester. For such additional attempt, a student has to pay additional examination fee as may be notified by the University. Proviso to this provision lays down that a candidate failing in any one course of the second semester, shall be promoted to third semester, subject to the condition that he has passed all the courses of first semester. Next thereafter, a provision has been made of this clause of applying Clause 10 to third and fourth semesters also with a condition that a student will be allowed to appear in the next semester in the whole examination of that semester, in which he/she has failed, and if such candidate passes in that examination in which he/she has appeared as an ex-student, will be entitled for admission as a regular student in the next semester, if any.

7. Clause 10 in clear terms does not speak that if a student who fails in second semester in any one or more course, either has to appear in those courses only or has to appear as an ex-student in the whole examination of the second semester, alongwith the examination of third or fourth semester, while, a student who fails in first semester, is promoted to next higher semester, and has to take up the examination of that course/paper of first semester in which he/she has failed as an ex-student alongwith the examination of second semester. Provision is also specific for a student who fails in third and fourth semesters, for taking up the whole examination of that semester, in which he/she has failed. Therefore, from a reading of Clause 10, it is clear that it deals with two situations; one relates to first semester, while other relates to third and fourth semesters, but the provision is silent relating to a student who has failed in the course of second semester whether such a student has to take up the whole examination or has to appear as an ex-student in the examination of second semester only in those courses in. which he/she has failed. However, it is certain that before a student is allowed to take up the examination of fourth semester, he/she has to clear examination of second semester, and, while pursuing the studies of the fourth semester he/she is allowed to take up the whole examination of third semester alongwith the examination of fourth semester.

8. The proviso to Clause 10 does not cover the field. It carves out only an exception to the main provision that a candidate failing in any one course of the second semester, shall be promoted to the third semester, subject to the condition that he/she has passed all the courses of first semester, therefore, it deals with a case which would otherwise fall within the general language of the main provision and its effect is to confine to that case only. It has no repercussion on the interpretation of the main provision of Clause 10, so as to

exclude from it, by implication, what clearly falls within its express terms. As it is an exception to the main provision which has to operate in the same field, it cannot be torn apart from the main provision of Clause 10 nor can it be used to nullify by implication what the provision of Clause 10 clearly means, as its word does not give that necessary effect. To say so, we rely on the decisions of the Supreme Court in *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, and, *Tribhovandas Haribhai Tamboli Vs. Gujarat Revenue Tribunal and others*,

9. When the proviso and the provision relating to third and fourth semesters are silent, by necessary implication, and by harmonious construction of Clause 10, in our opinion, a student who fails in second semester, has to take up the examination of second semester as an ex-student only in those courses, in which he/she has failed, as in case of a student who fails in the first semester. Therefore, the Petitioner who has not cleared two papers of second semester, cannot be directed to take up the whole examination of second semester, but he has to take up the examination of the course/s (in which he has failed) of second semester as an ex-student alongwith the examination of third semester.

10. At this stage, Shri Gupta states that the examination of second semester is going to be held in June 1993, therefore, the University will hold the examination of the said two papers alongwith the examination of third semester, the result of the Petitioner's examination of two papers shall be declared as soon as possible. However, it is also stated that if the Petitioner appears in the two papers only of second semester, the University will arrange a special examination of third semester. If the Petitioner clears the said examination or is not able to clear any of the papers of third semester, he shall be admitted to pursue his studies in the fourth semester and shall be allowed to appear in the examination of fourth semester alongwith the whole examination of third semester as an ex-student at the appropriate time, i.e., when the examinations of fourth semester are held in normal course.

11. On this, the Petitioner also made a submission that the Vice-Chancellor of the University allowed the Petitioner to take special subject, i.e., Physical Chemistry in third semester, but the Head of the Department is not allowing the Petitioner to take up this subject, therefore, a direction be issued to the Respondent/ University to allow the Petitioner to take the special subject. For that, the Petitioner may make a representation to the Vice-Chancellor, who shall consider the prayer of the Petitioner favourably.

12. In the result, the petition is disposed of in the manner aforesaid. No costs.