

(2010) 04 P&H CK 0484
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8583 of 2009

Samriti Sharma and Others	Vs	APPELLANT
Guru Nanak Dev University and Another		RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 2 ILR (P&H) 598

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kholi, J.—All these petitions are being disposed of by this common order as the facts and questions of law in all these petitions are identical.

2. All the petitioners in these petitions are the students of undergraduate course like, Bachelor of Technology (Computer Science and Engineering), Bachelor of Architecture, Degree Programme in the Faculties of Applied Sciences, Engineering and Technology and Physical Planning and Architecture. They were admitted to the course in the year 2005. At the relevant time, they were governed by the Ordinances framed by the University for promotion from one semester to another semester. The eligibility conditions were prescribed in para 8 of the Appendix of "Ordinances for Under Graduate B. Tech/B.Arch., Degree Programmes in the Faculties of Applied Sciences, Engineering and Technology and Physical Planning and Architecture". Ordinance dated 15th November, 2000 in operation at the time of the admission is reproduced hereunder :--

8.(a) A candidate shall be promoted to the next higher semester provided he secures at least 40% marks in aggregate of all the courses taken together for that semester even if he fails in one or more courses.

(b) Reappear examinations for an odd semester shall be conducted along with the next odd semester and an even semester along with the next even semester.

(c) An extra chance shall be given to a reappear candidate of seventh semester

(B. Tech.) 9th Semester (B. Arch) along with the eighth/tenth end semester examination provided the candidate has passed all the courses up to sixth/eighth semester.

(d) A supplementary end semester examination shall be conducted only for eighth (B. Tech.)/tenth (B. Arch.) semester provided the candidate has passed all the courses up to seventh/ninth semester.

(e) Award of grace marks for these under-graduate examination shall be applicable as per the University Ordinance.

3. Under Clause (a) of the Ordinance, a candidate was entitled to be promoted to the next higher semester, if he secures at least 40% marks in aggregate of all courses taken together for that semester, if he fails in one or more courses. Under Clause (b), reappear examination for an odd semester shall be conducted along with the next odd semester and even semester along with the next even semester. Under Clause (c) an extra chance is provided to a reappear candidate of 7th semester (B. Tech.), 9th semester (B. Arch.) along with 8th and 10th semester examination provided a candidate has passed all courses up to 6th and eighth semesters. Similarly, under clause (d), a supplementary examination is to be conducted for 8th (B. Tech.) and tenth (B. Arch.) semesters provided the candidate has passed all the courses up to seventh/ninth semester. There is also a provision for award of grace marks as per the University Ordinances. The University amended the aforesaid Ordinances. The University has introduced the carry on system in the year 1999 for various faculties/departments under the University Calendar 1999, Vol. III for various courses except Law, Engineering and Technology faculties and School of Social Sciences. In respect to the course having 8 semester duration following conditions have been laid down:--

3. Courses having eight semester duration:

(a) There shall be no condition for promoting a student from first semester to second semester.

(b) However, a student shall be promoted to third semester only if he has passed atleast 50% courses/papers, of the first two semesters, but there will be no condition for promoting a student from third semester to fourth semesters.

(c) However, a student shall be promoted to fifth semester only if he has passed at least 50% courses/papers of the first four semester.

(d) There will be no condition for promoting a student from fifth to sixth semester.

(e) However, a student shall be promoted to seventh semester only if he has passed all the courses/papers of the first two semesters.

(f) The student shall be promoted to eighth semester only if he has passed all the courses /papers of the first three semesters. After a period of eighth semesters the student shall be given a period of two consecutive years more to pass failing which he shall have to start the course afresh from the first

semester. However, such a student will not be required to qualify the entrance test again.

4. The aforesaid Ordinances (carry on system) was further amended by the Syndicate in its meeting held on 13th December, 2006, in the following manner:--

Present Heading:

Proposed Heading:

(iii) Carry on system for various (semester examination (except law and Engineering and Technology Faculties and School of Social Sciences).

(iii) Carry on System for various semester examination

(except Law Faculties and School of Social Sciences).

5. Vide the amendment, the carry on system for various semester examinations was made applicable to the Engineering and Technology Faculties as well except Law and School of Social Sciences. However, the amendment was applied from Session 2007-2008. The University further introduced the amendment in carry on system of B. Tech., M. Tech., MCA and MBA 5 years course vide its decision dated 1st August, 2008 whereby the carry on system was applied in all the departments except Law and School of Social Sciences which there are separate Ordinances. Vide the aforesaid decision, the carry on system was made applicable to the Computer Science and Engineering and Electronic Technology by way of further clarification of the amendment introduced,-- vide Item No. 23 in the meeting of the Syndicate held on 5th December, 2006. The petitioners are aggrieved of the decision dated 1st August, 2008 whereby the amended Ordinances governing the carry on system has been applied to all the Engineering courses referred to here-in-above. As a consequence of the application of carry on system, a student can be promoted from first semester to second semester without any condition. However, such a student can be promoted to third semester if he has passed at least 50 per cent courses/papers of the First two semesters. For promotion to 4th semester, no condition is applicable. Again for promotion to 5th semester, a student must pass at least 50 per cent courses/papers of the first four semesters. Again for promotion from 5th to 6th semester is without any condition. For promotion to 7th semester, a further embargo is created that the student must pass all courses/papers of the first two semesters. Similarly, for promotion to 8th semesters, a student must qualify all the courses/papers of the first three semesters,--meaning thereby a student will not be eligible to seek admission in 7th semester if he has any reappear or backlog of first two semesters. Same eligibility condition will apply for promotion to 8th semester and if the student has a reappear or backlog of first three semesters, he is ineligible to seek admission in 8th semester.

6. The grievance of the petitioners is that the amendment introduced or the clarification issued vide order dated 1st August, 2008, is illegal and inapplicable in cases of the petitioners. With a view to support their contention, reliance is

placed on the Ordinance dated 14th November, 2000 (Annexure P-1) which was in force at the time of admission which only required 40 per cent aggregate marks of all the papers in a semester irrespective of the fact whether a student fails in one or more papers of that semesters. It is further contended that carry on system which was introduced in the University Calender, 1999 (Vol. III), has no application to the Engineering and Technology Faculties, Law and School of Social Sciences as is evident from Annexure P-3. Even the amendment introduced pursuant to the decision of the Syndicate,--vide Item No. 23 in the meeting held on 5th December, 2006, carry on system for the disciplines of Engineering and Technology Faculties has been applied from Session 2007-2008. It is, accordingly, submitted that since the petitioners were admitted in the year 2005, this amendment is again not applicable to the petitioners having been specifically made operative from Session 2007-2008, as per the stipulation contained in the amendment Ordinances itself. It is further contended that vide order dated 1st August, 2008 (Annexure P-4) impugned herein, the amendment has been applied retrospectively which has adversely affected the career of the petitioners. According to the learned counsel for the petitioners, had the petitioners known, that they would be required to clear all the reappear of first 2/3 semesters, they would have concentrated on those papers on priority. Now after two years, the petitioners cannot be punished for not having cleared the papers two years back. It is the case of the petitioners that the retrospective operation of the rules is impermissible particularly when it takes away any of the right of the petitioners hither to available in existing statute/law. According to the petitioners, the only requirement for promotion to the seven and eight semesters, was that a candidate should secure 40 per cent marks in aggregate in a semester irrespective of the fact whether a candidate has failed in one or more of the papers of that semester.

7. In the reply filed by the respondent-University, the University has relied upon the order dated 1st August, 2008 whereby carry on system has been applied to all the under-graduate courses in the University except Law and School of Social Sciences. These two courses being governed by separate Ordinances. It is reiterated that any candidate/petitioner having supplementaries in the first two semesters, is ineligible for seeking admission to 7th semester and a candidate having "reappear" in first three semesters is ineligible to seek admission in 8th semester. It is stated that as a matter of fact, order dated 1st August, 2008 is not an amendment to the regulation, but only by way of clarification as previous Ordinances of 2000 were ambiguous in this regard and, thus, necessitated a clarification. It is mentioned in the reply filed by the University that some of the petitioners who had appeared in reappear examinations on first two semesters, were granted provisional admission to 7th semester subject to clearance of the back-log of the first two semesters on their filing of the affidavit that in the event of the failure of the candidate to clear the "reappear" of first two semesters, the admission to 7th semester could be cancelled. Similar affidavits were filed by the candidates/petitioners who secured admission in 8th semester while reappearing

in first three semesters papers. It is submitted that all the admissions to 7th and 8th semesters in respect to the candidates who had back-log of first 2/3 semesters, were provisional in nature and could be cancelled on their failure to clear the back-log.

8. When these petitions were filed, interim orders were passed by this Court in CWP No. 8583 of 2009 on 29th May, 2009, allowing entry in 8th semester. Similar orders were passed in other writ petitions permitting the petitioners to seek admission in 7th and 8th semesters and also to appear in the examinations from time to time.

9. Mr. D.S. Patwalia, learned counsel appearing for the respondents has, however, argued that neither the Ordinances introducing carrying on system are retrospective in nature nor the order dated 1st August, 2008 can be construed to have retrospective operation. His further contention is that the University is entitled to change the rules even during the continuance of the Course by a student as the University does not hold a promise to a student not to change the duration or the manner or method of promotions from one semesters to another except changing the syllabus or a course of study for which a student may be entitled to notice.

10. The petitioners have placed reliance upon a Single Bench judgment of this Court reported as Pawan Kumar Sharma v. The State of Punjab and others 1991 (3) R.S.J. 407. In the case, the affiliating University promulgated bye-laws introducing the condition of passing the examinations in a particular chance. The students who are undergoing the course at the time of introduction of the bye-laws, assailed the action of the University. Considering the issue, a learned Single Bench of this Court held as follows :--

It has been laid down in the above referred two authorities that the rules/regulations which are applicable at the time a student takes admission in the consolidated course would keep on applying, irrespective of any amendment, till the student so admitted, completes the course. In view of this, the respondents were not justified in applying the bye-laws which were promulgated on 16th August, 1986, to the students who had got admission in the B.A.M.S course in the first year, prior to that date.

11. Reliance is also placed on another Division Bench judgment of this Court in the case of Munish Kumar Talwar v. The Vice Chancellor, Baba Farid University of Health Sciences and others 2007 (2) S.L.R. 330. In this case also, the rules for B.A.M.S. course were amended. The amended rules prohibited admission to final professional examination if there is reappear in the second professional examination. The petitioner therein had re-appeared in second professional though he was granted admission to third semester, but not permitted to appear in the examinations. The Court considering the question, held as under :--

7. The short question that requires determination in this case is whether the appellant is to be governed by the amended or un-amended Ordinance. The

appellant had been permitted to appear in the 3rd Professional examination held in April-May, 2005. If the original duration of the 3rd Professional had not been amended, the appellant had cleared the reappears of the 2nd Professional and on that account there was no impediment before him to appear in the final examination which was then to be held in November-December, 2005. As per the appellant, he is suffering on account of the wrong application of the amended Ordinance in his case.

9. Since the appellant is required to be treated as belonging to batch of year 2000, as already noticed, the provision of para 11 reproduced above would also come to his rescue. When the appellant joined the course, he was entitled to take position that he would be eligible to clear 1st and 2nd Professional by November-December, 2005. He really could not have any say in fixing the duration of the 3rd professional by amendment in the Ordinance after he had joined the course. To remedy such a situation only perhaps the provision of para 11 of Ordinance specifically provided that candidates admitted prior to 2001 will appear in final professional after two years of study. It can be noticed that the appellant has studied with the batch in 1st and 2nd Professional examinations. Thus a different duration of the course if being applied to similarly situated candidates. We do not say that it amounts to discrimination but parity need to be maintained between similarly situated candidates and that is what is sought to be achieved by Ordinance reproduced above. We are thus of the view that unamended Ordinance would govern the case of the appellant and the provisions of the amended Ordinance cannot be made applicable to him.

12. To the contrary, Mr. D.S. Patwalia, learned counsel appearing for the respondents has relied upon Punjab University Vs. Subash Chander and Another, In this case, the petitioners had secured admission to MBBS course in the year 1965. The existing regulations required minimum of 50 per cent marks to pass in each subject. In addition to the above, there was a separate rule for grant of grace marks up to one percent of the total aggregate marks including marks for Practical and internal assessment if a candidate fails in one or more papers/ subjects. In the year 1970, an amendment was made in the rules and the award of grace marks was confined to total aggregate marks excluding the marks for internal assessment. Where a candidate fails in one or more subjects provided he has appeared in all subjects where a separate requirement of passing aggregate also exists. In case of BAMS/BDS examination, the grace marks of one percent was confined to each subject and not to aggregate of all subjects. The petitioner who was a student of MBBS was failing in one paper. He claimed grace marks on the basis of un-amended rules, but he was awarded grace marks on the basis of the amended rules which did not prove beneficial to him. He challenged the same in the Punjab and Haryana High Court. A Full Bench of this Court allowed the writ petition holding that the rules prevalent at the time of the admission of the students would apply and the amended rules cannot be applied retrospectively to the detriment of the candidates. Hon"ble the Supreme Court while considering the issue held as under:--

11. We do not agree with the learned Judges of the Full Bench of the High Court that there is any element of retrospectivity in the change brought about by the addition of the exception to Rule 2.1 of Calendar for the year 1970. "Retrospective" according to the Shorter Oxford English Dictionary, Third Edition, in relation to Statutes etc. means "Operative with regard to past time". The change brought about by the addition of the exception to Rule 2.1 does not say that it shall be operative with effect from any earlier date. It is obviously prospective. It is not possible to hold that it is retrospective in operation merely because though introduced in 1970 it was applied to Subash Chander, respondent 1, who appeared for the final examination in 1974, after he had joined the course earlier in 1965. No promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating thereto which were in force at the time of his admission would continue to be applied to him until he finished his whole course.....

12. Therefore, we are clearly of the opinion that there is no question of the change in the rule made in the year 1970 having retrospective operation merely because it was applied in 1974 to Subash Chander who had joined the MBBS course in 1965 when the rule regarding award of grace marks was different. In these circumstances, we affirm the view of D. K. Mahajan and P. C. Jain, JJ. expressed in the Division Bench judgment in Sewa Ram versus Kurukshetra University and disapprove the view taken by the learned Judges of the Full Bench in the decision under appeal in the case and hold that the University was right in holding that Subash Chander. respondent 1, was not entitled to 16 grace marks under the old rule but was entitled to only 4 grace marks under the new rule and had therefore not passed the examination in Midwifery. We allow the appeal, but without any order as to costs. However, this decision will not affect the result of the examination of Subash Chander in Midwifery if it had been declared as per the direction of the learned Judges of the Full Bench in the Letters Patent Appeal.

13. The aforesaid judgment was followed by another Bench of the Supreme Court in the case of Punjab University, Chandigarh Vs. Devjani Chakrabarti and Others, wherein it has been held as follows:--

In the present case also the new decisions are prima facie prospective in operation any they did not become retrospective merely because they subsequently applied to students who had already started their educational careers. We, therefore, allow these appeals but without any order as to costs and set aside the judgments of the High Court and dismiss the writ petitions. However, this decision will not affect the right which might have been granted to the petitioners in the writ petitions on the basis of the judgements of the High Court which have been reversed in these appeals.

14. A similar issue came to be considered by a Division Bench of this Court in the case of Rahul Gupta v. State of Haryana, 2000 (4) S.C.T. 1099, where in

Subhash Chander's case (supra) has been relied upon and it has been held as under :--

4. We have heard learned counsel for the parties and are of the view that there is no merit in the writ petitions. The only argument advanced by the counsel for the petitioner is that when his client joined the diploma course in the year 1997 the prospectus made it clear that the duration of that course was 3 years and the respondents could not change the duration till the students who joined the course in the academic session 1997-98 had completed the same. He has placed reliance on Full Bench judgments of the Court in *Amardeep Singh Sahota v. State of Punjab etc.*, 1993 (4) SLR 673: 1993 (4) SCT 328 (P&H) (FB) and *Swaranjit Singh and another v. State of Punjab and others*. 1998 (2) SLR 14: 1997 (4) SCT 511 (P & H) (FB). We are unable to agree with the contention of the petitioner. From the stand taken by the respondents it is clear that the competent authority decided in the year 1995 to revise the curriculum of Electronics and Communication Diploma Course to 3-1/2 years consisting of 7 semesters. The 7th semester includes the in-plant training and the marks awarded to a candidate in this training have to be included in the diploma awarded to him. It is further clear that the Director, Technical Education, Haryana, by his communication dated 18th October, 1995 informed all the Principals of the Institutes in the State of Haryana which impart such education that the duration of the course had been increased to 3-1/2 years and that the revised curriculum was to be implemented with effect from the academic session 1995-96. What happened was that when the prospectus was issued for the academic session 1997-98 there was an inadvertent error therein and the duration of the course was shown to be of 3 years. When this error was noticed the Director, Technical Education, Haryana sent another communication to all the Principals of the Institutes imparting education in Electronics and Communication Diploma Course that the revised curriculum was to be implemented with effect from the academic session 1995-96. This is not a case where the duration of the course was changed mid-stream. The duration of the course had already been increased to 3-1/2 years in the year 1995 and the petitioner is only trying to take advantage of the error that crept in the publication of the prospectus for the academic session 1997-98. We are further of the view that even after the commencement of the course which was earlier 3 years it was open to the competent authority to change the duration by amending the Rules as has been observed by their Lordships of the Supreme Court in *Punjab University Vs. Subash Chander and Another*, . When a course stretching over a period of 3 years commences and the students join that course the authorities make no promise that there would be no alteration of the duration and that the Rules in regard thereto which were in force at the time of admission would continue to be applied until the whole course is finished. In the case before us, as already observed, there was only an error in the publication of the prospectus on the basis of which the present petition has been filed. We are satisfied that the duration of the course had been extended to 3-1/2 years stretching over 7 semesters even before the petitioner

joined the same. In this view of the matter, the petitioner who has cleared the 6th semester examination did not become eligible for admission to the engineering course. He is yet to complete the in-plant training in the 7th Semester and the marks obtained by him in that training would be taken into account before the diploma is awarded to him.

15. Another Division Bench of this Court in the case of Akashdeep Bhargo and others v. Baba Farid University of Health Sciences and others, 2007 (2) S.C.T. 139 has observed as follows :--

10. The facts, as noticed above, clearly show that, although, the petitioners had been admitted in BAMS course in the College, respondent No. 3 in the year 2000 and at that point of time the said college was affiliated with Guru Nanak Dev University, but, later on, on constitution of Baba Farid University of Health Sciences, the said college came to be affiliated with Baba Farid University in March, 2001. For a period of some time, the old syllabus/ordinances of Guru Nanak Dev University were made applicable to the students who were already admitted but later on Baba Farid University of Health Sciences framed its own rules/regulations/ordinances. The decision taken on 13th September, 2001 has already been extracted above. The said decision shows that only the students admitted prior to 2000 were to be governed by old syllabus/ordinances. The petitioners have continued with their studies under the new Regulations/ Ordinances of Baba Farid University. They have appeared in their final BAMS examination held in the month of May/June 2006. In these circumstances, the rules/regulations and ordinances of Baba Farid University, operative at the time of conducting of the examination, are to govern the case of the petitioners. Concededly, the regulations/ordinances of Baba Farid University do not contain any provision of grace marks, as claimed by the petitioners. The petitioners cannot claim to have acquired any vested rights, merely on account of the fact that at the time of admission, they were governed by Guru Nanak Dev University regulations. We do not find that the grievance made by the petitioners, that a retrospective operation has been given to the ordinance of Baba Farid University, is justified. As a matter of fact, the case in hand is squarely covered by the judgment of the Supreme Court in Subash Chander's case (supra).

16. In view of the dictum of the aforesaid judgment of the Hon'ble Supreme Court in the cases of Subhash Chander's (supra), Hawaldar Singh's (supra) and two Division Benches judgments of this Court in Rahul Gupta and Akashdeep Bhargo's cases (supra), the introduction of the carry on system cannot be said to be retrospective in operation so long it was applied to the examinations held after carry on system so applied. The petitioners are not at all entitled to invoke either the doctrine of estoppel or the retrospectivity.

17. It has been contended on behalf of the petitioners that two petitioners, namely, Simranjit Kaur and Amit Bhardwaj, who had also filed writ petitions have been permitted to appear in the next semesters examinations after the writ petitions were withdrawn. Vide order dated 1st February, 2010 passed by this

Court, Mr. Patwalia, was asked to file an affidavit in this regard. Affidavit has been filed.

18. In the aforesaid affidavit, allegations of the petitioners about declaration of result of three candidates named above who withdrew the writ petitions and promoted to the next semester, have been admitted. It is stated in the affidavit filed by the Registrar of the Guru Nanak Dev University that the matter relating to carry on system was considered by the Committee constituted by the Vice-Chancellor on 31st July, 2008. The Committee notice that since the position with regard to the uniform application of the carry on system was not clear but certain ineligible persons have been admitted under carry on system. It is further noticed that applications were received from the students from various departments for regularisation of the carry on system. In respect to ineligible candidates who were granted admissions under the carry on system it was left to the concerned authorities to give them a special chance. It is further mentioned that on receipt of such request from the candidates, their cases for admission will be considered in special terms. A copy of the decision of the Committee is also enclosed along with the affidavit. It is, accordingly, mentioned in the affidavit that in view of the aforesaid decision, the candidates who withdrew their writ petitions were given special chance to clear the first and second semester's papers along with 7th and 8th semesters and simultaneously they were granted admissions to 7th and 8th semesters.

19. Even after these writ petitions were reserved for judgment, some applications have been filed on behalf of some of the writ petitioners to withdraw from the writ petition, obviously, to take benefit of the University's own decision. It is also pertinent to note that the decision of the University granting relaxation was not circulated in all the departments and has been applied in a selective way. The petitioners had no knowledge of such a decision and, thus, they could not even apply seeking the benefit of the decision. It is a matter of concern for this Court to note that similarly situated writ petitioners who have withdrawn their writ petitions have been granted relief and the present writ petitioners have been denied the benefit without any lawful and valid reasons.

20. Even though the carry on system under challenge in the present writ petitions deserves no interference in view of the law laid down by the Apex Court in Punjab University versus Subhash Chander and another and Punjab University Chandigarh versus Devjani Chakrabarti and others (supra), nor it can be said that the decision to introduce carry on system mid course is retrospective in operation. However, the fact remains that the University in its wisdom chose to grant special chance to ineligible candidates for clearing first and second semester examinations and were also granted admission to 7th and 8th semesters without clearing the backlog papers. This decision has been applied selectively and not uniformly. This action of the University is impermissible in law is an arbitrary exercise of power, deserves no appreciation. The University as an Institution has to act in a non-arbitrary manner providing equal opportunity

to all. The Action of the University do not suggest so. Some of the similarly situated candidates have been granted the benefit of special chance and admissions to the higher semesters despite their ineligibility under the carry on system, whereas others have been denied similar relief.

21. In view of the above circumstances, the petitioners cannot be treated differently and with hostility. They shall also be entitled to the special chance granted to other similarly situated students for clearing the papers of first and second semesters on uniform pattern. Their right to admission to 7th/8th semesters, respectively, cannot be denied to them. These petitioners are, accordingly, allowed in the following manner:--

- (i) Such of the petitioners who have not availed special chance for clearing first and second semester re-appear, will be provided special chance for the purpose;
- (ii) admissions granted to the petitioners to 7th/8th semesters under the interim orders of this Court, shall stand regularised;
- (iii) results of the petitioners who have appeared in 7th/8th semesters examinations, shall be declared;
- (iv) those who have been denied admissions in 7th/8th semesters on account of non-clearance of second/third semesters examinations, shall be granted admission to 7th/8th semesters, as the case may be, and on completion of the course, their result shall be declared;
- (v) this relaxation shall be available to all students who have reached 7th/8th semesters up to academic session 2009-2010 or till such time the decision of the University taken vide letter No. 1737-DAA dated 1st August, 2008, shall remain in operation. It is, however, open to the University to uniformly apply the carry on system to all the disciplines covered by the carry on system by properly notifying to the students.