
(2003) 02 KAR CK 0091
In the Karnataka High Court
Case No : Writ Petition No. 18551 of 2002

Sudarshan Kumar Babu Vallurur

APPELLANT

Vs

Visveswaraiah Technological University and Another

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Visveswaraiah Technological University Regulations Governing Master of Technology Course — Regulation 10

Citation : (2003) ILR (Kar) 4771 : (2003) 4 KarLJ 252 : (2003) 2 KCCR 111 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; Basavaprabhu S. Patil, for Respondent-1, for the Respondent

Judgement

N. Kumar, J.—In a student's career, how a pass, without a class and pass in the first attempt in the prescribed examination, can change his course of life is the subject-matter of this writ petition.

Facts in brief:

The petitioner was admitted to first semester M.Tech. course in Computer Applications in Industrial Drives during the academic year 1999-2000 as against a free merit seat. The petitioner attended the classes regularly and was doing well in sessional tests. In the first semester, out of the total internal assessment marks carrying a maximum of 300, the petitioner secured 221 marks. The petitioner suffered serious attack of enteric fever from 23rd February, 2000 because of which he had to be shifted to Gudivada, his native place. He was advised complete rest up to 15th March, 2000. On account of the said ill-health, the petitioner could not attend the first semester examination conducted in March 2000. Therefore, in October-November 2000, the petitioner took first and second semester examinations together and passed in all but one paper of first semester and all but one paper of second semester. He appeared for remaining papers in the examination held during May-June 2001 and passed the said two

papers. The petitioner completed and passed third semester in first class with distinction. The petitioner has been issued provisional degree certificate by the University certifying that the petitioner has passed the prescribed examination in Second Class, as per Annexure-L.

2. The petitioner submits that M.Tech. course in Engineering is governed by the regulations framed by the first respondent called Regulations Governing the Master of Technology Course in Engineering (for short, hereinafter referred to as the "Regulations"). Award of class is governed by clause O.M. 10 of the Regulations. It stipulates that the class shall be awarded on the aggregate marks of all three semesters taken together, A reading of the said clause shows that passing of the subjects in the first attempt is not required for securing first class with distinction and the requirement of class with distinction and the requirement of passing all the subjects in the first attempt is applicable only for declaration of rank. In other words, for declaration of the class, the University is required to take the average percentage of marks secured by the student of all the three semesters taken together, subject however to the condition that the marks to be reckoned for this purpose are the marks secured in the first attempt.

3. The petitioner contends that he did not attend the examination of the first semester held in February-March 2000. In the subsequent examination held in October-November 2000, the petitioner wrote the first semester examination for the first time and obtained aggregate marks of 428 in the five subjects for which theory examination was administered and he had already 45 marks out of 50 in the Seminar/Lab which is an examination conducted independent of the theory examination. Thus, for the determination of the aggregate average percentage of the petitioner, the first attempt marks for the first semester is required to be taken as 473 which is $428+45$. Similarly, for the second semester, the first attempt of the petitioner being the examination held in October-November 2000 and the petitioner having secured 478 marks out of 800 marks, that should be taken as the basis. Thus, out of the aggregate of 2000 marks (first semester 473, second semester 478 and third semester 344) this would give him 64.75 percentage and the petitioner is entitled for a declaration to have passed M.Tech. degree in first class.

4. The University issued him provisional degree certificate dated 16-3-2002, in which it was declared that the petitioner has passed degree of Master of Technology securing second class. On enquiry with the college and the University, the petitioner learnt that February-March 2000 examination of the first semester in which the petitioner was absent from examination due to ill-health has been taken as the first attempt by the University for computation of the class of the petitioner and the University has taken into account 221 marks which the petitioner has secured in the internal assessment as the total marks secured by him out of 800 in the first semester and thus computed that the petitioner has secured only second class. The petitioner made a detailed representation to the authorities to undo the injustice done to him and there was no response. In fact,

the petitioner had joined services of Koneru Lakshmaiah College of Engineering as a Lecturer in Electronics and Computer Engineering for which the academic requirement is pass in M.E./M.Tech. with First Class. Noticing that the petitioner has secured only second class on seeing the provisional degree certificate, the college has terminated his services at the end of office hours on 31-3-2002. The AICTE has prescribed the minimum academic requirement of first class in M.E./M.Tech. for appointment as Lecturer in Engineering Colleges. That apart, for registration for Ph.D., the minimum, academic standard prescribed is a pass in M.E./M.Tech. with first class. Though the petitioner has secured first class, by denial of the same, the petitioner has suffered serious injury and virtually his degree will be of no use. Therefore, the petitioner has approached this Court for quashing of the provisional degree certificate issued to him showing that he has passed in second class and for a declaration that the petitioner has passed prescribed examination in first -class and also for a direction to the University to issue regular degree certificate showing that the petitioner has passed in first class.

5. The respondent-University contested the claim of the petitioner. They do not dispute the facts alleged in the writ petition. However, they contend that in the first semester examination and even in examination held in October-November 2000, as he did not clear one subject, he is not entitled to declaration of his result as first class. This absenteeism and the paying of the admission fee for the exams during March 2000 has been considered to be his first attempt by the University which he did not complete successfully. Further, the petitioner did not clear even the second semester subjects in the first attempt. As per the University Regulations, only such of those students who have passed in their first attempt would be entitled to for being awarded a first class. The petitioner has not passed in his first attempt, he is not entitled to be awarded any class except for being declared as having passed. The awarding of the second class by the respondent-University has been done erroneously, and that shall be rectified by issuing the provisional/degree certificate only declaring the student to have passed. Therefore, they contend that the petitioner is not entitled to the relief sought for.

6. The learned Counsel appearing for the petitioner Sri P.S. Rajgopal, submitted that the stand taken by the University in denying first class to the petitioner is contrary to Regulation 10 which deals with award of class. According to him, pass in first attempt is required for declaring a rank. Pass in first attempt is not the criteria for declaring a class. Criteria for declaring a class is that a candidate should secure 60% or more marks in aggregate in first attempt. First attempt means, that the candidate should write examination. If for any reason, a candidate is unable to write the examination, consequently absents himself, it cannot be said that the candidate has failed in the first attempt. The petitioner on account of ill-health could not take the examination conducted in March 2000 and therefore he remained absent. He took the examination in October 2000 and the marks secured by him in that examination being his first attempt has to be

taken into consideration. As passing in the said examination is not a criteria for declaring the class, even though he has failed in one subject, the total marks obtained in that first attempt has to be taken into consideration for declaring the class and if so taken, admittedly, the petitioner has secured 64.75% of marks in aggregate in first attempt in all the three semesters and therefore, denial of first class to the petitioner is illegal, contrary to law and as such, the petitioner is entitled to the relief sought for.

7. Per contra, the learned Advocate appearing for the University submitted in the first place, that, the petitioner did not take the examination in March 2000. He took the examination in October 2000. In the examination held in March 2000, the petitioner secured 221 marks out of 300 marks in the internal assessment, whereas, in theory papers, he remained absent. For the purpose of computation of attempt, as he has secured 221 marks out of 800 marks, that is the marks which he has secured in the first attempt and in that view of the matter, the petitioner has not secured 64.75% of marks as alleged.

8. Secondly, it was contended even though the marks secured by him in October 2000 is to be computed, then, in the October 2000 examination, the petitioner did not pass in all the papers, he failed in one paper, therefore, unless the petitioner passes in the first attempt, the said average cannot be taken into consideration for the purpose of declaring a class. In that view of the matter, the University was fully justified in not declaring the petitioner as having secured first class, even though in aggregate of three semesters, in first attempt, he has secured 64.75% of marks.

9. In view of the aforesaid facts and rival contentions, the points that arise for my consideration are.-

(1) What is the meaning of first attempt contained in Regulation 10?and

(2) Whether for declaration of a class, is it necessary that a candidate should pass in first attempt?

10. The answer to these questions, depends on the interpretation to be placed on Regulations O.M. 9 and O.M. 10 of the Regulations. Therefore, it is necessary to look at these two provisions:

"O.M. 9. Eligibility for passing:

O.M. 9.1 There shall be University examination at the end of each semester.

O.M. 9.2 The candidate shall obtain a minimum of 40% of marks in the University examination and a minimum of 50% of marks in aggregate including the internal assessment marks for pass in theory subject.

O.M. 9.3 A candidate shall obtain a minimum of 50% of marks in:

1. Laboratory;

2. Seminar;

3. Dissertation; for pass.

The minimum requirement in case of dissertation work is based on the aggregate for the evaluation of dissertation and the performance at the viva voce.

O.M. 9.4 There shall be no restriction for promotion from first provided he/she has fulfilled the attendance requirements as per O.M. 4.

O.M. 9.5 The candidates who do not pass in any subject of the first and second semester examinations can be allowed to complete dissertation. But, submission of the dissertation shall not be permitted till they pass first and second semester examinations in full.

O.M. 10. Award of Class:

O.M. 10.1 The candidates who have passed in all the subjects of first and second semesters and the dissertation work of third semester shall be declared to have passed the course.

O.M. 10.2 The class shall be awarded on the aggregate marks of all the three semesters taken together.

O.M. 10.3 A candidate who secures 70% and above marks in aggregate in first attempt shall be declared to have passed in first class with distinction.

O.M. 10.4 A candidate who secures 60% or more marks but less than 70% in aggregate in first attempt shall be declared to have passed in first class.

O.M. 10.5 A candidate who secures 50% or more marks but less than 60% in aggregate shall be declared to have passed in second class.

O.M. 10.6 There shall be three ranks in each PG Branch. The ranks shall be declared on the basis of the aggregate marks of the first, second and third semesters taken together and provided the candidate has passed in all these three semesters in first attempt only.

O.M. 10.7 The ranks shall be awarded if there are minimum, of 10 candidates of the same batch".

11. In construing the aforesaid regulations, we have to bear in mind the settled legal position regarding construction of statute. The golden rule is that the words of statute must prima facie be given their ordinary meaning. The natural and ordinary meaning of words should not be departed from, unless it can be shown that the legal context in which the words are used requires a different meaning. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid a head-on clash between two sections of the same Act. The provisions of one section of a statute cannot be used to defeat those of another unless it is

impossible to effect reconciliation between them. The sub-sections must be read as parts of an integral whole and as being interdependent, an attempt should be made in construing them to reconcile them if it is reasonable and possible to do so and to avoid repugnancy. When there are in an enactment, two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction. That effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a useless lumber or dead letter is not harmonious construction. To harmonize is not to destroy. It is no doubt true that if on its true construction a statute leads to anomalous results, the Courts have no option to give effect to it and leave it to the Legislature to amend and alter the law. But, when on a construction of a statute, two views are possible one such results in an anomaly and the other not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies. The intention of the Legislature is primarily to be gathered from the language used which means that attention should be paid to what has been said as also what has not been said.

12. So keeping in mind the settled legal position, if we look at the regulations, the Regulation 2 provides for the duration of the course. It states that there shall be two categories. Full-time course and part-time course. The full-time course shall extend over a period of three semesters of total duration of 18 months. Full-time candidate shall be allowed a maximum duration of six semesters to become eligible to award a PG degree, failing which he/she shall have to register once again as a fresh candidate.

13. In this background, if we look at the eligibility for passing in the PG degree, Regulation O.M. 9.1 categorically provides that there shall be University examination at the end of each semester. The candidate shall obtain a minimum of 40% of marks in the University examination and a minimum of 50% of the marks in the aggregate including the internal assessment marks for pass in theory subject.

14. Regulation O.M. 10 deals with award of class. Regulation O.M. 10.1 provides only those candidates who have passed in all the subjects of first and second semesters and the dissertation work of third semester shall be declared to have passed the course. Regulation O.M. 10.2 states that class shall be awarded on the aggregate marks of all the three semesters taken together. Depending upon the percentage of marks secured, distinction, first class and second class are declared. Further, it is made clear that for award of a class, the required percentage of marks should be secured in aggregate in the first attempt. Insofar as the declaration of rank is concerned, there are three ranks in each PG Branch. Rank shall be declared on the basis of aggregate marks of first, second and third semesters taken together and provided the candidate has passed in all three semesters in first attempt only and the rank shall be awarded if there are minimum of 10 candidates of the same batch.

15. Therefore, it becomes clear that insofar as declaration of rank is concerned, the candidate should satisfy three conditions: (a) the candidate should pass in all the three semesters; (b) in first attempt only; and (c) aggregate marks of first, second and third semesters would be taken together. However, for declaration of a class those regulations provide only two conditions to be fulfilled, (a) the candidate should secure the requisite percentage of marks in aggregate; (b) the said marks should be secured in the first attempt only. Therefore, the requirement of passing is conspicuously missing in the case of award of class. Of course, Regulation O.M. 10.1 says only when the candidate passes in all the three semesters, he would be declared to have passed. From this, it follows that the criteria for declaration of a class is that the marks of the candidate in the first attempt in three semesters would be taken into consideration and depending upon the percentage of marks obtained, the said candidate would be declared to have passed in such class, provided on the date of such declaration, the candidate has passed in all the three semesters.

16. Now the question is, what is the meaning of the words "first attempt" used in the aforesaid regulation.

17. In fact, this Court had an occasion to consider the meaning of the word "attempt" or "chance" in the case of Subhashish Talukder Vs. The Principal, M.R. Medical College and Others, , wherein, it has been held as under:

"4. The intention of the Legislature is made very clear by the words "permitted" and "actual examination" in the said rule. A candidate may pay the necessary fee, may make an application to take the examination, he may be issued with hall-ticket and thereafter he should actually take the examination. It is only if he does not pass after actually taking the examination four times, he is debarred from taking the examination on fifth occasion. In other words, these four chances have to be counted with reference to the candidate writing the actual examination four times. If after paying the necessary fee and making the application if he is not permitted to take the examination, that would not amount to a chance. A candidate may not be permitted to take the examination on the ground of want of attendance or not fulfilling any other requirement prescribed by the University, though he has paid the examination fee, then it would not amount to a chance or an attempt. Similarly, if a candidate after paying the fees, making the application, obtaining hall-ticket, may not be able to actually write the examination for various reasons. For example, due to ill-health he may not be able to write the examination. In an extreme case on the date of the examination, the student may leave the house to the college to write the examination and he may meet with an accident which prevents him from writing the examination. Then, under those circumstances chance cannot be counted against such an eventuality. What is of essence is, he must write four times the actual examination and if he fails, he would not be eligible to write the examination for the fifth time. Therefore, payment of examination fee, making an application, issue of an hall-ticket, are not relevant to decide whether the

candidate has taken a chance in the examination. It is the actual writing of the examination four times which has to be counted as a chance under the aforesaid rules".

18. The same reasoning should be applied to the words "first attempt". Only when a student writes the examination, the same has to be counted as an "attempt". Therefore, merely because a candidate has paid the necessary examination fees, has been given a hall-ticket and if he fails to write the examination and when he is shown to have absented in the said examination, it cannot be said that he has failed in the first attempt.

19. If the intention of the Legislature was that the candidate should secure the requisite percentage of marks in the first examination itself, they could have used the words "first examination" in place of "first attempt". When in all, a candidate is given a maximum duration of six semesters, to become eligible to award PG Degree, nothing prevented the authorities to insist that the candidate should secure the marks in the first examination. On the contrary, consciously they have used the words "first attempt" thereby meaning that the candidate takes the examination, and writes the examination for the first time, he is said to have made an attempt to pass the examination. In such an attempt, he has to secure the requisite percentage of marks. Therefore, mere paying the examination fees, issue of hall-ticket would not constitute an attempt by the candidate. Only when the candidate attends the examination, writes the examination, he attempts to pass the said examination and in such first attempt, he must secure the requisite percentage of marks.

20. The contention that even though the candidate does not take the theory examination, as marks is awarded for the internal assessment, he is deemed to have made an attempt to take the examination, I do not find any substance in the same. Regulation 5.3 reads as under:

"O.M. 5.3.--The candidates obtaining less than 50% of the internal assessment marks in any subject shall not be eligible to appear for the examination in that subject. However, the Head of the Department may arrange for the improvement of internal assessment marks in the subject/subjects in the immediate subsequent semester and the candidate be provided opportunity for taking the examination at the end of the immediate subsequent semester to fulfil the provisions of Regulation 5.1".

It clearly sets out that a candidate obtaining less than 50% of the internal assessment marks in any subject shall not be eligible to appear for the examination in that subject. Therefore, it becomes clear that only on the candidate securing 50% of the internal assessment marks, he would be eligible to take the theory papers. Therefore, though for the purpose of declaring a candidate as passed, both the marks obtained in internal assessment and in the theory papers is taken into consideration, it cannot be construed as one examination. Obtaining of 50% in the internal assessment is condition precedent

for permitting the candidate to take theory examination. Therefore, once the candidate secures 50% marks, even if the candidate fails in the theory examination, the marks obtained in the internal assessment would be same and the candidate when he takes the theory examination to improve his performance, the same marks in the internal assessment is taken into consideration. If that 50% marks is not obtained in the internal assessment, the candidate is provided an opportunity for taking the examination at the end of the immediate subsequent semester. Therefore, the first attempt strictly refers to first attempt in internal assessment and first attempt in theory examination. In fact, the internal assessment is made not by any examination at the end of the semester. It is based on the assessment for over a period of time which is the period prescribed for that particular semester. But it is clear that for the purpose of declaration of class, the marks obtained only in the first attempt in all the three semesters has to be taken into consideration, which is inclusive of marks obtained in the internal assessment and theory papers.

21. Insofar as the contention that the student who has failed in first attempt is not entitled to declaration of class is concerned, the language employed in the regulation do not give room for any such interpretation. When the language employed is that he must secure marks in the first attempt, it is the aggregate marks of the first attempt alone which decides the class. Whether the student has passed in all the subjects in that first attempt is not relevant. The rule making authorities have deliberately omitted the words "that the candidate should have passed in all the three semesters in the first attempt only". Whereas, the said phraseology, "has passed in all the three semesters in the first attempt only" is made a condition precedent for declaration of rank. Therefore, for the purpose of declaration of rank not only the candidate must secure the highest marks in aggregate, he must secure the said marks in the first attempt and he must pass all the three semesters in the first attempt. Insofar as declaration of class is concerned, the phrase "passing in the first attempt" is conspicuously missing. Therefore, for the purpose of declaration of class, what is to be calculated is the aggregate of marks obtained by the candidate in the first attempt only irrespective of the fact whether in the first attempt, the candidate has passed all the papers or not. Hence, passing in all the papers in the semester is not necessary before the said marks obtained in the first attempt is taken into consideration for the declaration of class. It is also to be remembered here that class is declared only at the end of entire course, i.e., after the first semester, second semester and the dissertation work of third semester. Only when the candidate passes in all these three semesters, he shall be declared to have passed the course. It is at this stage, the aggregate marks of all the three semesters is taken together and if the candidate has secured the requisite percentage of marks in the first attempt, he shall be declared to have passed in the class to which he belongs. Therefore, the requirement that in the first attempt the candidate should pass in all the papers before the said marks in the first attempt should be taken into consideration, do not find any support from the

regulations framed.

22. Any other interpretation would have disastrous consequences. It cannot be forgotten that these are all beneficial legislations regulating the conduct of examination, declaration of results and benefits accruing to the students. There is no logic in denying a class to a meritorious student who has secured the requisite percentage of marks. It would be a reasonable restriction to insist that a student should obtain the marks in the first attempt. In other words, if he wants to secure a class or he wants to be declared with a class, not only he must study hard within the time stipulated and in the first examination, he must secure the requisite percentage of marks. But for the reasons beyond the control of the student, if the student is prevented from taking the first examination and when a specific provision is made to meet such contingencies by enabling the student to take the next examination, it cannot be said that the marks obtained in the next examination which would be the first attempt cannot be taken into consideration in deciding the declaration of class. When a student is innocent, and for the reasons beyond his control and for no fault of his, prevented from, taking the first examination, he cannot be denied the benefit of marks secured by him in his first attempt in the next examination.

23. The material on record discloses that AICTE has prescribed rules prescribing a minimum academic requirement of first class in M.E./M.Tech. for appointment as lecturer in Engineering Colleges. For registration of Ph.D., the minimum academic standard prescribed is a pass in M.E./M.Tech. in first class. When first class has been prescribed as the minimum qualification for employment and for higher studies, though a student has secured the marks which would enable him for declaration that he has passed the examination in first class, on a technical interpretation, if he is denied the said benefit, the entire course which he has studied would be set at naught. The entire educational career spanning over two decades in a student's career would be rendered useless. All this for no fault of the student. That is not the intention of the authorities in enacting these rules. Even though the student possesses the required merit and has secured necessary percentage of marks to enable him to be declared to have passed the examination in first class or with distinction, if it is denied by interpreting these provisions either literally or contrary to the intention of the rule making authority, irreparable injury and great injustice would be caused to such student. Therefore, such interpretation has to be avoided. On a reading of the said regulations, if two views are possible, that view which tend to give benefit to the student is to be preferred as the regulations are not penal but beneficial.

24. Under these circumstances, for declaration of class what is to be taken into consideration is:

- (1) at the end of these 18 months" course, the candidate should have passed in all the three semesters;
- (2) it is the marks obtained in the three semesters in the first attempt alone is

taken into consideration;

(3) if the candidate has secured requisite percentage of marks in the aggregate marks of the three semesters taken together, he would be declared to have passed in that class depending upon the percentage of marks which he has obtained.

25. In the light of the aforesaid discussions, if we look into the facts of this case, for the first time, the petitioner secured 221 marks out of 300 marks in the internal assessment. Therefore, he was eligible to take the theory examination conducted in March 2000. Unfortunately, due to illness, he could not take the said examination. Therefore, he took the examination in October 2000. Therefore, that is the first attempt insofar as first semester is concerned by the petitioner. The marks which he has obtained in the first attempt theory is 252. To that, if marks obtained in first attempt first semester internal assessment, is to be added, it would be 473. In the second semester examination which the petitioner wrote in October 2000, he has secured 225 marks in internal assessment, 253 marks in theory, in all 478, though he failed in one subject. Subsequently, the petitioner has completed those failed subjects of first and second semesters. However, for the purpose of class, the said marks obtained by him cannot be taken into consideration. Insofar as third semester examination is concerned, he has secured 344 marks, out of 400, which he has passed in first attempt. Therefore, the total marks obtained by the petitioner in the first attempt of first semester, second semester and third semester would be 1295, out of 2000, which would be 64.75%. Therefore, the petitioner is entitled to declaration of his results as having passed in first class. Denial of first class on the ground that he has not passed the examination in the first attempt and on the ground that he has not passed all the papers in the first attempt is unjustified, contrary to law and as such the same cannot be sustained. Hence, I pass the following:

ORDER

(1) Rule is made absolute.

(2) Provisional degree certificate dated 16th March, 2002 issued by the first respondent as per Annexure-L, insofar as it declares that the petitioner has passed the prescribed examination of the degree of Master of Technology in Second Class is quashed.

(3) First respondent is directed to declare the petitioner to have passed the prescribed examination for award of the degree of Master of Technology in First Class and consequently to issue the regular degree certificate showing the petitioner to have passed Master of Technology degree in First Class.

(4) No costs.