



2024 : DHC : 3890



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6287/2024 & CM APPL. 26194/2024

SAKSHI KUMARI

..... Petitioner

Through: Ms. Mrinal Ecker Mazumdar,
Ms. Aarushi Gupta and Mr. Divyansh Singh,
Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Pritish Sabharwal, ASC for
GGSIPU

Mr. Apoorv Kurup, Ms. Nidhi Mittal and
Ms. Gauri Goburdhan, Advs. for UGC/R-4

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

08.05.2024

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1. The issue in controversy in the present writ petition is whether the petitioner is entitled to be awarded grace marks or to a “mercy chance” so as to tide over having failed in the Otolaryngology paper in the second semester of her B. ASLP¹ course undertaken with the Respondent 1 University (hereinafter referred to as “the University”).

2. Consequent to clearing the Common Entrance Test (CET) 2020 held by the University, the petitioner joined the B. ASLP course in the Ali Yavar Jung National Institute of Speech and Hearing Disabilities (Divyangjan) [hereinafter referred to as “the Institute”]. The course spans four years. The petitioner is therefore a student of the 2020-



2024 batch.

3. In June 2022, the petitioner appeared for her second semester regular examinations. She failed her Otolaryngology paper in which she scored 28 marks against the minimum pass marks of 37.5. She re-appeared in the said paper in April 2023, the result of which was declared on 10 April 2023. She again failed, scoring 30 marks in her second attempt. She undertook her third attempt of her second semester in her Otolaryngology paper in December 2023. As per the result which was announced on 25 January 2024, the petitioner again failed, scoring 32 marks against the requisite 37.5 pass marks.

4. As a result of the University refusing to award her grace marks, the petitioner is unable to appear for the sixth semester exams and continue with her studies.

5. It is also pointed out that the petitioner has been unable to clear the subject “Child Language Disorders” in her fourth semester examination. However, if the petitioner is not awarded 5.5 grace marks and is not promoted to her sixth semester, she would never be able to re-appear in the said papers thereby rendering nugatory the provision for three attempts at every paper, specified in Clause 8.1 of the norms of the Rehabilitation Council of India (hereinafter referred to as ‘RCI’) for the B. ASLP course, which reads thus:

“8.1 Carry-over of papers

Each paper should be successfully completed within 3 attempts

¹ Bachelor in Audiology and Speech Language Pathology Course



including the first one.

Students can start internship after the 6th semester exams. However, students who fail in their clinical exam of 6th semester will have to discontinue internship. The candidates are permitted to carry over the theory courses until the end of the program.”

6. The second prayer of the petitioner in this writ petition is that she be granted 5.5 grace marks for his Otolaryngology paper in her third attempt.

7. The award of grace marks, at the relevant time, was regulated by the “Regulation for Grace Marks in the University Examinations” of the University, circulated on 19 December 2013 (hereinafter referred to as “the 2013 Regulations”) as approved by the Board of Management of the University in its 55th meeting held on 24 September 2013. Regulations 1, 4, 5 and 6 of the 2013 Regulations are relevant and may be reproduced thus :

1. **Applicability:** This regulation shall apply to students, who do not qualify the University Examinations of that particular programme (for which enrolled) in the stipulated time of "n" years for award of degree barring those pursuing programmes approved by Medical Council of India.

4. The grace marks may be awarded (maximum up to six marks) only to the regular semester/annual examinations. However, in programme(s) governed by a National Statutory Body, the norms, if prescribed for grace marks, will be applied.

5. Grace marks in End Semester/Annual Examinations after n years, n+1 years and n+2 years may be awarded for one or more papers/courses of the regular end semester/annual examinations, ensuring that the total marks (including the grace marks), for such papers/courses does not exceed the minimum passing marks.

a) **After n years:**

Six grace marks may be awarded after completion of



the normal duration of the course (n semester/annuals etc.), only if this enables the student to become eligible for the award of degree (i.e. after n semesters/years).

b) After n+1 years:

Nine grace marks to be awarded after n+1 year, only if this enables the student to become eligible for the award of degree.

c) After n+2 years:

Twelve grace marks to be awarded after n+2 years, only if this enables the student to become eligible for the award of degree.

6. If a student appears in a subject, his/her best marks will be retained and made operational only when situation enumerated in clause (a), (b) or (c) arises.”

8. This case is fully covered by the judgment dated 6 May 2024 passed by this Court in *Raj Gangwani v. Guru Gobind Singh Indraprastha University*².

9. Ms. Aarushi Gupta, learned Counsel for the petitioner, made sincere efforts to extricate her client from the said decision but it has to be said that her effort, though sincere, are not successful.

10. She first referred to para 35 of the decision in *Raj Gangwani*, which reads thus:

“35. The petitioner’s prayer for grant of a mercy chance is also, according to Mr. Sabharwal, unjustified, as the petitioner’s case is not one in which, owing to unavoidable circumstances, he was not in a position to attempt the papers. The petitioner attempted the Communication Sciences paper not once but thrice and failed each time. There can, therefore, be no question of grant of any mercy

² Order dated 6 May 2024 in **WP(C) 1506/2024**



chance to him.”

11. Ms. Gupta submits that the case of her client is different from that of *Raj Gangwani*.

12. A reading of the decision in *Raj Gangwani* reveals that the prayer for grant of mercy chance was rejected, not just on the ground that the petitioner was unable to appear in the paper owing to unavoidable circumstances, but also on other grounds which Ms. Gupta is not able to distinguish.

13. *Inter alia*, this Court has noted that the grant of a mercy chance is matter of discretion of the Vice Chancellor and that, unless the court is satisfied that the said discretion has been misused or abused, it cannot sit in an appeal over the exercise thereof.

14. That apart, Mr. Sabharwal has pointed out, correctly, that the petitioner had submitted an application dated 2 February 2024 to the Institute, seeking grant of grace marks and stating that she was unavoidably late for her Otolaryngology examination owing to an unexpected emergency, as her mother was admitted to hospital requiring immediate attention. He points out that, while the examination was held in December 2023, the medical records submitted with the applications are all between 19 September 2018 and 28 July 2023. There is, therefore, no medical record submitted by the petitioner to the institute, evidencing that her mother was seriously unwell or hospitalised even proximate to the date of the examination



for which she seeks a mercy chance.

15. The second submission of Ms. Gupta is that, in *Raj Gangwani*, the petitioner had not yet entered the sixth semester and, therefore, this Court was not inclined to extend, to him, the benefit of the 2013 Regulations.

16. As against this, her client, she submits, was actually studying in the sixth semester. This factor, too, can make no difference, as Regulation 5, as I have held in *Raj Gangwani*, applies only with respect to the n^{th} semester examinations, i.e. the examinations held at the end of the n^{th} year, at the cusp of obtaining a degree.

17. Regulation 5 in fact is a beneficial provision introduced so as to facilitate the obtaining of a degree by student who may have not been able to obtain the requisite marks in the last examination at the end of n^{th} year. In such a case, the student is entitled to two opportunities to re-attempt the examination, at the end of $n+1$ year and at the end of $n+2$ years. The regulation also provides that, at the first attempt, undertaken at the end of n^{th} year, six grace marks may be awarded; at the second examination conducted at the end of $n+1$ year, 9 grace marks may be awarded and at the second re-test at the end of $n+2$ years, 12 grace marks may be awarded.

18. A student who has not reached the stage of attempting the n^{th} year examination, cannot, therefore, seek the benefit of Regulation 5.



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19. Inasmuch as the petitioner has failed the Otolaryngology paper of her second semester thrice, she would not be in a position to undertake the nth year examination. As such, the benefit of Regulation 5 of the 2013 Regulations cannot be extended to the petitioner.

20. There is, therefore, no distinguishing feature as would justify this Court adopting, in the present case, a view any different from that which it took in *Raj Gangwani*.

21. As such, following the judgment of this Court in *Raj Gangwani*, this writ petition is dismissed in *limine*.

C. HARI SHANKAR, J

MAY 8, 2024

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[Click here to check corrigendum, if any](#)