

Punjab-Haryana High Court

Derrick S Failbus vs The Punjab Technical University ... on 29 July, 2009

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

C.W.P. No. 5841 of 2009

Date of Decision: July 29, 2009

Derrick S Failbus

...Petitioner

Versus

The Punjab Technical University and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Manu K. Bhandari, Advocate, for the petitioner.

Mr. Amrit Paul, Advocate, for respondent No. 1.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J This petition filed under Article 226 of the Constitution prays for quashing of notification dated 22.2.2006 (P-1) to the extent it relates to the last date of passing of examinations up to 31.12.2007. It has further been prayed that direction be issued to the respondent Punjab Technical University to grant equal number of chances to the petitioner as has been given to other batches of students studying in the University.

2. Brief facts of the case are that in the year 2001 the petitioner took admission in the four years degree course in the C.W.P. No. 5841 of 2009 Mechanical Engineering in the Beant College of Engineering and Technology, Gurdaspur-respondent No. 2 which is affiliated to respondent No. 1 University, which was started in August 2001 and completed in August 2005.

3. On 22.2.2006, the Board of Governors of the respondent University took a decision to grant an additional opportunity to old students to clear their backlog of reappear papers (subjects) and accordingly a notification was issued amending the regulations (P-1). In para (a) of the notification it has been postulated that the maximum duration for earning all subjects of a particular course would be twice the duration of the respective regular course. This condition was to apply to the

current students who were not able to clear their course within the maximum duration stipulated under the un-amended regulations. In this manner, by amending the regulations additional chance was provided to the students to clear their examinations. However, in the later part of para (a) of the notification a rider was imposed that such examinations would be conducted only when the University examinations in the respective subjects is held in the normal course between 1.1.2006 to 31.12.2007 and no additional chance to clear the backlog was available after 31.12.2007.

4. It has been claimed that the petitioner was not able to clear one of his paper of 5th Semester in the subject of 'Heat Transfer', having Code No. ME-303. It is claimed that in February 2006, the petitioner was able to get a job in a Company in Delhi and in December 2006 he appeared in the re-appear examination of the said paper. The grievance of the petitioner is that the result of his re-appear examination held in December 2006 was never communicated C.W.P. No. 5841 of 2009 to him despite repeated requests. On inquiries he was told that the result would be conveyed to him after its receipt.

5. On 19.2.2009, the employer of the petitioner issued a notice to him to complete submission of documents including documents showing academic qualifications. The petitioner was required to submit the documents by 16.3.2009 (P-3). The petitioner again inquired from respondent No. 2 about his result and came to know that he again failed in the re-appear examination, result of which was declared on 30.5.2007 (P-4). On 19.3.2009, the petitioner made a representation to the respondent University and requested for granting him one additional chance to clear the examination (P-5). According to the petitioner no decision has been taken on his representation. Even on account of his failure to pass the examination he had to resign from his job on 30.3.2009 (P-6).

6. Having heard learned counsel for the parties and perusing the paper book with their able assistance we are of the view that the issue raised in the instant petition is no longer res integra. Similar controversy came up for our consideration in CWP Nos. 16521 and 20888 of 2008 wherein the impugned notification dated 22.2.2006 (P-1) was subject matter of challenge. After considering the rival contentions of the parties as well as the contents of the impugned notification dated 22.2.2006 we have dismissed the aforementioned writ petitions vide order dated 14.7.2009 passed in CWP No. 16521 of 2008 (Sachin Nanda and others v. The Punjab Technical University and another) by observing as under:-

" This Court, in our considered opinion, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, is highly constrained to grant the relief prayed for in the instant petitions. Conduct of examinations or grant of additional chances to clear the backlog of reappear are in the realm of policy matters lying within the exclusive domain of the respondent-University. Even though petitioners, by fixing last date for clearing backlog arrears as 31.12.2007, may have been put at a less advantageous position vis-a-vis students of older batches, yet this Court cannot direct the respondent-University to grant still more additional chances to the petitioners holding that such a disparity is arbitrary, discriminatory or violative of Article 14 of the Constitution. The Board of Governors of respondent- University has taken a conscious decision to grant as a special privilege/concession to all the old students additional chances by adopting a deadline i.e.

31.12.2007 as a matter of academic policy to bring about academic certainty. Merely because in uniformly implementing that policy, some students are put in a less advantageous position, would not be sufficient to hold that the policy is discriminatory and arbitrary.

The Hon'ble Supreme Court in *Chairman, J&K State Board of Education v. Feyaz Ahmed Malik and others*, 2000(1) RSJ 586 while considering the case of issue of notification by the State Education Board permitting scrapping of the entire examination in a centre reported of mass copying, as well as of a notification C.W.P. No. 5841 of 2009 cancelling the entire examination of Higher Secondary Part II for regular candidates held in May, June 1993 in the centres stated therein on account of mass copying and violation of sanctity of the examinations, on a plea raised by some of the meritorious students, who were affected by such cancellation held in para 21 of the judgement that a notification cannot be struck down as discriminatory merely because in implementing the same injustice is likely to be suffered by some students. Therefore, no fault can be found with the impugned notification dated 26.2.2006 (Annexure P/2). Hence both the writ petitions are dismissed with no order as to costs."

Learned counsel for the petitioner has not been able to successfully controvert the aforementioned legal position in the instant petition. Accordingly, following the same principle of law and precedent instant petition is also dismissed. No costs.

(M.M. KUMAR)
JUDGE

(JASWANT SINGH)
JUDGE

July 29, 2009

Pk Kapoor