that the Punjab Government was the only appropriate government who could refer the industrial dispute for adjudication in the present case. Accordingly, we allow this Appeal; set aside the award dated 14th March, 1989 (Annexure P-6) passed by the Labour Court, Chandigarh as also the judgment dated 17th August, 1993 passed by the learned Single Judge and hold that reference to the "industrial dispute" in the present case made by the Union Territory of Chandigarh is a valid reference made by the "appropriate government" in terms of Section 2(a)(ii) of the Act. The Labour Court at Chandigarh shall accordingly proceed to adjudicate the dispute on merits. It cannot be lost site that the Appellant was retrenched more than 20 years back and is languishing before one or the other forum at the threshold only of the industrial dispute raised by him. We, therefore, hope and trust that the Labour Court at Chandigarh will make all earnest efforts to decide this case on merits at the earliest but not later than six months. No order as to costs.

R.N.R.

Before G.S. Singhvi & Ajay Kumar Mittal, JJ.

GURPREET KAUR & OTHERS,—*Petitioners*

versus

PUNJAB TECHNICAL UNIVERSITY AND OTHERS,—*Respondents*

C.W.P. No. 17596 of 2003

9th February, 2004

Constitution of India, 1950—Arts. 226—Punjab Technical University Act, 1996—Ss. 14(8)(a)(d), 17 & 18—Academic Regulations, 2001—Chapter IV, paras 4, 7, 8 & 23—Admission to Bachelor of Computer Application Course—Part (i) of Cl. (iv) of para 23 of 2001 Regulations requires a student to clear re-appear papers in a maximum of 3 chances and part (ii) thereof requires to pass the entire course within a maximum period of 4-1/2 years—Whether part (ii) of Clause (iv) is ultra vires to part (i) and liable to be struck down—Held, no—Students failing to clear re-appear papers in second semester within maximum permissible chances—No provision in the Regulations for grant of mercy chance to clear re-appear papers—In the absence of statutory sanction, decision of the Academic Council of University in

granting mercy chance is ultra vires to the scheme of Chapter IV—Power to amend the Regulations vests only with the Board of Governors-Decision of the Council taken in its meeting cannot be treated as an amendment in Regulations—Petitions dismissed while directing the Registrar of University to explain the rationale of decision taken to grant one chance to students to clear the papers ignoring the statutory provisions.

Held, that the conditions enshrined in two parts of Clause (iv) of Part 23 of Chapter IV of Regulations are independent of each other and operate in different fields. In terms of the first part, a candidate is required to pass the entire course within a maximum period of 4-1/2 years. In terms of the second part, he is required to pass all the papers of a semester within a maximum of three chances (including the regular chance). A harmonious construction of the two parts of clause (iv) of Para 23 of Chapter IV of the Regulations leads to the conclusion that for being declared successful in the course, a candidate has to pass all the papers of any particular semester within a maximum of three chances including the regular chance and all the semesters within the maximum period of 4-1/2 years. Thus, we hold that second part of clause (iv) of Para 23 of Chapter IV of the Regulations is inconsistent with the first part and there is no valid ground to strike down the same.

(Paras 12 & 13)

Further held, that the decision taken by the Academic Council in its 11th meeting was clearly *ultra vires* to the scheme of Chapter IV of the Regulations, inasmuch, there is no provision in that Chapter for grant of mercy chance over and above the maximum chances admissible in terms of clause (iv) of Para 23 and in the absence of any statutory sanction, the Court cannot confer legitimacy on such decision. It is unfortunate that an Academic Body which has been entrusted with the responsibility for maintaining the standard of instruction, education etc, in the University has been swayed by extraneous consideration and acted in disregard of the statutory provisions which are binding on it. Therefore, we do not find any justification to issue a direction to the University and its functionaries to allow mercy chance to the petitioners.

(Para 15)

Further held, that a reading of Sections 14(8) and 18 of the Punjab Technical University Act shows that the power to amend the Regulations vests with the Board of Governors. In terms of Section 15(1) of the Act, the Academic Council can advise the Board of Governors on academic matters, but there is nothing in the language of that Section or any other provision of the Act from which it can be inferred that the Academic Council has the power to amend the Regulations. Indeed, it is not the petitioners' case that the resolution passed by the Academic Council was placed before the Board of Governors and a decision was taken by it to amend the Regulations. Therefore, the resolution passed in the 11th meeting of the Academic Council cannot be treated as an amendment of clause (iv) of Para 23 of Chapter IV of the Regulations.

(Para 23)

Amit Rawal, Sanjeev Ghai, S.S. Rai, Narinder Dadwal, Kapil Kakkar, Pawan Kumar, P.S. Bhullar, K.S. Sivia and Ms. Gargi Kumar, Advocates, *for the petitioners.*

A.G. Masih, Deputy Advocate General Punjab for respondent Nos. 1 and 3 in C.W.P. No. 19265 of 2003.

Anupam Gupta, Advocate with Shri Atul Nehra, Advocate for respondent Nos. 1 and 2 in C.W.P. Nos. 17596, 17541, 18804, 19058, (for respondent No. 3 also), 19265 (for respondent No. 2 only), 19554 (for respondent No. 1 only), 19808, 19837, 20161, 20239, 20380, 20381 of 2003 and 597 of 2004.

None for other respondents in all the petitions.

JUDGMENT

G.S. SINGHVI, J.

(1) These petitions are illustrative of how a populist decision taken by an academic body of University in uttar violation of the statutory provisions can lead to filing of avoidable litigation resulting in unnecessary wastage of Courts time which could otherwise be utilised for deciding more deserving cases.

(2) The petitioners were admitted to Bachelor of Computer Application (for short, BCA) course in various colleges affiliated to Punjab Technical University, Jalandhar (for short, the University) in the academic session 2001-2002. They cleared the 1st semester examination within the chances prescribed under clause (iv) of Para 23 of Chapter-IV of Academic Regulations, 2001 (for short, 'in the Regulations') framed by the University. However, in the second semester, they got re-appear in different subjects which they failed to clear within maximum permissible chances. In the intervening period, they were allowed to prosecute studies in 3rd, 4th and 5th semesters. However, they were not allowed to take examination of 5th semester.

(3) The petitioners have relied on the decision taken by the Academic Council of the University in its 10th meeting held on 13th December, 2002 for giving a maximum of four chances for clearing the course of any semester in MBA/MCA/BBA/BCA and B. Pharmacy, 11th meeting held on 22nd April, 2003 for grant of mercy chance and order dated 13th October, 2003 passed by this Court in C.W.P. No. 9085 of 2003—**Gangandeep Singh Gill** *versus* **Punjab Technical University** and have pleaded that the decision taken by the University not to give them the benefit of mercy chance should be declared illegal and they be allowed to take remaining re-appear papers by giving them mercy chance and also allowed to take the main examination of 5th semester.

(4) The stand taken by the University is that in terms of clause (iv) of Para 23 of Chapter-IV of the Regulations, a student is required to clear all the papers of a semester in a maximum of three chances (including the regular chance) and as the petitioners have failed to pass the examination within the permissible chances, they have no right to continue their studies in BCA course. In so far as the decision taken in 11th meeting of the Academic Council is concerned, the stand of the University is that in terms of Para 23 of the Regulations which has already been interpreted by the Division Bench in **Gagandeep Singh Gill's case** *(supra),* the petitioners are not entitled to take the examination of re-apear papers because they have already exhausted the maximum number of three chances (including the regular chance). In the written statement filed on behalf of respondents No. 1 and 2 in C.W.P. No. 17598 of 2003 which has been treated as

written statement for all the cases, it has been averred that the decision taken by the Academic Council in its 11th meeting to give mercy chance in May/June, 2003 examination was not intended to be repeated or given in future examinations. It has been further averred that there is no provision in the Regulations for grant of mercy chance and, therefore, the petitioners cannot seek issuance of a direction to compel the University to give such chance to them to clear the re-appear papers.

(5) Sarvshri Amit Rawal, Sanjeev Ghai, Kapil Kakkar, Narinder Dadwal, S.S. Rai, Pawan Kumar, P.S. Bhullar, K.S. Sivia and Ms. Gargi Kumar, Advocates argued that the petitioners are entitled to avail the mercy chance as of right because the decision taken by the Academic Council in the 11th meeting cannot be confined to the students of the particular semester. They referred to the provisions of Section 15(1) of the Punjab Technical University Act, 1996 (for short, 'the Act') and argued that being the highest Academic Body of the University, the decision taken by the Academic Council in its 10th and 11th meetings held on 13th November, 2002 and 22nd April, 2003 respectively under the Chairmanship of the Vice-Chancellor should be treated as an amendment of clause (iv) of Para 23 of Chapter–IV of the Regulations and as per amended clause (iv), the petitioners are entitled to avail mercy chance. Learned councel further argued that the second part of clause (iv) of Para 23 of Chapter–IV of the Regulations should be struck down because the same is ultra vires to the first part which entitiles a candidate to pass the course within a maximum period of 4½ years.

(6) Shri Anupam Gupta, learned counsel appearing for the University and its functionaries vehemently argued that in the absence of the statutory sanction, the decision of the Academic Council cannot be made basis for issuance of a writ in the nature of mandamus compelling the University to give mercy chance to the petitioners. He submitted that one time decision taken by the Academic Council in its 11th meeting cannot be extended to future examination and mercy chance cannot be allowed to the petitioners because that would amount to violation of the mandate of clause (iv) of Para 23 of Chapter–IV of the Regulations.

(7) At this stage, we may mention that during the course of hearing, Shri Anupam Gupta candidly stated that the decision taken in the 11th meeting of the Academic Council was not only contrary to the mandate of the Regulations but was also against the academic interest of the institution.

(8) We have thoughtfully considered the respective arguments.

(9) In our opinion, the petitioners claim for mercy chance to clear the remaining papers of 2nd semester is wholly meritless and is liable to be rejected. Sections 14(8) (a) (b), 15(1), 17 and 18 of the Act and Paras 4, 7, 8, and 23 of Chapter–IV of the Regulations, which have bearing on the decision of these petitions, read as under :—

"Sections 14(8) (a) and (d), 15(1), 17 and 18 of the Act.

14(8). The Board of Governors shall be the Supreme authority of the University and shall have the following powers and functions :—

(a) to superintend and control affairs of the University ;

(d) to frame and approve rules and regulations of the University.

(e) to (m) xx xx xx xx xx xx xx

15(1). The Academic Council shall be the Academic Body of the University and shall, subject to the provisions of this Act and Regulations have Control and general regulation and be respondible for the maintenance of standards of instruction, education and examination within the University and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Regulations. It shall have the right to advice the Board of Governors on all academic matters.

17. Subject to the provisions of this Act, the Constitution, the powers and duties of the authorities of the University other than the Board of Governors and the Academic Council shall be provided for by the Regulations.

18(1). The first Regulations of the University shall be made by the State Government and notified in the Official Gazette.

(2) The Board of Governors may, from time to time make new or additional Regulations or may amend or repeal the Regulations :

Provided that the Board of Governors shall not propose the draft of amendment of the Regulations affecting the status, powers or Constitution of any existing authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal and any opinion so expressed shall be in writing and shall be considered by the Board of Governors.

(3) Every new Regulations or addition to the Regulations or any amendment or repeal of a Regulation shall require the approval of the Board of Governors who may approve, disallow or remit it for further consideration.

Paras 4, 7, 8 and 23 of Chapter–IV of the Regulations.

4. There shall be University examination at the end of each semester. The examination for the first, third and fifth semesters shall ordinarily be held in the month of December and for the second, fourth an sixth semesters in the month of May, or on such dates as may be fixed by the University.

7. The first semester examination shall be open to a regular student who :—

(i) has been on the roll of the Institution during the first semester : and

(ii) has attended not less than 75% of the lectures, seminars and case discussions etc.;

(iii) bears a good moral character.

8. The second, third, fourth, fifth and sixth semester examinations shall be open to a regular student who :—

(i) has been on the rolls of the Institution during these semesters, as the case may be ;

(ii) has attended not less than 75% of lectures ; seminars and case discussions etc.

(iii) has passed the previous semester examination respectively, or is covered under Re-appear regulations.

23. A candidate is required to pass in all the courses prescribed in a semester by securing minimum prescribed marks in a course and in the aggregate as prescribed in the regulations. However, if a candidate fails to secure required marks in a course or in the aggregate, he/she shall be allowed to reappear according to the following regulations :—

(i) A candidate detained from appearing in any semester examination of a subject(s) due to shortage of attendance will retake the course of study when the subject(s) are offered as a regular course in the subsequent semesters.

(ii) Those candidates who obtain less than 40% marks in University examination in any of the courses shall be placed under reappear. They may appear in the University examination in the reappear course in the subsequent semester when the examination of this course is held.

(iii) A candidate who has been placed in reappear because of University examination shall be allowed to study for next semester examination and shall be permitted to appear in the failed papers of the previous examinations in the subsequent examinations which shall be held along with the papers of higher examination, subject to the conditions that for promotion in the third semester

atleast 50% courses of first and second semester should be clear and similarly for promotion to the fifth semester, atlest 50% of the first, second, third and fourth semester courses together should be cleared.

(iv) A total of nine semesters (four and a half years) from the date of admission shall be given to a candidate to pass all the courses, after which the candidature of the candidate shall be cancelled. A maximum of three chances (including the regular chance) shall be given for clearing a course of any semester."

(10) A conjoint reading of the provisions of the Act and the Regulations reproduced above shows that the Academic Council is the Academic Body of the University having control and general regulation and is responsible for the maintenance of standards of education, instructions and examinations. It has the right to advise the Board of Governors on all academic matters. The Board of Governors is the supreme authority of the University. It has the powers to frame and approve the rules and regulations of the University. Section18 of the Act provides for making of the regulations and amendments/repeal thereof. The provisions of the Regulations to which reference has been made hereinabove deal with various matters including maximum period and chances within which a candidate is required to pass the course. Clause (iv) of Para 23 of Chapter–IV of the Regulations consists of two parts. In terms of the first part, a candidate is required to pass the entire course within a period of 4½ years counted from the date of admission. In terms of the second part, a maximum of three chances (including the regular chance) are available to the candidate to clear any particular semester. In Gagandeep Singh Gill's case *(supra),* the Division Bench interpreted Para 23 of the Regulations and observed :—

"A perusal of the aforesaid regulation makes it abundantly clear that a candidate is required to pass in all the courses prescribed in the semester by securing the minimum prescribed marks. The minimum marks are prescribed in the course as also in aggregate. However, if a student fails to secure the required marks, he shall be allowed to reappear according to the regulation as reproduced above. The present writ petitions pertain to

interpretation of sub-regulations 3 and 4. It is not disputed as a matter of fact that all the writ petitioners were permitted by the Colleges to register themselves for attending classes either in the IVthe Semester or in the VI Semester inspite of the provisions contained in regular 3 and regulation 4 above. A bare perusal of regulation 3 reproduced above makes it clear that a student who has been placed in reappear shall be allowed to study in the next semester examination and shall be permitted to appear in the failed papers of the previous examination alongwith the examinations of the higher semester. This permission is, however, conditional on the candidate having successfully completed atleast 50% courses of the semesters next below. It is not disputed at the time of the promotion of these students to the 4th and 6th semesters, they were not entitled to the aforesaid promotion as they had not cleared the lower semesters. However, as noticed earlier they were permitted to register by their respective colleges and have completed studies in 4th and 6th semesters. These students could not have been permitted to join the IVth semester and 6th semester in view of the provisions contained in clause 4 of the regulation. Under clause 4, it is necessary for all the candidates to pass all the courses by availing maximum three chances including the regular chance. If the students fail to clear the papers within the maximum of three chances, the candidature has to be cancelled. The aforesaid regulations makes it clear that the students, who had not cleared the earlier semesters within the stipulated maximum period of three chances, could not be promoted either to the 4th Semester or to the 6th Semester."

(11) We respectfully agree with the views expressed by the co-ordinate Bench and hold that a candidate is required to pass the particular semester within a maximum of three chances (including the regular chance) and if he fails to do so, he cannot be allowed to continue the studies.

(12) The argument of the learned counsel for the petitioners that the second part of clause (iv) of Para 23 of Chapter–IV of the Regulations is inconsistent with its first part and is, therefore, liable

to be struck down is based on a wholly misconceived notion about the scope of the two parts. Though the clause in question is not happily worded, we do not find any inconsistency in the two parts thereof. The conditions enshrined in two parts are independent of each other and operate in different fields. In terms of the first part, a candidate is required to pass the entire course within a maximum period of 4½ years. In terms of the second part, he is required to pass all the papers of a semester within a maximum of three chances (including the regular chance). A harmonious construction of the two parts of clause (iv) of Para 23 of Chapter–IV of the Regulations leads to the conclusion that for being declared successful in the course, a candidate has to pass all the papers of any particular semester within a maximum of three chances including the regular chance and all the semesters within the maximum period of 4½ years.

(13) In view of the above discussion, we hold that second part of clause (iv) of Para 23 of Chapter–IV of the Regulations is inconsistent with the first part and there is no valid ground to strike down the same.

(14) Equally meritless is the plea of the petitioners that they are entitled to mercy chance in terms of the decisions taken by the Academic Council in its 10th and 11th meetings. A careful reading of the documents marked as Annexures P. 3 and P. 4 with CWP No. 17596 of 2003, which incorporate the decisions of the Academic Council, show that at one stage, the Academic Council had thought that four chances are available for clearing a course of any semester in MBA/MCA/BBA/ BCA/B. Pharmacy, but later on, it was realised that only three chances are available for this purpose. In its 11th meeting, the Academic Council considered the question of granting mercy chance and allowed one opportunity to the candidates to clear the backlog course. However, there is nothing in the two decisions from which it can be inferred that the same is to be applied in all future examinations. This is how the Division Bench had interpreted the decision of the Academic Council in **Gagandeep Singh Gill's case** *(supra)* and we do not find any cogent reason to take a different view of the matter.

(15) There is another reason for rejecting the petitioners prayer for grant of mercy chance. In our opinion, the decision taken by the Academic Council in its 11th meeting was clearly *ultra vires* to the scheme of Chapter–IV of the Regulations, inasmuch as, there

is no provision in that Chapter for grant of mercy chance over and above the maximum chances admissible in terms of clause (iv) of Para 23 and in the absence of any statutory sanction, the Court cannot confer legitimacy on such decision. It is unfortunate that an Academic Body which has been entrusted with the responsibility for maintaining the standard of instruction, education etc. in the University has been swayed by extraneous consideration and acted in disregard of the statutory provisions which are binding on it. Therefore, we do not find any justification to issue a direction to the University and its functionaries to allow mercy chance to the petitioners.

(16) In C.P.W. No. 12782 of 2003—**Rakhi Bhatheja** versus **Baba Farid University of Health Sciences, Faridkot and others,** decided on 7th November, 2003, a Division Bench of this Court, of which one of us (G.S. Singhvi, J.) was a member, interpreted Section 15(1) of Baba Farid University of Health Science Act, 1998 governing the powers of the Vice-Chancellor and rejected the argument that in exercise of the power vested in him under that Section, the Vice-Chancellor was competent to allow an additional/mercy chance. The relevant portion of the order passed in that case reads as under :—

> "The argument of Shri Sandeep Moudgil that in exercise of the power vested in him under Section 15(1) of the Act, the Vice-Chancellor can allow additional/mercy chance to the candidates to pass the examination is wholly meritless and deserves to be rejected. In our opinion, the power of supervision and control vested in the Vice-Chancellor over the affairs of the University cannot be interpreted as entitling him to amend, modify or tinker with the Ordinances framed by the Board of Management under Section 46(1) read with Section 45 of the Act because that would amount to unwarranted encroachment on the Ordinance-making power vested in the Board of Management and the power of the Academic Council to make recommendations in the matters relating to conduct and standard of examinations. These matters have to be left to the discretion of the academic bodies consisting of experts in the field and one individual, how-so high he may be placed in the hierarchy of the administration of the University, cannot directly or indirectly interfere with

the justification of these authorities. Therefore, we are unable to agree with Shri Moudgil that even in the absence of any provision in the Ordinances for grant of additional chance to the students to clear the examination, the Vice-Chancellor can give such permission under Section 15(1) of the Act."

(17) This view was reiterated in C.W.P. No. 17060 of 2003– **Gurdial Singh and another** *versus* **Baba Farid University of Health Sciences, Faridkot and others,** decided on 21st November, 2003.

(18) A somewhat similar issue was considered by a Full Bench of this Court in **Anita Devi** *versus* **State of Haryana, (1)** in the backdrop of the claim of the students for award of grace marks. The Full Bench negatived the plea of the petitioners and observed :—

"The academic standards laid down by the appropriate authority postulate the minimum marks that a candidate has to secure before he becomes eligible for the award of the diploma. The award of grace marks is a concession. It results in diluting academic standards. A rule for the award of grace marks has to be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim for the award of grace marks can be sustained. Normally, the Court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate authority. This rule shall be all the more stringent in case of 'teaching', 'medical' and other similar courses."

(19) The above quoted observations of the Full Bench were approved by the Supreme Court in **Board of School Education, Haryana** *versus* **Arun Rathi and others, (2).** Their Lordships allowed the appeal filed by the Board of School Education against the judgment of this Court which had held that when the respondent took the

(1) 1993 (4) SLR 295
(2) (1994) 2 S.C.C. 526

examination in March, 1993, the regulation providing for award of grace marks to the students was in operation and was being acted upon and, therefore, the Board was estopped from denying the benefit of grace marks. While reversing the judgment of the High Court, their Lordships of the Supreme Court referred to another Full Bench judgment of this Court in Writ Petition (Civil) No. 1802 of 1992— **Meenakshi Sharma** *versus* **Board of School Education, Haryana,** decided on 21st July, 1992 and observed :—

> "It is no doubt true that in Meenakshi Sharma's case, the Full Bench of the High Court was considering the question as to the mode of computing the benefit 1% grace marks to be given to a candidate who had been placed under compartment and who had appeared in one subject only and the High Court was not required to consider the question whether benefit of grace marks should be given to earn compartment and the validity of Regulation 20, as being discriminatory, was also assailed in the said context. But we find that while negativing the challenge to the validity of regualtion 26 the Full Bench has considered Regulation 26 in its entirety and having regard to the intention of the Legislature and object of the legislation, namely, to promote the interest of education by requiring the students to achieve success in the examination on the basis of their own performance and not by depending upon the grace marks of the examining bodies, the High Court has held that Regulation 26 is neither arbitrary not unfair or unjust. These observations apply to all the clauses of Regulation 26 including clause (b). For like reasons a Full Bench of the High Court in Anita Devi's case upheld a provision similar to Regulation 26(b) which provided that grace marks shall not be awarded to enable a candidate to be placed under compartment. Moreover, the judgement in Meenakshi Sharma's case has to be read with the earlier judgment of the Full Bench of the High Court in Raj Kumar's case wherein the Court did not accept the contention that a rule which did not provide for grant of grace marks to enable a candidate to earn compartment was arbitrary and discriminatory."

(20) In **The Maharashtra State Board of Secondary and Higher Secondary Education** *versus* **Amit and another, (3),** the Supreme Court again considered the nature of the provision relating to award of grace marks and observed :—

> "It cannot be disputed that the academic standards are laid down by the appropriate authorities which postulate the minimum marks that a candidate has to secure before the candidate can be declared to have passed the examination. The award of grace marks is in the nature of a concession, and there can be no doubt that it does result in diluting academic standards. The object underlying the grant of grace marks is to remove the real hardship to a candidate who has otherwise shown good performance in the academic field but is losing one year of his scholastic career for the deficiency of a mark or so in one or two subjects, while on the basis of his overall performance in other subjects, he deserves to be declared successful. The appropriate authorities may also provide for grant of grace marks to a candidate who has taken part in sports events etc., considering the fact that such candidates who have obtained a level of proficiency in any particular game or event may have devoted considerable time in pursuit of excellence in such game or event. *However, a rule for the award of grace marks must be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority.* It is only in a case where the language of the statute is absolutely clear that the claim for the award of grace marks can be sustained. *Normally the court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate authority.*" (Underlining is ours).

(21) In **Gagandeep Singh Gill's case** (supra), on which reliance has been placed by the learned counsel for the petitioners, the Division Bench approved the University's interpretation of the decision taken by the Academic Council but ordered regularisation of the registration of the writ petitioners because they had already completed

(3) J.T. 2002 (5) S.C. 196

the studies. This is clearly borne out from the following extract of the order passed by the Division Bench :

> "We have considered the submissions made by the learned counsel for the parties. We find considerable force in the submissions made by Mr. Gupta to the effect that strictly, legally, the petitioners could not take any advantage of the studies in the 5th/6th semesters which is based on illegal registration permitted by the colleges. On the other hand, the Court can also not totally ignore the plight of the students who have undergone the necessary course for sitting in the 4th/6th semester examinations. Directing the students at this stage to attend the lectures for the 4th/6th semesters again would be an exercise in futility. In fact, it may well prove to be counter-productive in that the students will have unnecessarily to attend the courses which they have already completed. This would entail loss of valuable time for the institution as also for the students. Keeping in view the peculiar facts and circumstances of these writ petitions, we are of the opinion that the petitioners be permitted to take advantage of the registration of the 4th/6th semesters even though it was illegally permitted by the colleges."

(22) On the basis of the above discussion and by applying the ratio of the decisions noted above to the facts of these cases, we hold that the petitioners are not entitled to mercy chance in terms of the decision taken in the 11th meeting of the Academic Council.

(23) The question which remains to be considered is whether the decision taken by the Academic Council can be treated as an amendment of clause (iv) of Para 23 of Chapter-IV of the Regulations. A reading of Sections 14(8) and 18 of the Act shows that the power to amend the Regualtions vests with the Board of Governors. In terms of Section 15(1) of the Act, the Academic Council can advise the Board of Governors on academic matters, but there is nothing in the language of that Section or any other provision of the Act from which it can be inferred that the Academic Council has the power to amend the Regulations. Indeed, it is not the petitioners case that the resolution passed by the Academic Council was placed before the Board of Governors and a decision was taken by it to amend the Regulations. Therefore, the resolution passed in the 11th meeting of the Academic

Council cannot be treated as an amendment of clause (iv) of Para 23 of Chapter-IV of the Regulations.

(24) Before concluding, we deem it proper to observe that by virtue of the interim orders passed by the Court, the petitioners were provisionally admitted to take the examination. However, such interim orders cannot be made basis for granting relief to the petitioners ignoring the mandate of the Regulations.

(25) In **A. P. Christians Medical Educational Society** *versus* **Government of Andhra Pradesh and another, (4),** the Supreme Court adversely commented upon the grant of provisional admissions and refused to regularise the same by making the following observations :—

> "The Court cannot issue dirction to the University to protect the interests of the students who had been admitted to the medical college as that would be in clear transgression of the provisions of the University Act and the regulations of the University. The Court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. That would be destructive of the rule of law. It is not possible to treat what the University did in the case of the Daru-Salam Medical College as a precedent in the present case to issue the direction sought for."

(26) In **Guru Nanak Dev University** *versus* **Parminder Kumar Bansal, (5),** a three-Judges Bench of the Supreme Court interfered with the interim orders passed by the High Court to allow the students to undergo internship course without passing M.B.B.S. Examination and observed as under :—

> "We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the

(4) AIR 1986 S.C. 1490
(5) 1993 (4) S.C.C. 401

candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the *prima facie* legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themeslves taking over their functions."

(27) In **Central Board of Secondary Education** *versus* **P. Sunil Kumar, (6),** their Lordships of the Supreme Court reiterated the view taken in **Guru Nanak Dev University versus Parminder Kumar Bansal** *(supra)* and observed as under :—

"We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

(28) In the result, the writ petitions are dismissed.

(29) While disposing of the writ petitions in the manner indicated above, we call upon the University to explain as to how an Academic Body entrusted with the responsibility of maintaining standard of education can take decision ignoring the statutory provisions. The Registrar of the Unversity is directed to file affidavit in consultation with the Vice-Chancellor who had chaired the meeting of the Academic Council and explain the rational of the decision taken to grant one chance to the students to clear the papers, even though they had already exhausted the maximum chances admissible in terms of clause (iv) of Para 23 of the Regulations. The needful be done within a period of two weeks. The case be listed before the Court on 24th February, 2004 for considering the affidavit.

R.N.R.

(6) (1998) 5 S.C.C. 377