
Before Viney Mittal, J.

ASEEMPREET KUNDI AND ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

CIVIL WRIT PETITION NO. 5843 OF 2004

8th March, 2006

Constitution of India, 1950—Art. 226—Ordinances of the University—Cls.5(d)(v), 5(d)(vii) and 6(b)—Admission to Bachelor of Physiotherapy Course (BPT) on the basis of entrance test—Petitioners failing to clear all subjects in 1st year of BPT Course—Permission to appear in 2nd year Course granted—Petitioners appeared in supplementary examination to clear 1st year reappear subject—Unsuccessful in clearing one of subjects even in second attempt—University not permitting petitioners to take annual examination of 2nd year and reverting them to 1st year Course—Clause 5(d)(vi) provides six attempts to an unsuccessful candidate to clear subjects in which he was required to reappear—Cl.5 (d)(v) provides that if a candidate fails to pass all subjects in the subsequent examination i.e. second attempt then he was to be reverted back to 1st year BPT Course forfeiting all benefits of earlier promotion—Cl.(vii) provides that a candidate who clears all the subjects of 1st year BPT course in 6th attempt shall be promoted to 2nd year course after the declaration of result and thereafter shall have to complete the period of one academic year of study in order to become eligible to appear in 2nd year Course—Clauses (v), (vi) and (vii) resulting in mutual inconsistency with each other—Interpretation applying the doctrine of harmonious construction.

Held, that various clauses of Ordinance (v) and Ordinance (6) are to a substantial extent mutually inconsistent. On a plain reading of the various clauses it means that although a student has a total of six chances to clear the subjects in which he has been placed in re-appear and had already been promoted to the next profession course, but still if he fails in the subsequent examination, he is to be reverted back to 1st Professional examination. This interpretation would not only result in mutual inconsistency in various clauses but shall also operate as a great hardship to a student, meaning thereby

withdrawal of the benefits granted to such a candidate by clause (vi) when six chances have been provided to him to clear the subjects. In such a situation, this Court considers it duty to construe the various clauses of Ordinance in such a manner so that each of the clauses can operate and co-exist with the remaining clauses and also reflect the true intention of the University. Rather than adopting the course of declaring various clauses of the Ordinance as mutually inconsistent with each other and, therefore, *ultra vires*, it would be appropriate to make an effort to give an harmonious construction to the various clauses so that all the clauses of the Ordinance can co-exist and give way to one another.

(Paras 14 & 16)

Munish Bhardwaj, Advocate *for the petitioners*.

Ashok Aggarwal, Additional A.G., Punjab with Sushant Maini,
DAG, Punjab.

Atul Nehra, Advocate *for the University*.

JUDGMENT

VINEY MITTAL, J.

(1) CWP No. 5843 of 2004 alongwith other connected writ petitions was allowed by this Court,—*vide* order dated 8th March, 2006. It was indicated that the detailed reasons shall be recorded later on.

(2) *Vide* aforesaid short order, reversion of the petitioners to the previous professional year was quashed. The respondent-University was directed to declare the result of the petitioners for the examinations for which they had appeared under the interim orders of this Court. As a consequence thereof, the respondent University was also directed to issue the requisite Detailed Marks Card to the petitioners. The petitioners were also permitted to pursue their further studies/internship and appear in all examinations as per law.

(3) This judgment shall now record the detailed reasons for allowing the aforesaid writ petitions.

(4) For the sake of convenience, the facts are borrowed from CWP No. 5843 of 2004.

(5) The petitioners Aseempreet Kundi and Monika Mahajan had passed their 10+2 (Medical) in the year 2002. As per their eligibility, the petitioners thereafter appeared in the Punjab Para Medical Entrance Test held by Baba Farid University of Health Sciences, respondent No. 2 (hereinafter referred to as the University) on 28th July, 2002. The petitioners cleared the aforesaid examinations successfully for their admission to the Bachelor of Physiotherapy Course (in short, 'the BPT Course'). On the basis of their respective merits, the petitioners got admission in Saint Soldier Institute of Physiotherapy, Jalandhar on 24th/25th September, 2002. The petitioners, each, paid requisite fee of Rs. 78,000 (approx.). The examination for the 1st (Prof.) year of BPT Course was held in June, 2003. The petitioners appeared in the said examination. However, the petitioners could not clear all the subjects and got re-appear in some of the papers. Whereas, petitioner No. 1 got re-appear in three papers, namely, Physiology, Bio-Chemistry and Electro-Therapy, petitioner No. 2 was placed in re-appear in one paper, namely, Physiology. The petitioners claimed that the remaining papers were cleared by them with good marks and petitioners No. 2 was even placed in distinction in the paper of Sociology. Even though the petitioners had got re-appear in some of the papers in 1st year (Prof.) of BPT Course, they were permitted to appear in 2nd Year (Prof.) and were allowed to attend the classes. The petitioners also deposited fee of Rs. 78,000 each for the 2nd year (Prof.) course also. A certificate of payment of fee has been appended as Annexure P.2 with the present petition. Since the petitioners had got re-appear in some of the papers in 1st year (Prof.) examination, they appeared in the supplementary examination which was held in September 2003. In the aforesaid supplementary examination, petitioner No. 1 cleared two subjects out of three, for which he had re-appeared, but, however, remained unsuccessful in clearing the subject of Bio-chemistry. Similarly, the petitioner No. 2 got re-appear in Physiology subject. A detailed marks card of the petitioners has been appended as Annexure P.3 with the present petition. The petitioners specifically rely upon Clause 3 of the aforesaid detailed marks card in which the result of the petitioners has been indicated as "REAPPEAR and eligible to appear in paper/s 3, till December, 2004". Because of the aforesaid non-clearance of the subjects by the petitioners even in second attempt, the petitioners were not permitted to take the annual

examination of the said 2nd year (Prof.), which was due to be held in May/June, 2004. The respondents even sought to revert the petitioners to 1st year (Prof.) course. In these circumstances, through the present petition, the petitioners, besides challenging the action of the respondents in forfeiting the benefits of study of 2nd year (Prof.) and reverting them to the 1st (Prof.) course, have also challenged the vires of Clauses 5(d)(v), 5(d)(vii) and 6(b) of the Ordinance of the University approved by the Board of Management in its meeting dated 13th December, 2002.

(6) The claim of the petitioners has been contested by the respondent University.

(7) Shri Atul Nehra, the learned counsel appearing for the respondent University at the outset has stated that the relevant Ordinance had been amended/revised by the Board of Management of the University in its meeting held on 28th May, 2004 and under the circumstances it is only the amended provisions of the Ordinances which shall govern the controversy involved in the present writ petitions. Shri Nehra has also requested the Court to take into consideration the defence raised by the respondent University in the written statement filed in CWP No. 17432 of 2004 (Sahil Mittal *versus* State of Punjab and others). In view of the stand taken by the respondent University, before noticing the various pleas raised by the University in the written statement, filed in CWP No. 17432 of 2004, it would be necessary to extract the relevant provisions of amendment Ordinance governing the controversy in question.

“5. First Profession B.P.T. Examination :

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(c) xxx xxx xxx xxx

(d) The First Professional B.P.T. examination shall be in the following subjects and candidate shall be required to pass all the subjects :—

xxx xxx xxx xxx

(v) A candidate who fails in one or more subjects in his/her 1st attempt, shall be permitted to attend classes in 2nd Prof. B.P.T. course. However, if a candidate

who fails to pass all the subjects in the subsequent examination shall be reverted to 1st Prof. B.P.T. course forfeiting all the benefits of earlier promotion.

- (vi) A candidate who passes in one or more subjects shall be exempted from appearing in these subjects at a subsequent examination, but the candidate must pass the examination in a maximum of six attempts/ failing which he/she shall have to appear in all the subjects of the examination.
- (viii) However, those candidates who clear all the subjects of 1st Professional B.P.T. course in 6th attempt shall be promoted to 2nd Prof. B.P.T. course after the declaration of the result, and thereafter they shall have to complete the period of one academic year of study in order to become eligible to appear in 2nd Prof. B.P.T. examination.

6. Second Professional B.P.T. Examination

The Second Professional B.P.T. Examination shall be open to a person who—

xxx xxx xxx xxx

- (b) has previously passed the First Prof. B.P.T. examination of this University or an examination of any other recognized University/Institution in India considered equivalent for the purpose by the University.

xxx xxx xxx xxx

(8) In its written statement, the respondent University has defended the legality and validity of the aforesaid Ordinance and has maintained that the Ordinances are quite clear well-structured, fair and reasonable. According to the University, a candidate having re-appear in one or more subjects in the annual examination of a professional course is allowed provisional promotion to, or to attend classes of next professional class/course. However, if the candidate is unable to clear all the subjects of re-appear in the first re-appear chance, then he is to be reverted to the previous class/course and in such a situation forfeits all the benefits of the provisional promotion.

The University has maintained that such a candidate cannot draw any benefit whatsoever from the classes thus attended by him in the higher professional course and could not appear in the examination of the higher professional course till he cleared all re-appear papers of the lower professional course. It has further been maintained by the University that such a candidate was required to attend/complete classes for one academic year in the higher professional course after clearing the re-appear subjects. The stand of the University is that the aforesaid bar/restriction provided in the Ordinances is justified because a candidate who was weak in his studies/academics was not SADDLED WITH the additional burden of extra studies of unsuccessful subject from the previous course and the subjects of the higher professional course. It is thus apparent from the stand taken by the University that the University has chosen to interpret various clauses of the Ordinances literally and has chosen to contest the claim of the petitioners on such literal interpretation.

(9) I have heard the learned counsel for the parties at some length.

(10) The learned counsel, during the course of arguments, have reiterated the stand taken by the parties in their respective pleadings.

(11) As per the provisions of of Clause (v) of the Ordinance 5(d) of the Ordinances, a candidate who fails in one or more subjects in his/her 1st attempt, is permitted to attend classes in 2nd Prof. BPT course. Later portion of clause (v), however, stipulates that if such a candidate fails to pass all the subjects in the subsequent examination, then he would be reverted to 1st Professional BPT Course forfeiting all the benefits of earlier promotion. On the other hand, clause (vi) provides six attempts to a candidate to clear all the subjects of the 1st Prof in which he had failed in his first attempt. Clause (vi) further provides that a candidate who had passed one or more subjects would be exempted from appearing in the aforesaid subjects in the subsequent examination. Similarly, clause (vii) provides that a candidate who clears all the subjects of 1st Professional BPT course in 6th attempt shall be promoted to 2nd Professional course after the declaration of the result and, thereafter shall have to complete the period of one academic year of study in order to become eligible to appear in

2nd Professional BPT examination. Further Ordinance 6(b) of the Ordinance provides that 2nd Professional BPT examination shall be open to a person who has previously passed the 1st Professional BPT examination.

(12) A conjoint reading of the aforesaid clauses referred to above shows that although a candidate who has remained unsuccessful in first attempt to clear all the subjects of his first professional examination is granted a maximum of six attempts to clear the aforesaid subjects and is also promoted provisionally to the next higher 2nd Professional BPT course but at the same time it has been provided in clause (v) that if such a candidate fails to pass all the subjects in the subsequent examination (i.e. second attempt), then he was to be reverted back to 1st Professional BPT course forfeiting all the benefits of the earlier promotion. Thus, what has been given by the University with one hand has been taken back by it with the other. It appears to be a very anomalous situation that although an unsuccessful candidate has been granted six attempts to clear his unsuccessful subjects and had been earlier so promoted to the next higher course also but merely on account of his failure to clear all the subjects in the 2nd attempt itself, is ordered to be reverted back, even though on such reversion also he is not required to appear in those subjects which he had cleared earlier. It is only when a candidate who has remained unsuccessful in all the six attempts to clear all the subjects of 1st Professional Course, that he is required to appear in all the subjects all over again.

(13) In fact, the vehement argument of the learned counsel appearing for the petitioners is that substantial portions of clause (v) and clause (vii) are in conflict with clause (vi) and, therefore, being unreasonable and mutually inconsistent, the aforesaid clauses are liable to be struck down.

(14) After giving my thoughtful consideration to the various pleas raised by the learned counsel for the parties, I find that various clauses of Ordinance (v) and Ordinance 6(b) are to a substantial extent mutually inconsistent. The provision of re-appear and exemption from appearing in the examination already cleared is a

beneficial provision for a student. Granting further promotion to the next professional course and also exempting him from appearing again in such subjects which had been cleared by him earlier, are the provisions in the aforesaid direction. As a matter of fact, clause (vi) provides six attempts to an unsuccessful candidate to clear the subjects in which he was required to re-appear. However, later provision of clause (v) appears to be in direct conflict with what is intended to be given to a student by clause (vi). On a plain reading of the various clauses, as has been argued by the learned counsel appearing for the University, it means that although a student has a total of six chances to clear the subjects in which he has been placed in re-appear and had already been promoted to the next professional course, but still if he fails in the subsequent examination, he is to be reverted back to 1st Professional examination. This interpretation would not only result in mutual inconsistency in various clauses but shall also operate as a great hardship to a student, meaning thereby withdrawal of the benefits granted to such a candidate by clause (vi), when six chances have been provided to him to clear the subjects. It is also apparent that clause (vi) specifically provided that a student would be exempted to appear in the subjects which he had cleared, if he clears the re-appear papers in six attempts and it is only when if the re-appear papers are not cleared by him in six attempts, then he would be required to appear in all the papers all over again. In these circumstances, it could not be taken that the University ever intended that on non-clearing the papers even in the very next examination (second attempt), the candidate was to be reverted back to earlier professional course, forfeiting all the benefits of earlier promotion.

(15) To consider the question of consistency and mutual co-existence of the various clauses of Ordinance 5, the matter may be examined by way of an illustration. If a student clears re-appear subject in the third attempt, meaning thereby in an examination held in the month of June, then as per clause (vii), he is to be promoted to next professional course and would be required to complete a period of one academic year of study in order to become eligible to appear in 2nd Professional BPT examination. The question now arises that at what point of time shall he appear in the 2nd Professional

examination. Of course, not in December, because an academic year shall not be complete by that time. That would mean a loss of two years for such a student. In these circumstances, the interpretation suggested by the University cannot be accepted as the same is clearly contrary to the spirit of the Ordinances.

(16) In such a situation, this Court considers it duty to construe the various clauses of Ordinance in such a manner so that each of the clauses can operate and co-exist with the remaining clauses and also reflect the true intention of the University. Rather than adopting the course of declaring various clauses of the Ordinances as mutually inconsistent with each other and, therefore, *ultra vires*, it would be appropriate to make an effort to give an harmonious construction to the various clauses so that all the clauses of the Ordinances can co-exist and give way to one another.

(17) The Hon'ble Supreme Court of India in the case of **Bengal Immunity Co. Ltd. versus State of Bihar (1)** has laid down that if two provisions of a statute are in conflict with each other, then, if possible, a rule of harmonious construction should be adopted, to give effect to both. The Apex Court in the case of **K. Anjaiah and others versus K. Chandraiah and others (2)** has held as follows :

“7. In view of the rival submissions at the Bar the only question that arises for consideration is whether the provisions of Regulation 9(2) shall be upheld by reading down the same or the language used in the said provision is not susceptible to be read down and should be struck down by the Tribunal ? It is a cardinal principle of construction that the Statute and the Rule or the Regulation must be held to be constitutionally valid unless and until it is established they violate any specific provision of the Constitution. Further it is the duty of the Court to harmoniously construe different provisions of any Act or Rule or Regulation, if possible, and to sustain the same rather than striking down the provisions outright. In other words the Court has to make an attempt to see if the different provisions of the Regulation can survive and in making that attempt it is open for the Court to read down a particular provision to clarify any ambiguity so that the provision can be sustained but not to relegislate a provision.”

(1) AIR 1955 S.C. 661

(2) (1998)3 S.C.C. 218

(18) In the aforesaid judgment, the Apex Court has observed that if a literal meaning is given to the language used in Regulation 9(2) of the Regulations under consideration, then it might appear that the benefits conferred under Regulation 9(1) are given a go bye. In these circumstances, the Court adopted the principle of harmonious construction by reading down the provisions of Regulation 9(2) of the aforesaid Regulations.

(19) Again in the case of **Calcutta Gujarati Education Society and another versus Calcutta Municipal Corpn. and others (3)** the Apex Court held as follows :

“35. The rule of “reading down” as provision of law is now well recognized. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the garb of “reading down”, however, it is not open to read words and expression not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes”.

(20) In view of the law settled by the Apex Court, as noticed in the aforesaid judgments, this Court is of the considered view that the various clauses of Ordinance 5(d) and 6(b) have to be harmoniously construed and the language used in some of the clauses, which militates against co-existence has to be read down. The various ordinances being in the nature of beneficial provisions for the students have to be interpreted in the said spirit.

(21) Thus, adopting the aforesaid principle of reading down and applying the doctrine of harmonious construction, while interpreting clauses (v), (vi), (vii) of Ordinance 5(d) and 6(b), it is held as follows :

A candidate who fails in one or more subjects in his/her first attempt, shall be permitted to attend classes in 2nd Professional BPT course.

A candidate who passes in one or more subjects shall be exempted from appearing in these subjects at a subsequent examination but the candidate must pass the examination in a maximum of six attempts, failing which he/she shall have to appear in all the subjects of the examination.

Those candidates who had not cleared all the subjects of 1st Prof. BPT course and who had completed the academic year of studies of 2nd Prof BPT course shall be eligible to appear in 2nd BPT examination and, if such candidates clear all the subjects of 1st Prof BPT course in six attempts shall be deemed to have been regularly promoted to 2nd Prof BPT course. However, if a candidate fails to pass all the subjects of 1st Prof in six attempts, then he/she shall be reverted to 1st Prof BPT course, forfeiting all the benefits of earlier promotion.

(22) The aforesaid interpretation inferred by this Court takes into consideration the spirit of the Ordinances and the concessions offered by the University to the unsuccessful candidate, who had been placed in re-appear in his first attempt. It also takes into consideration, the total number of six attempts offered by the University to such an unsuccessful candidate to clear all the subjects and also abides by the intention of the University that if such an unsuccessful candidate fails to clear all the subjects within six attempts provided to him, then he would be reverted back to his 1st Professional Course and in such a situation would have to appear in all the subjects all over again.

(23) The aforesaid interpretation with regard to Ordinances 5 and 6 shall in *mutatis-mutandis* apply to all other relevant Ordinances with regard to 2nd, 3rd and 4th Professional examinations as well.

(24) As a result of the aforesaid discussion and for the detailed reasons as given above, the writ petition filed by the petitioners stands allowed.