

**(2014) 12 AP CK 0011**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 35671 of 2014

Abdul Quayum

APPELLANT

Vs

Osmania University

RESPONDENT

**Date of Decision:** Dec. 6, 2014

**Citation:** (2015) 5 ALD 367 : (2015) 1 ALT 600

**Hon'ble Judges:** C.V. Nagarjuna Reddy, J

**Bench:** Single Bench

**Advocate:** Mir Masood Khan, Advocate for the Appellant; Dishit Bhattacharjee for Deepak Bhattacharjee, Standing Counsel, Advocate for the Respondent

### **Judgement**

C.V. Nagarjuna Reddy, J.

The petitioners are students of B.E. (Production) course pursing their studies in respondent No. 4-college, affiliated to respondent No. 1-University. At the end of the II year of the said course, they had 13 backlog subjects. As per the Rules of Promotion framed by the Academic Council of respondent No. 1-University, the maximum number of backlogs are stipulated year-wise depending upon the number of papers prescribed. For example, a student of I year B.E. is permitted to be promoted to the first semester of the II year B.E. course, which has 9 or 10 papers prescribed, if he has not more than five backlogs. If the I year B.E. course has 11 papers, a student shall not have more than six backlogs for being promoted to the II year. A student of second semester of B.E. II year will be promoted to the III year, if he does not have 6 backlogs against 12 prescribed papers, 7 backlogs against 13/14 of the prescribed papers; 8 backlogs against 15/16 prescribed papers and 9 backlogs against 17/18 prescribed papers.

2. It appears, on the representations made by the student community that due to agitations and disturbances on account of the demand for separate State of Telangana, respondent No. 1-University through Circular No. 1079/I/Acad.I/2013, dated 30-7-2014, has increased the permitted backlogs by 4 for each category of B.E. students. As a result of this increase, if the total number of papers in the first and

second semesters of B.E. II year are 15 or 16, the permitted backlogs for promotion to the first semester of B.E. III year, are 12 and if the prescribed number of papers are 17/18, the permitted backlogs are 13.

3. It is the pleaded case of the petitioners that the results of the II year B.E. were declared on 12-8-2014 and they were not allowed to attend the classes of the first semester of III year on the ground that they had more than 9 backlogs. They have further averred that as per circular No. 1079/I/Acad.I/2013, dated 30-7-2013, the permitted backlogs are increased to 13 and that as the petitioners have only 13 backlogs after revaluation, they are entitled to be promoted to the III year B.E. course. As respondent No. 1 has not promoted the petitioners to the III year, they have filed this Writ Petition.

4. On behalf of respondent No. 1-University, its Registrar has filed a counter affidavit wherein it is pointed out that as per the original Rules of Promotion, 9 backlogs were permitted only for B.E. (Civil Engineering) course and not for B.E. (Production Engineering) course. He has further averred that the following subjects constitute the core subjects for B.E. (Production Engineering) degree course: (1) Mathematics-II, (2) Engineering Physics, (3) Engineering Chemistry, (4) Engineering Graphics, (5) Engineering Mechanics, (6) Programming in C and C++, (7) Mathematics-III, (8) Metallurgy and Material Sciences, (9) Machine Drawing, (10) Mathematics-IV, (12) Kinematics of Machines, (13) Electrical Circuits and Machines, (14) Thermodynamics, (15) Basic Electronics and (16) Fluid Dynamics. That the subject Computer Drafting Lab is not a University examination and that therefore the total number of subjects in the first and second semester of the II year B.E. course together is 16 and therefore the permitted number of backlogs is  $8 + 4$  i.e., 12. In order to fortify this plea, it is mentioned in the counter affidavit that the syllabus for the four year degree course in Mechanical Engineering will clearly show that for all the core subjects, there is University examination prescribed, the duration of the examination is three hours and the University examination and Sessional marks are shown for every subject. That there is no minimum pass mark for the Sessional test and that even non-appearance in the Sessional does not debar a student from appearing in the main examinations. That whatever marks are secured in the Sessional test conducted by the colleges themselves are added to the main examination marks, which facilitate a student to score higher percentage. It is further averred that the respondent No. 1-University does not conduct Sessional test and that it is conducted by the concerned colleges themselves and after conducting of Sessional tests, the colleges forward the award lists to the University for including those marks in the total marks secured after the University Examinations. That in view of the said reasons, the subject for which no University examination is prescribed is not taken into consideration for calculating the total number of backlogs and that an examination which is not prescribed by the University cannot be considered as a paper for the purpose of reckoning of backlogs.

5. A reply affidavit is filed by petitioner No. 1 wherein he has joined the issue with respondent No. 1-University on its plea that the Sessional in Computer Drafting Lab cannot be treated as a subject for the purpose of calculating the backlogs. It is pleaded that as respondent No. 1-University has contended that B.E. (Civil) students alone are permitted to have 13 backlogs, the burden lies on it to prove that the said stream has 18 subjects in externals (University Examinations).

6. I have heard Mr. Mir Masood Ali Khan, learned Counsel for the petitioners and Mr. Dishit Bhattacharjee, learned Counsel representing Mr. Deepak Bhattacharjee, the learned Standing Counsel for respondent Nos. 1 to 3.

7. After careful consideration of the respective pleadings, the only Point for determination is whether the first and second semesters of B.E. II year (Production Engineering) course have in all 16 papers or 17 papers.

8. The subjects prescribed by respondent No. 1-University for B.E. II year Mechanical and Production Engineering (Semesters I & II) as contained in the Rules and Regulations for the four year degree course are given in the following Tables:

If the number of papers as indicated in the two Tables reproduced above is totalled, they come to 17. However, the bone of contention between the parties is whether Sl. No. 2 in the Table pertaining to Semester-I under the head Practicals i.e., Computer Drafting Lab, can be reckoned as a paper within the meaning of Part-V of the Rules of Promotion.

9. Part-IV of the Rules pertains to the scheme of instructions and examinations. Rule 8 thereof provides that a candidate shall be deemed to have fully passed the Examination of any year/semester, if he/she secures not less than minimum marks as under:

There shall however be no minimum for the Sessional marks secured by a student in a subject or in all the subjects put together.

10. Rule 3 of Part-V of the Rules of Promotion reads thus:

If the subjects prescribed for semesters I and II shown in the above mentioned Tables are closely analysed, it is apparent that both for Theory as well as Practicals, 25 marks each are prescribed for Sessionals. While Sessional marks are awarded based on internal assessment of the concerned teacher of the college, marks in the University Examinations are awarded by external examiners deputed by the University. It is not out of place to notice that of all the 17 papers prescribed for the I and II semesters of B.E. II year (Mechanical Engineering & Production Engineering), University examinations are prescribed for 16 papers, of which 12 papers are in Theory and 4 papers are in Practicals. The only paper for which University examination is not prescribed is Computer Drafting Lab. For this paper, only Sessional is prescribed without any University examination and the maximum marks prescribed for the Sessional are 25. While under Rule 8 of Part-IV referred to above,

the minimum marks of 40% for each Theory subject and 50% for each Practical subject in the University Examinations are prescribed, no minimum marks for the Sessionals are prescribed. Evidently, the Sessional marks are relevant for two purposes, namely, for considering the over all aggregate of marks in all the papers for which University Examinations are held, which shall be not less than 40% and also for adding to the total marks of a student.

11. As noticed hereinbefore, the University has specifically averred that even if a student does not attend the Sessional, he is not disqualified for promotion. On the analysis of these facts, the phrases Papers prescribed and Backlogs mentioned in Rule 3 of Part-V of the Rules of Promotion must be construed. The word Backlog signifies the number of papers in which a candidate has failed. A candidate is declared failed if he fails to secure the minimum marks prescribed in a paper/subject. As per Rule 8 referred to above, the minimum pass marks are prescribed for Theory and Practical subjects in which University examinations are held. However, no such minimum marks are prescribed for Sessionals. So much so, there can be no backlog in respect of a paper for which minimum marks are not prescribed. As noted above, except for Computer Drafting Lab, for all other 16 Theory and Practical papers University Examinations are prescribed with minimum marks. The lone exception in this regard is Computer Drafting Lab. Therefore, irrespective of the marks awarded in the Sessionals for Computer Drafting Lab, there is no question of the petitioners failing or passing in the said subject. Unless a candidate fails in any subject, the possibility of his having backlog in the subject would not arise. Unlike Computer Drafting Lab, for the other Practical subjects, namely, Metallurgy Lab and Mechanics of materials lab for Semester-I and Electrical Circuits and Machines Lab and Basic Electronics Lab for Semester-II, University Examinations are prescribed and 50 marks each for such examinations are also prescribed. As per Rule 8 of Part-IV, unless a student secures 25 marks each in these Practical examinations, he will fail. It is thus evident that while a student can have backlog in the said four Practical examinations where the University examinations are prescribed, there is no question of any student failing in Computer Drafting Lab. Therefore, the plea of the petitioners that Computer Drafting Lab shall be treated as a paper for the purpose of reckoning the backlog is unacceptable. While for the purpose of Sessionals, the said subject may be reckoned as a paper in the scheme of the University Rules, it defies logic and rationale to include the said subject in the total number of subjects for the purpose of reckoning the permissible backlog.

12. As regards the submission of the learned Counsel for the petitioners with reference to the plea of respondent No. 1-University that only Civil Engineering has permissible backlog of 13, the substance of this submission of the learned Counsel is that the paper at Sl. No. 4 of Semester-II of B.E. II Year (Civil Engineering), namely, Surveying Camp included under the head Practicals is considered as a paper, though University examination is not prescribed for it and that as no other Department has 18 papers, it is deemed that respondent No. 1-University has

reckoned the said paper also for the purpose of reckoning the backlogs. This submission is obviously advanced only in despair and based on mere hypothesis. Even if the said subject is not reckoned for Civil Engineering, still it has 17 papers for which the permitted backlogs are 13.

13. The learned Counsel for the petitioners has relied upon the Judgments in V. Guruvaiah Naidu vs. State of Madras AIR 1958 Madras 249, S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others, Commissioner of Income Tax, Delhi Vs. S. Teja Singh, N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, and Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey and Others. In the context of the dispute arising in this Writ Petition, none of these Judgments have any relevance whatsoever and placing reliance on the said Judgments is wholly misconceived.

14. For the above mentioned reasons, I hold that for B.E. (Production Engineering) course, Computer Drafting Lab cannot be considered as a paper prescribed for the purpose of calculating the backlogs and that the permissible backlogs for the said stream of the course is 12 as against which the petitioners have 13 and that therefore, the respondents have rightly detained the petitioners in the second semester of II year of the B.E. (Production) course.

15. On the analysis as above, the Writ Petition has no merit and the same is accordingly dismissed.

16. As a sequel to the dismissal of the Writ Petition, WPMP No. 44625 of 2014 filed for interim relief is dismissed as infructuous.