

*Before Rajiv Narain Raina, J.*

**KAWALJIT KAUR & OTHERS—Petitioners**

*versus*

**GURU NANAK DEV UNIVERSITY, AMRITSAR & OTHERS—  
Respondents**

**CWP No.14035 of 2011**

March 22, 2012

*Constitution of India, 1950 - Art. 226 - Guru Nanak Dev University, Rules and Prospectus - Petitioner admitted to MBA/MCA Courses during the academic session 2010-11 at Guru Nanak Dev University - Condition in prospectus that if a student fails in a subject, he/she will have to repeat the course, but will be promoted to the next semester - Condition later changed and it was notified if a student fails in a subject, he/she will have to repeat the core course & will not be promoted - Such condition challenged - Held that rules of the game changed mid-stream - Cannot be allowed - Amendment can apply only prospectively - writ petition allowed.*

*Held*, that where the entire eligibility conditions for promotion to third semester have undergone a sea change. The amendment itself is silent as to date of applicability. The salutary principle of interpretation in such circumstances is to give effect to it for the future. It would not, to my mind, cover cases where after the game has begun the rules are changed in such manner as to completely obliterate the old law and create an insurmountable hurdle in the present hurdle. I agree with Mr. Kartikeya that the present case, which calls interference. I would conclude and declare the amended regulation as prospective in operation.

(Para 17)

R. Kartikeya, Advocate *for the petitioners.*

Amrit Paul, Advocate *for the respondents.*

**RAJIV NARAIN RAINA, J.**

(1) This order will dispose of this writ petition along with four connected writ petitions\*. Facts are being taken from CWP No.14035 of 2011 for convenience.

(2) The petitioners were admitted to the MBA and MCA courses for the academic session 2010-11 conducted by the Guru Nanak Dev University, Amritsar ( for short 'the University'). The primary grievance of the petitioners is that at the time of admission the courses were governed by un-amended Rules and by an amendment carried out on 18.5.2011 the Rules have been amended to their detriment midstream. They are either studying at Jalandhar or Amritsar campus of the University. The dispute arises in the following conspectus of facts as pleaded:

The credit based evaluation system introduced by Respondent-University provides that the students are required to have minimum of 100 credits for the MBA Course and 225 credits for the MBA/MCA Course. On the basis of the academic performance of the students, the students are awarded Grade Points. As per the Rules provided in the prospectus issued by respondent- University, grades from "A+" to "F" are awarded to the students. The note provided under the heading of grading system in the prospectus for the sessions 2010-11 provides as under:-

*"Note: A student shall be required to maintain a minimum of 4.5 SGPA at the end of each semester. A student getting 'E' or lower grade in any course will be treated as having failed in that course and shall have to repeat with the approval of Board of Control, and will have to obtain atleast 'D' grade in that course within specified period as per the prevailing rules. The weight of 'E' and 'F' will not be counted in SGPA or CGPA."*

The term "SGPA" refers to the 'Sessional Grade Point Average' and "CGPA" refers to 'Cumulative Grade Point Average'. Thus the 'E' and 'F' grade awarded to the student would not count towards his SGPA or CGPA and the candidate is required to repeat in that course within specified period as per the prevailing Rules. The specified period has been prescribed in the prospectus and ranges from 2 to 7½ years varying from course to course. That as per the scheme provided by the prospectus, the students were thus required to complete the course within the maximum time specified in the schedule and the students could repeat the course within the said period with the approval of the Board of Control. In practice a candidate who secured "E" or "F" was required to repeat that very course and could continue the courses with admission to the next semester. Thus the course

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alone was to be repeated and not the complete semester or core course. However, certain amendments were proposed to the Ordinance and Regulations for Credit Based Continuous evaluation grading system which were approved by the Syndicate in its meeting held on 12.3.2011. But no such amendment was informed to the petitioners at the time of admission, nor was any such recommendation suggested in the prospectus. The respondent-University issued the information brochure / prospectus for the year 2011-12. In the note provided under the head of Grading System in the newly issued prospectus, the Note provides as under:-

*"Note: A student shall be required to maintain a minimum of 4.5 SGPA at the end of each semester. A student getting "E" or lower grade in any course will be treated as having failed in that course and shall have to repeat the core/elective course/or repeat/opt another course in lieu of interdisciplinary/outside department course with the approval of Board of Control, and will have to obtain atleast 'D' grade in that course within specified period as per the prevailing rules. The weight of 'E' and 'F' will not be counted in SGPA or CGPA."*

The underlined portion refers to the only additions made in the note provided in the new prospectus, the rest of the contents are the same. The office of the Dean Academic Affairs of the respondent-University issued a letter dated 17.5.2011, referring to the recommendations made by the Senate in its meeting held on 12.3.2010 and the modalities for the students who had failed, and are studying under Credit Based Evaluation System.

(3) A joint reading of the recommendations made by the Committee and the suggestions made by the University would lead to the conclusion that the students who had scored "E" or "F" would be declared failed and would have to repeat the course as the "E" and "F" grades would now be counted in the SGPA and CGPA.

(4) The petitioners are those candidates who had got "E" or "F" grades in a particular course in the examination held in December 2010. On the strength of the letter dated 17.5.2011 issued by the Office of Dean Academic Affairs (P-3) respondent No.2 is now denying further admission to the petitioners on the ground that they are now required to repeat the

core course and would not be entitled to admission further till they do not repeat the previous core course. The petitioners are aggrieved by this action of the respondents, wherein the amended provision of the Credit Based System is being applied illegally to the students who had joined respondent-University prior to the amendment. The petitioners have approached respondents several times but respondents have denied them admission and have not allowed them to deposit the fee. The petitioners would have been promoted to the 3rd semester but for the amendment. The effect of the amendment showed up in the academic session 2011-12 effective from July, 2011. The effect of the amendment is that if a candidate fails in one subject he would have to repeat the course and not just the subject.

(5) On notice of motion having been issued the respondent-University put in appearance and filed a short reply. The defence taken in the reply reads as under:

The Ordinances (R-1) of the Credit Based Evaluation System was evolved for introduction in the respondent University as per recommendation dated 15.1.2010 of the Committee constituted by the Vice Chancellor for preparing the same. The said Ordinances were approved vide para 28 of the proceedings dated 12.3.2010 (R-2) of the Syndicate of the respondent University, and the same were approved to be enforced, and therefore, these came into force, in the following faculties from 2010-11 :-

1. Applied Sciences.
2. Economics and Business Management
3. Engineering and Technology
4. Life Sciences
5. Sciences
6. Sports Medicine and Physiotherapy
7. Physical Planning and Architecture

In order to benefit the students studying and failing under the Credit Based Evaluation System for repeating the Course, the amendments (R-3) in the said Ordinances (R-1) of the Credit Based Evaluation System were approved vide para 58 of the proceedings dated 18.5.2011 (R-4) of the Syndicate of the respondent University on the basis of recommendations

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dated 19.4.2011 (R-5) of the Committee constituted for laying down the modalities for repeating the course by the students studying and failing under the Credit Based Evaluation System. According to it, among others, the words: "The weightage of 'E' and 'F' Grades will not be counted in SGPA or CGPA" were deleted. The said amendments dated 18.5.2011, approved before the start of the present session 2011-12, came into force from the present Session 2011-12 and naturally also applied to the students of the same integrated Course, such as the petitioners, who had failed during the previous semesters too. The petitioners have themselves admitted in the writ petition that they have got 'E' or 'F' grade in the particular course in the examination held in December, 2010 but they concealed the true facts that they also did not maintain the minimum 4.5 SGPA/CGPA in each semester. As per prospectus issued at the time of admission for the Session 2010-11. It has been mentioned in Sr. No.4 grading system; that a student shall be required to maintain a minimum of 4.5 SGPA at the end of each semester. A student getting 'E' or lower grade in any course will be treated as having failed in that course and shall have to repeat the core/elective course/or repeat/ opt another course in lieu of interdisciplinary/outside department course with the approval of Board of Control, and will have to obtain atleast D grade in that course within specified period as per prevailing rules. The weights of "E" and "F" Grades will not be counted in SSGPA or CGPA". Taking into consideration the betterment of the students, the impugned amendment (R-3) was made according to which if a candidate does not maintain 4.5 SGPA/CGPA and if his SGPA/CGPA was below than 4.5 at the end of Second Semester of any year, the student will be declared as having failed and will have to seek re-admission to the First Semester of that year. All the petitioners have not secured 4.5 CGPA in the University examination and they have not been given admission as per University rules.

(6) I have heard the learned counsel for the parties at length and perused the record and the unamended and amended ordinances of the University.

(7) The only issue which requires determination in the present case is as to the effect of the amendment, whether it is retroactive or prospective. In case it is retroactive then the petitioners would have to repeat the third semester. The formula of evaluation would stand changed. The weight of 'E' & 'F' will not be counted in calculating the average.

(8) Mr. R. Kartikeya, learned counsel for the petitioners has forcefully argued that having the petitioner's secured admission under the information brochure/prospectus 2010-11 and the rules of the game having been set they could have not been changed mid-way to their detriment. Under the unamended regulations the petitioners would have been automatically promoted to the third semester in July, 2011 subject to conditions contained in the earlier prospectus. Learned counsel submits that in the face of the amended regulations which came into operation from 18.5.2011 his clients would have to repeat the entire course. He has built his arguments on the strength of the Full Bench judgment of this Court in the case of *Amardeep Singh Sahota versus State of Punjab and Ors (1)*. The Full Bench while dealing with the issue of change in the provisions of a prospectus held as under :-

*"The Prospectus cannot subsequently be changed by the State Government to the detriment of students to benefit certain other students. In Ravdeep Kaur v. The State of Punjab and Ors., I.L.R. (1985)1, Punjab and Haryana, 343, a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the Prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench."*

(9) He further relies on the Division Bench judgment of this Court rendered in the case of *Raj Singh versus Maharshi Dayanand University (2)*, in which this Court held as follows:-

*"The college, which is entitled to grant admission, has precisely done that it was required to do and it could not wait in granting admission and has no option but to grant admission as per the options exercised in the admission form and as per the prospectus, support for this view can be had from Ravdeep Kaur*

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(1) 1993(2) PLR 212

(2) 1994 (2) 107 PLR 32

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*v. The State of Punjab and Ors., I.L.R. (1985)1, Punjab and Haryana, 343 and a Full Bench decision of this Court in Amardeep Singh Sahota v. The State of Punjab etc. (1993-2) 104 P.L.R. 212. The Full Bench approved the view taken in Ravdeep Kaur's case (supra) wherein it was held that the eligibility for admission to a Course has to be seen according to the Prospectus issued before the Entrance Examination and that the admission has to be made on the basis of the instructions given in the prospectus, these having the force of law".*

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(10) He submits that it is settled proposition of law that admissions are to be carried out strictly in terms of the criteria provided in the prospectus. No deviation from the prospectus would be countenanced which would upset preexisting rights of the candidate. The petitioners have vested and accrued right under the unamended rule. The amendment can have only prospective effect governing fresh admissions in the academic session 2011-12. Learned counsel emphasizes that the amendment is silent as to retrospectivity or prospectivity, therefore, the general principles of law of interpretation of statutes would require to be resorted to. When those are applied then the University is not justified in denying admission to the third semester. An entirely new formula of evaluation has been introduced which has rendered them ineligible for consideration for promotion, a situation which the student could never have envisaged, remedy or reorganized their studies in a manner to fit the unknown future development. He further submits that the petitioners were allowed by interim order dated 6.9.2011 to appear in the respective examination, subject to the outcome of the writ petition. The petitioners had appeared in the examination which commenced from 17.10.2011 and by another order dated 19.10.2011 were permitted to attend the classes as well, by way of clarification order.

(11) Mr. R. Kartikeya, learned counsel for the petitioners further contends that the University had arbitrarily changed the admission criteria for admission to the second year. The amendment had prejudiced the rights of the students, that too when the proposed amendment brings in a substantive change in the evaluation criteria and drops the carry forward rule. The amended Rules and Syndicate decision does not refer to any date from which the Regulations are to apply, and hence, they cannot be stretched to be assumed as "retrospective in nature". The mischief sought to be cured

can be rectified prospectively and not retrospectively by asserting the Hayden's Rule. The power to amend the Rules cannot be questioned, but the same cannot be permitted to operate retrospectively to the prejudice and disadvantage of the students, and that too affecting several students. The Balance of equity would lie in favour of the petitioners who have been caught off-guard due to the amendment of the provisions and the University has attempted to give it a retrospective colour.

(12) Mr. R. Kartikeya submits that those interim orders deserve to be made absolute.

(13) Mr. Amrit Paul, learned counsel for the University has taken me through Annexure 1 (R-3) being the proposed amendment to the Ordinances and regulations for Credit Based Continuous Evaluation Grading System approved by the Syndicate in its meeting held on 12.3.2010. He has drawn my attention to Clause 7(d), which reads as under :-

*“(d) If a student maintains SGPA/CGPA of 4.5 at the end of the second semester of the session, but fails in three or more courses during all the preceding semesters taken together; at the end of the session including summer term, he/she will be declared as having failed in that year and will have to seek readmission to the first semester of that year.”*

(14) The proposed amendment was brought on the statute book on 18.5.2011 resolving to approve the recommendations dated 19.4.2011 of the Committee constituted by the Vice Chancellor for laying down the modalities for repeating the course by the students studying and failing under the Credit Based Evaluation System (CBES) as per the Appendix.

(15) Mr. Amrit Paul, learned counsel for the University further urges this Court to apply the law laid down by the Supreme Court in the case of *Punjab University versus Subash Chander and another (3)*; and *Punjab University, Chandigarh versus Devjani Chakrabarti and others (4)*. He contends that the rules prevailing at the time of examination and not those obtaining at the time of admission of the candidates would be applicable. In such a case no retrospectivity is involved for applying the

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(3) AIR 1984 SC 145

(4) (1984) 3 SCC 612

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amended rules to candidates admitted prior to the amendment. In the case of *Punjab University v. Subash Chander and another* (supra) the issue involved was awarding of grace marks. The candidate in that case joined the MBBS course in 1965, when Regulation 65 of the Punjab University was in force. That Regulation required a minimum of 50% to pass in each subject. However, Rule 7.1 relating to the MBBS course and certain other courses provided that a candidate who fails in one or more papers/subjects and /or aggregate may be given grace marks up to 1 per cent of the total aggregate marks (including marks for practical and internal assessment) to his best advantage in order to be declared to have passed the examination. In May, 1970 the University amended the Rules by incorporating an exception to Rule 2.1 to correspond to Rule 7.1, which was in force in 1965. The exception dealt with MBBS and BDS examinations and grace marks could be given upto 1 per cent of the total of each subject and not upto one per cent of aggregate of all the subjects. Each subject made a separate unit, and a candidate who fails in a subject by not more than one per cent of the aggregate marks of that subject may be given the required number of marks in order to pass in that subject. Subash Chander appeared for the final examination in 1974 after he joined the course earlier in 1965. In those circumstances it was held that no promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rules or regulations in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating thereto which were in force at the time of his admission would continue to be applied to him until he finished his whole course.

(16) Mr. Amrit Paul, learned counsel for the University has also relied on a decision of a Division Bench of this Court in *Akashdeep Bhargo and others* versus *Baba Farid University of Health Sciences and others* (5); in which the Division Bench has followed *Punjab University* versus *Subash Chander and another* (supra). He relies on another Division Bench judgment of this Court in the case of *Rahul Gupta* versus *State of Haryana* (6); to contend that the University made no promise at the time of admission that there would be no alteration of duration and

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(5) 2007(2) SCT 139

(6) 2000(4) SCT 1099

Rules would not be amended or continue to apply until the whole course is finished. The competent authorities are free to change the duration of course at any time. He has also relied upon a Single Bench decision of this Court rendered in *CWP No. 8583 of 2009* titled *Samriti Sharma & others v. Guru Nanak Dev University, Amritsar & another* decided on 8.4.2010.

(17) Mr. R. Kartikeya, learned counsel for the petitioners has countered the arguments of Mr. Amrit Paul in rebuttal and has cited a Division Bench decision of this court rendered in *Munish Kumar Talwar versus The Vice Chancellor, Baba Farid University of Health Sciences and others (7)*, in which the Hon'ble Supreme Court's decision in the case of *Punjab University v. Subash Chander and another* (supra) has been considered. The issue before the Division Bench was regarding duration of the course. The decision in the case of *Punjab University v. Subash Chander and another* (supra) was distinguished on the ground that in that case the candidate had got admission in the year 1965 and he had appeared in the examination in 1974, i.e. after 9 years of his admission. Four years prior to the date of the examination, the Rule was amended in 1970 and it was in this context that the Court held that the Rule amended in 1970 would apply in the said case. The facts of this case stand on a different footing. Where the entire eligibility conditions for promotion to third semester have undergone a sea change. The amendment itself is silent as to date of applicability. The salutary principle of interpretation in such circumstances is to give effect to it for the future. It would not, to my mind, cover cases where after the game has begun the rules are changed in such manner as to completely obliterate the old law and create an insurmountable hurdle in the present hurdle. I agree with Mr. Kartikeya that the present case, which calls interference. I would conclude and declare the amended regulation as prospective in operation.

(18) For the foregoing reasons, this petition succeeds. The petitioners would have a continued right to admission to the third semester in accordance with the unamended rules under the Credit Based Evaluation System (CBES) provided in the prospectus issued for the session 2010-11, which has the force of law. The interim orders are made absolute. The University would

regularize the admission of the petitioners subject to all conditions as are warranted under the prospectus 2010-11. Consequently, directions are issued to the University to regularize their admission to the third semester and permit them to pursue studies without let or hindrance. The respondents are further directed to adjust and refund the balance fee in respect of the petitioners at the time of registration of the session 2011-12 against the deposit at the time of seeking provisional admission under the interim orders of this Court. The needful be done forthwith.

(19) A copy of this order be placed on the file of each connected case.

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