

(2015) 10 DEL CK 0057

In the Delhi High Court

Case No : W.P. (C) No. 6550/2015 and CM No. 11923/2015

Aatisha

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2015) 10 DEL CK 0057

Hon'ble Judges : Rajiv Sahai Endlaw, J.

Bench : Single Bench

Advocate : D.N. Goburdhan, Balaindu Shekhar, Vivake Jaiswal and Somya Rathore, Advocates, for the Appellant; Amit Bansal, Seema Dolo and Akhil Kulshrestha, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition, (i) impugns the Guidelines of the respondents No. 1&2 University of Delhi which debar the third year students of Vth and VIth Semester of Bachelor of Arts (BA) (Honours) Undergraduate Programmes from giving their Supplementary Examination of Essential Repeat; (ii) seeks a direction to the respondents University to conduct the Vth and VIth Semester Essential Repeat examination and declare the result of Undergraduate BA Programme students on or before 30th September of each year; (iii) impugns the amendment vide Notification dated 14th June, 2010 to Ordinance VIII to the Delhi University Act, 1922 pertaining to Supplementary Examination in Undergraduate Courses for Vth and VIth Semester as arbitrary, unreasonable and violative of Articles 14 & 21 of the Constitution of India; (iv) seeks a direction for Supplementary Examinations to be taken in the same academic year for the final year students of BA (Honours); (v) seeks a direction to the respondents University to conduct Vth and VIth Semester Supplementary examinations and declare results of the same before October of the same year, so that the Degree of BA (Honours) is given to the students who give the Supplementary

Examinations in the same year; and, (vi) seeks a direction that the Degree awarded to such BA (Honours) students to relate back to the same academic year.

2. The petition accompanied with an application for interim relief directing the respondents University to conduct and hold Supplementary Examination for Vth / VIth Semesters and declare the result of the same by 30th September, 2015 came up first before this Court on 10th July, 2015 and after a couple of adjournments came up for admission on 17th July, 2015. However, the counsel for the petitioner, after some arguments on that date stated that he is not pressing the petition for the relief for the year 2015 and desired the petition to be decided after a counter affidavit is filed. On the contention of the counsel for the petitioner that there was no reason for the respondents University to, while allowing students to appear in Supplementary Examinations of the subject till of the IVth Semester in September of the same academic year and not allowing the students completing their course of the final year to take the Supplementary Examination in the same year, notice of the petition was issued. The petitioner thereafter sought for amendment of the petition and which was allowed. Counter affidavit has been filed by the respondents University and to which rejoinder has been filed by the petitioner. The counsels for the parties were heard on 31st August, 2015 and judgment reserved.

3. It is the case of the petitioner:

(a) that she joined BA (Honours) History Programme with Lady Shri Ram College for Women affiliated to the respondents University in the year 2012 and was promoted to the second year of the said Programme in the year 2013 and to the third and final year of the said Programme in the year 2014;

(b) that as per "Passing Scheme and Promotional Criterion for Undergraduate Courses in Semester Mode in University of Delhi"

"6. Student who has to reappear in semester I/III/V can appear in the semester examination to be held in November/December.

7. Student who has to reappear in semester II/IV/VI can appear in the semester examination to be held in April/May."

(c) that there is no reason for the respondents University not allowing Supplementary Examination for third year students to be conducted in the same academic year;

(d) that not allowing the third and final year students to take Supplementary Examination in the same year wastes their entire year;

(e) that the third year students have been arbitrarily denied taking the Supplementary Examination in the same year as first and second year student have been allowed;

(f) that all the other reputed Universities of India including (i) Presidency

University (Calcutta); (ii) Jadavpur University (Kolkata); (iii) Mumbai University; (iv) National Law University (Jodhpur); (v) National Law School of India University (Bangalore); (vi) Punjab University; and, (vii) Kashmir University allow final year students of Undergraduate Courses to give Supplementary Examination immediately after the result of the VIth Semester, so that such students who fail to give examination in Vth and VIth Semester of their third year do not waste their entire education / academic year;

(g) that not allowing the third year students another chance to clear their backlog papers is arbitrary, highly discriminatory, harsh and discouraging to the morale of the students;

(h) that the respondents University itself is allowing Law Students to take the Supplementary Examination of the final year in the same year; there is no rationale for denying this right to students of other Programmes / Subjects;

(i) that similarly the respondents University allows "Honours" students of third year who have not passed "Hindi" examination to take Supplementary Examination for the said subject in the same year;

(j) thus, while the first and second year students are promoted to the next year, even if have failed in any subject and thus do not waste a year, the third year students, by being deprived of taking the Supplementary Examination in the same year, are made to waste a year;

(k) that the third year students, if permitted to take the Supplementary Examination soon after the declaration of the result of the third year and if the result of the said Supplementary Examination is also declared before the month of September of the same year, the said students would be able to join the Postgraduate Courses in the same academic year;

(l) that the need for appearing in the Supplementary Examination may not be on account only of failing in the subject but can also be on account of illness or other like reasons;

(m) that there is no rational basis for, while allowing the first and second year students to take the compartment examination in the same year, not allowing the third year students to do the same.

4. The Registrar of the respondents University in his counter affidavit has stated:

(I) that the petitioner could not qualify one paper of the Vth Semester Examinations in her third year;

(II) that the petitioner does not have a vested right to seek holding of Vth and VIth Semester Essential Repeat Examinations on or before 30th September of each year;

(III) that there is no provision in the Statute / Ordinances of the respondents University to hold Supplementary Examination in respect of any of the Semester

examination;

(IV) that in the absence of any such Rule, Statute or Ordinance, the petitioner cannot claim / insist upon the same, as a matter of right;

(V) that the provision for Supplementary Examination existed in the Annual mode of examination for courses of BA, B.Com. and B.Sc. Programmes and for subsidiary papers (which were only qualifying) for Honours courses;

(VI) that from the year 2005, there are no subsidiary papers in Honours courses, as those papers became main papers;

(VII) that accordingly, no Supplementary Examinations were being conducted for the subsidiary papers under the Annual mode of examination also;

(VIII) that the conduct of examination is a long-drawn process, starting from identification of question setters for each of the papers provided in the course for a particular Semester and ending with the publication of results of the examination;

(IX) that in the case of July-December Semester, the process for selection of Question Paper Setters starts after the University reopens in the third week of July; after Question Paper Setters are selected, they are asked to submit the question paper drafted by them within 2-3 weeks; thereafter, when all the question papers are received, moderation of the question papers is done by the Moderation Committee;

(X) that the Practical examinations start in the month of October and Theory paper examinations commence from November and end in December;

(XI) that the papers are evaluated by the teachers along with their scheduled classes by 31st January of the following year and the results put up on the University's website;

(XII) that with the introduction of Semester mode of examination, gradually from 2010 onwards, the provision for Supplementary Examinations, which was a feature of Annual mode of examination became difficult to be operated for those courses which were conducted Semester-wise, as four examinations has to be conducted in a year instead of two;

(XIII) that accordingly, the respondents University took a policy decision to discontinue with the Supplementary Examinations;

(XIV) that the Supplementary Examination in Undergraduate Courses under the Annual scheme has been discontinued by an amendment to Ordinance VIII(1) of Delhi University vide Academic Council Resolution dated 21st June, 2014;

(XV) that the provision of Supplementary Examination has never been in the Ordinance related to Semester Examination; hence the question of conduct of Supplementary Examination in the Semester examination does not arise;

(XVI) that the course of the petitioner was Semester mode at the time she took admission to the same;

(XVII) that Supplementary Examinations held in Law Faculty are in accordance with the directions of the Bar Council of India;

(XVIII) that the question is no longer res-integra in view of the judgment dated 3rd September, 2013 of this Court in W.P.(C) No. 5501/2013 titled Shakti Garg Vs. Delhi University;

(XIX) that even otherwise, this Court in judgment dated 10th May, 2013 in W.P. (C) No. 1810/2013 titled Rithambhra Garg Vs. University of Delhi has reiterated that the Courts should be slow to interfere in academic matters and cannot lose track of the fact that preparing a schedule, conducting examinations, re-test, repeat examinations etc. falls strictly in the domain of the University and is binding on the students;

(XX) that the petitioner was well aware of the discontinuation of the Supplementary Examination well before she was admitted to Vth Semester of her course and that she would lose a year in case she fails in any paper of that Semester and is thus estopped from making the present challenge.

5. The petitioner, in her rejoinder, besides reiterating the contents of the petition has pleaded, (A) that the respondents University having not controverted the existence of the practice pertaining to conducting of Supplementary Examination in the other Universities has admitted to arbitrariness; (B) that the very introduction of Semester mode is arbitrary; (C) that the question of the petitioner having any grievance earlier did not arise, as the petitioner did not fail in any subject of the first or second year of her course.

6. The counsel for the petitioner during the arguments, besides reiterating the contentions in the pleadings already noticed above contended that the doing away with the holding of Supplementary Examinations is arbitrary and unjust to the students and illegal. The counsel for petitioner on 14th September, 2015 filed written submissions along with copies of judgments in Centre for Public Interest Litigation Vs. Union of India (UOI), , E.P. Royappa Vs. State of Tamil Nadu and Another, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Sansar Chand Atri Vs. State of Punjab and Another, , Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union Vs. Srinivasa Resorts Ltd. and Others, , Babita Prasad and Others Vs. State of Bihar and Others, , Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another, , Deepak Sibal Vs. Punjab University and Another, , Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others, , Siddhu Matriculation Hr. Secondary School Vs. K. Shyam Sunder and Others, , A.P. Dairy Development Corporation Federation Vs. B. Narasimha Reddy and Others, , State of Orissa and Another Vs. Mamata Mohanty, and judgment dated 6th July, 2010 in W.P. (C) No. 2593/2010 titled Ms. Simaran Kaur Vs. The Vice- Chancellor.

7. The counsel for the petitioner, at the time when the petition had come up for admission, also relied on *Tanvi Sarwal Vs. Central Board of Secondary Education and Others* whereby the Supreme Court has directed All India Pre-Medical Test to be re-conducted and on the basis thereof had contended that the Court can direct holding of a examination immediately. However, the said contention was rejected vide order dated 17th July, 2015 observing that the reasons which prevailed with the Supreme Court for directing so were entirely different from the present case.

8. In the written arguments, it is also contended that even if this Court were to not hold in favour of the petitioner and not direct Supplementary Examination to be held in the same year, should direct that the degree awarded to the petitioner on the basis of the Supplementary Examination of the following year should relate back to the current year in which the petitioner had completed the course. Reliance in this regard is placed on *Sh. Prashant Srivastava Vs. C.B.S.E. and Others*, .

9. Per contra, the counsel for the respondents University, besides reiterating his case in the pleadings as already noticed, argued that holding of Supplementary Examination of each Semester examination doubles the number of examinations to be held by the respondents University every year and which is not feasible. To meet the argument of discrimination, it was contended that the rule applies to all undergraduate courses. With respect to LLB Programme, it is stated that besides it being a professional Course / Programme is a Post-Graduation Programme and as compared to the number of students who appear in LLB examination, the number of students who appear in the examinations of all undergraduate courses conducted by the respondents University is much larger and though it is possible to hold / conduct Supplementary Examination of LLB Programme, it is not possible to hold the same for the Undergraduate Programmes.

10. The counsel for the respondents University is correct in his contention that the matter, as far as this Bench is concerned, is no longer res-integra, in the light of the judgment of a co-ordinate Bench in *Shakti Garg supra*. Rather, I find that LPA No. 708/2013 was preferred against the judgment of the Single Judge and vide order dated 30th September, 2013 therein, the Division Bench concurred with the reasoning given by the learned Single Judge but upon being told that number of representations had been made, left it for the respondents University to decide whether to hold Supplementary Examination for that batch of students. Thus, as far as this Bench is concerned, the matter is not open for consideration.

11. The counsel for the petitioner has not even made any attempt to show that the action of the respondents University of doing away with the compartment examination in the Semester mode introduced in the respondents University is contrary to any law. The only question which thus remains is, whether the policy of the respondents University can be said to be arbitrary or discriminatory.

12. No case of discrimination is made out as the said policy is applicable to all

undergraduate courses alike. The petitioner cannot seek comparison with LLB Programme which stands in an entirely different genre. The LLB Programme, besides being governed by the Statutes, Ordinances and Regulations of the University is also governed by the Bar Council of India entrusted with overseeing the legal education in the country. Moreover, as contended by the counsel for respondents University, it is a Post-Graduate Programme with far fewer students than in the Undergraduate Courses / Programmes of the respondents University. As far as discrimination between the Semesters of the same Programme i.e. allowing students of Ist, IInd, IIIRD and IVth Semester to re-appear in the same year is concerned, the respondents University is not required to hold any fresh or separate examination therefor. The students failing in any of the subjects of Ist, IInd, IIIRD and IVth Semester can re-appear in the examinations held in November / December or April-May as the case may be, of the same Semester. The same thus does not impose burden on the respondents University of holding a separate examination, as the petitioner wants the respondents University to hold.

13. I find that the Division Bench of the High Court at Hyderabad was recently in *Arshia Tanveer and Others Vs. Osmania University and Others* concerned with a similar demand on the part of the student. The student of the University in that case was similar to that of the respondents University before me. It was stated that it is difficult to conduct Supplementary Examinations immediately after the completion of the main examinations as after the main examination valuation and re-valuation has to be undertaken and all of which also takes time. The Division Bench relying upon *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, *Tariq Islam Vs. Aligarh Muslim University and Others*, and *Rajbir Dalai Vs. Chaudhary Devi Lal University* (2008) 9 SCC 287 held that it had to be slow to interfere with the opinions expressed by the experts, particularly in a case where there is no allegation of mala fides made against the experts. It was further held that the Courts have to be reluctant to substitute its views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It was yet further held that unless there is a clear violation of statutory provisions, the regulations or the notifications issued, the Courts shall keep their hands off since academic issues fall within the domain of experts. It was further reasoned that the issue was one of the academic standards and in the exclusive domain of the academecia.

14. The same learned Single Judge who pronounced *Shourabh Singh Vs. University of Delhi and Others*--> also dismissed a similar challenge.

15. However this is found to have been the consistent view of this Court. Earlier another Single Judge in *Vipin Sharma Vs. Guru Gobind Singh Indraprastha*

University and Another--> faced with a challenge to the ordinance of the University in that case stipulating holding of Semester examination only once a year for a subject of a particular Semester on the ground of the same being arbitrary held that the fact that the petitioner was inconvenienced by said rule and owing thereto stood to lose out on his chances of pursuing higher education abroad in the same very academic year are not grounds that would compel this Court to exercise its extraordinary jurisdiction under Article 226 to strike down academic policy. I may notice that it was also the contention of the petitioner in that case as before me that the other universities were permitting so. It was further held that the parameters and logistics for relaxation of requirements for admission cannot be equated with the exercise of discretion to conduct a Supplementary Examination which is based on various factors and that merely because in previous years the Supplementary Examination for the odd Semesters was conducted was no ground for directing the University to hold the Supplementary Examination in the subsequent year also. I find that the said matter was also taken before the Division Bench by way of LPA No. 395/2009 but which was dismissed vide a speaking order dated 17th August, 2009.

16. Yet another Single Judge of this Court in Sh. Prem Kumar Prasad Vs. Jamia Hamdard (Deemed University)--> dealing with a petition seeking mandamus to the University to hold the Supplementary Examination observed that the rules and regulations which had been framed by the University were within the knowledge of the student when he had taken admission to the Course / Programme and that no student has any legal or enforceable right to claim that Supplementary Examination or any other examination be conducted on a particular date or time as per the convenience of the candidate. It was further reasoned that Supplementary Examinations are intended and are organized by the University for the purposes of enabling students who have failed in any examination a further opportunity to pass the same and that a vigilant, conscious and diligent student would ensure that occasion to take such Supplementary Examination will not occur. It was yet further reasoned that conduct of examinations entails costs and administrative organization and there could be no judicial interference therewith.

17. I find the other High Courts also to have taken the same view. Mention may be made of Bilal Ah. Wani and Others Vs. University of Kashmir, and Ku. Niharika Saraf Vs. Rani Durgawati University--> .

18. The matter is beyond any pale of controversy by the judgment of the Division Bench of this Court in Aditya N. Prasad Vs. University of Delhi and Others, where also a mandamus was sought for holding Supplementary Examinations for students in each Semester so as to give better opportunity and chance to the students to clear their papers in which they had absented / failed. It was held that the matters of promotion are academic matters which are to be left to the academic institutions and Courts are not to tinker with the same unless it is found that they are in violation of some statutory or constitutional provisions.

The writ petition was dismissed. SLP(C) No. 11744/2012 preferred there against is found to have been dismissed on 20th April, 2012.

19. In the light of the aforesaid, the plethora of judgments filed by the counsel for the petitioner on the concept of "what is arbitrariness" pale into insignificance. It has been repeatedly held by this Court that not holding of Supplementary Examination as desired by the students does not qualify as arbitrary. Even in *Shakti Garg supra* it was reasoned that holding of Supplementary Examination is only a concession extended by the University to the students who are unable to clear one or more papers in the main examination taken by them and such a concession from the University cannot be claimed as a matter of right.

20. I may in this regard also notice that though Ordinance VIII under the University Statute provides that the annual examination for all degrees, diplomas and certificates of the University shall be held once a year, in the spring, unless otherwise provided for in any other Ordinance or Appendix thereto or at such other time during the year, as may be fixed by the Academic Council in each case, but the Proviso thereto provides that a Supplementary Examination, in addition to the annual examination, shall be held in the final year of the undergraduate courses. However, vide Amendment dated 14th June, 2010, the following was added to Ordinance VIII:

"1(b). Examinations for the courses covered under the semester scheme shall be held at the end of each semester in accordance with the academic calendar prescribed by the Academic Council from time to time. Unless otherwise provided specifically in any other Ordinance, there will be no Supplementary Examination for any of the semester examinations."

It is clearly borne out from the above that the provision for holding of Supplementary Examinations for the final year of the undergraduate courses was made when examinations were conducted annually and while providing for the Semester scheme, the Supplementary Examination for any of the Semester examinations have been done away with.

21. The reason given by the respondents University for doing away with the Supplementary Examinations is also not which can be said to be unreasonable or arbitrary. The process of holding the examination is indeed a tedious one, requiring a lot of care and caution and more so, now in this age of transparency when judicial review is sought of the process as well as result of nearly all examinations.

22. I am therefore unable to hold that there was no reason for the respondents University to, while introducing the Six-Monthly Semester and thus Six-Monthly Examinations, doing away with the Supplementary Examinations, which was in vogue in the era of Annual Examination. Only a hope can be expressed that if the respondents University at any point of time feels that it has equipped itself to hold a Supplementary Examination of the Semester Examination also, it would

certainly re-introduce the same.

23. There is thus no merit in the petition. Dismissed.

No costs.