

(2018) 01 DEL CK 0087

In the Delhi High Court

Case No : Civil Writ Petition No. 2028 Of 2016, Civil Miscellaneous No. 8746 Of 2016

ABHINAV PANDEY Vs GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND??ORS

Date of Decision : 23-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 01 DEL CK 0087

Hon'ble Judges : Indermeet Kaur

Bench : Single Bench

Advocate : Amit George, Swaroop George, Rajsree Ajay, Ekta Sikri, Jasbir Bidhuri, Sahil Munjal, Shea Gandhi, Munjal

Final Decision : Disposed Of

Judgement

1. Petitioner was enrolled in the 5 year course of B.A.LL.B in the year 2010 at the Amity Law School affiliated to the Guru Gobind Singh Indraprastha University (respondent no.2 and respondent no.1 respectively). For his 6th semester examination out of 5 papers he could not appear in 2 papers i.e. the paper of Code of Civil Procedure and the paper of Code of Criminal Procedure; these two examinations were scheduled for 29.5.2013 and 31.5.2013. The petitioner could not appear in the said examinations as he was suffering from a highly infectious disease i.e. the disease of chicken pox. Petitioner wrote his examination in the aforementioned 2 papers in the year 2014. He had passed with flying colours. He graduated from the University with the highest score/Cumulative Performance Index (CPI) for his course i.e. 80.56.

2. On 27.02.2016 the petitioner was shocked to learn that petitioner was not being considered for the award of Gold Medal in spite of him having achieved highest score in his course. He visited the office of the Controller of Examinations. He was informed that his claim for the Gold Medal was rejected by the University for the reason that since he had not been able to attempt his two examinations in the year 2013, on account of illness and he had cleared them

only subsequently, he could not be considered favourably for the award of the Gold Medal. His repeated communications to the Vice Chancellor as also to the Controller of Examinations and to the respondent University were of no avail.

3. The prayer in the present petition is that the Gold Medal be awarded by the respondent University to the petitioner for the B.A. LL.B. course which he had completed in the year 2015 for which he has admittedly scored the highest marks.

4. Respondent no.3 is the person to whom the Gold Medal had been awarded. Response of respondent no.3 is that she had been awarded the Gold Medal as per her score. She had scored marks of 79.14 CPI. The claim of the petitioner is false. He cannot be considered over and above the case of respondent no.3 as respondent no.3 had been given this score on her having attempted the papers in her "first attempt".

5. Respondent no.1 has filed a counter affidavit. No separate counter affidavit has been filed by respondent no.2.

6. Respondent no.1 has opposed the prayer. His submission is that the Ordinance XI of respondent no.1 is the governing ordinance and any student who fails to appear in examinations at the first time and thereafter appears in the said examinations on a subsequent date would qualify as a "second attempt" on his part. Reliance has been placed upon Annexure P6; this is an Order issued by the respondent no.1 university and the relevant extract relied upon by respondent no.1 reads as under: "(3) For programmes of study with credit based evaluation, the student obtaining highest CPI (Cumulative Performance Index) at the end of the study in a given programme group/programmes of study shall be eligible for the award of the gold medal and/or exemplary performance certificate, if the student has passed every paper/course in the first attempt."

7. Learned counsel for respondent no.1 points out that since admittedly the petitioner could not appear for two examinations in the year 2013; he had qualified these two papers only in the year 2014 and this not being his "first attempt" within the meaning of Annexure P6 and respondent no.1 being governed by its Ordinance, the petitioner makes out no case. Learned counsel for respondent no.1 additionally submits that the petitioner had an extra one year to prepare for the aforementioned two law examinations and which he had attempted in the year 2014 and this extra one year for preparation was also to the prejudice of respondent no. 3 who had otherwise scored the highest marks. It is pointed out that the prayer made by the petitioner had been rejected for the reason that the petitioner had already made his "first attempt", the examination chart for the year 2014 reflects that this was a re-examination/supplementary examination undertaken and this not being his "first attempt", the petitioner is not entitled to the Gold Medal. This reasoned order cannot be interfered with lightly by this Court.

8. This Court notes that on the first date of hearing i.e. on 09.3.2016 after

hearing arguments, the respondent no.1 university had been permitted to go ahead with its convocation and award Gold Medal to respondent no.3. However, the award of the Gold Medal to respondent no.3 would be subject to further orders passed in this petition; in the event that the petitioner is held entitled to a Gold Medal then in a subsequent convocation the petitioner could also be awarded a Gold Medal.

9. On behalf of the petitioner reliance has been placed upon a judgment of the Rajasthan High Court reported as *Sovila Mathur Vs. Maharshi Dayanand Saraswati University*. Submission is that in similar facts the interpretation of the word "first attempt" was considered in that judgment and the Court was of the view that where a candidate could not appear in his examinations on account of illness, it could not be said that any attempt has been made by the petitioner; his appearance in the subsequent examinations would qualify as a "first attempt". Reliance has also been placed upon a judgment of the Allahabad High Court reported as AIR 1982 All. 56 *Shashi Kant Mall Vs. Vice Chancellor and Ors.* Submission being that failure to appear in the examination cannot be equated with making an attempt and then failing thereon; if the candidate had not appeared in the examination at all it was not possible to say that he had made any attempt. Meaning thereby that his subsequent appearance would qualify as a "first attempt". For the same proposition reliance has been placed upon a judgment of the Apex Court reported as 1987 SC 1362 *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*. Learned counsel for the petitioner has also placed reliance upon a judgment of the High Court of Punjab and Chandigarh passed in Civil Writ Petition No.3269 of 1993 titled *Rubinder Brar Vs. Punjab University, Chandigarh and Another* delivered on 20.4.2011 wherein the word "first attempt" qua university examinations had been considered; in this judgment also it was held that if the petitioner did not at all sit in the paper on account of ill health, the occasion when he actually sat in the paper must be considered as his "first attempt". For the same proposition reliance has also been placed upon a judgment of the Bench of the Andhra Pradesh High Court reported AIR 1990 AP 122 *Kum. M.Anuradha Vs. Sri Venkateswara University, Tirupati*. Submission being that in this case where Rule 2 of the General Conditions of the said Educational Institution had contained a clause that a candidate who had not taken the examination at the appropriate time for any reason would be considered as having attempted the examination; this rule had been struck down.

10. Learned counsel for respondent no.1 while countering the submission has placed reliance upon a judgment of the Bombay High Court reported as 1988 Mh.L.J. 1022 *Dr.Rajkumar Shantilal Gandhi Vs. State of Maharashtra and Ors.* Submission is that in this case the Bench of the Bombay High Court was of the view that where a candidate could not appear in the examinations for the reasons which as per the Bombay High Court were irrelevant the fact that he had appeared in the supplementary examinations would qualify as a second attempt; in the context of admission to academic courses "attempt" having a special meaning and where candidate had filled in the requisite form and had crossed

the stage of preparation he was at the stage of "attempt" and he not having appeared on that particular date had already made his "first attempt". Learned counsel for respondent has also placed reliance upon a judgment of the Apex Court reported as AIR 1966 SC 707 Principal, Patna College, Patna and Ors. Vs. Kalyan Srinivas Raman to support a submission that powers under Article 226 of the Constitution of India should be exercised by the High Courts sparingly; in matters relating to educational institutions and where a reasoned order has been passed by an educational institution, as is in the instant case, the Courts should not interfere with that order.

11. In rejoinder learned counsel for petitioner points out that the petitioner in the year 2014 had appeared for five examinations for his 8th semester; he had also appeared in the aforementioned two examinations of his 6th Semester examination i.e., the paper of Code of Civil Procedure and the paper of Code of Criminal Procedure. This was a telling experience and highly burdensome to the petitioner as in that year he had to give 7 papers and the papers of the Code of Civil Procedure and the Code of Criminal Procedure were conducted on the same day when the papers of the 8th Semester were scheduled. Submission being reiterated that this extra one year upon which the respondent no.1 is harping, did not work to the advantage of the petitioner but in fact worked to his disadvantage.

12. Arguments have been heard. Record has been perused.

13. Record reflects that the petitioner had enrolled for his B.A. LL.B. course at respondent no.2 college in the year 2010. He had completed this course in the year 2015. Qua his 6th Semester out of the 5 papers which he was scheduled to appear in, he could only appear in 3 papers which he had qualified. He could not appear in the paper of Code of Civil Procedure and the paper of Code of Criminal Procedure as on those two days the petitioner was suffering from an infectious disease i.e. chickenpox. The fact that the petitioner was suffering from this illness is not disputed. Accordingly, the petitioner was permitted to appear in the aforementioned 2 papers (of the 6th Semester) only in the year 2014 along with 5 other exams for which he had to appear for in his 8th Semester. The Cumulative Performance Index (CPI) which the petitioner obtained was 80.56; this was the highest score. It was over and above the score secured by respondent no.3 who had achieved 79.14 CPI.

14. The Gold Medal has been awarded to respondent no.3. In the course of the arguments, learned counsel for petitioner pointed out that this could well be a case where both the candidates i.e. the petitioner and respondent no.3 deserve a Gold Medal; he would not like to disturb the award of the Gold Medal which has already been received by respondent no.3. His submission that a Gold Medal can be given by the respondent university while maintaining the status of respondent no.3 is in terms of the judgment of the Rajasthan High Court in Sovila Mathur (supra) wherein second Gold Medal had been awarded to the candidate who had made out a case in the court. The vehement submission of respondent no.1

university that the petitioner has stolen a march over respondent no.3 for the reason that he had one more year to prepare for the aforementioned two papers (the Code of Civil Procedure and the Code of Criminal Procedure) is a submission which necessarily has to be rejected. As pointed out by the learned counsel for petitioner along with the 5 papers for which the petitioner had to appear in his 8th Semester, he also had to appear for 2 papers of his 6th semester i.e. the paper of Code of Civil Procedure and the paper of Code of Criminal Procedure i.e. the left out papers of the 6th Semester. The fact that both these papers were scheduled on the same days when the examinations of the 8th Semester were held is also not disputed by respondent no.1; meaning thereby that on one day the petitioner had to appear for two examinations i.e. in the morning session and in the afternoon session. Petitioner had to work harder on those days than in the normal course; the question of the petitioner having earned an advantage of an extra one year of study does not arise. In fact to say the least, it was probably a prejudicial situation for the petitioner who had not only to write two examinations on the same day but obviously had to make extensive preparations on that score as well. Thus this argument of respondent no.1 carries no weight.

15. What really has to be interpreted by this Court is as to whether the petitioner who had sat for his examinations for the paper of Code of Civil Procedure and the paper of Code of Criminal Procedure in the year 2014 was a "first attempt" which had been made by him or whether it was a case of reappearance and would be out of the ambit of a "first attempt". As noted supra both the learned counsels for the respective parties have relied upon their respective judgments to support this definition. The Oxford Advanced Learner's Dictionary defines the word "attempt" as to make an effort or try to do something specially something difficult; to endeavour; an effort or endeavor to effect the accomplishment of an act?" The Division Bench of Punjab and Haryana High Court while interpreting the words "first attempt" in Rubinder Brar (supra) for an engineering examination had defined it to mean as the first time when a candidate actually sat for the subject in the university examination; if a candidate had not sat in the examination on account of his ill health, the occasion when he actually sat in the examination must be understood as his "first attempt". This Court is persuaded by the view taken by the Division Bench of the Punjab and Haryana High Court in the judgment of Rubinder Brar (supra). The Rajasthan High Court in Sovila Mathur (supra) had also interpreted these words "first attempt" to mean a first time situation wherein the candidate actually took the examination and the Court had unequivocally held that non-appearance on account of illness would not constitute an attempt. The Apex Court in the judgment of Abhijit (supra) had inter alia held as under: " we are also of the view that if the rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of five per cent of marks when seeking admission to a Post Graduate course the rule is indeed arbitrary".

16. This judgment of the Apex Court is also in line with the conclusion arrived at

by the Punjab and Haryana High Court Bench and Rajasthan High Court Bench. Although the Apex Court had made this observation not in the context of a "first attempt" but the line of thinking was obviously to the effect that where a candidate fails to appear in an examination because of an illness and because of no fault of the said candidate, his non-appearance at the examination would not be a ground to impose a penalty upon him.

17. The present case is clearly a case where the petitioner/candidate could not appear for his papers in the year 2013 on account of circumstances which were beyond his control i.e. the circumstance of him having developed an infectious illness i.e. chickenpox. In these circumstances he obviously could not appear in the said examinations. As per the rules of respondent no.1 the next scheduled date was in the year 2014 when after clearing his 5 papers of the 8th Semester he obtained the highest score i.e. CPI of 80.56.

18. The submission of respondent no.1 that the award of Gold Medal is an award of an honour and a recognition to a feat accomplished by a candidate and is not to be awarded as matter of right is noted. Yet such an achievement must be recognized and if the institution fails to give a recognition to a candidate who deserves it he has no other option but to approach this Court, which the candidate has done so in the instant case.

19. Ordinance 5 of respondent no.1 has been relied upon by the petitioner in this context. The relevant extract of the rule reads herein as under: (2) The Gold Medal and/or exemplary performance certificate to be awarded where the number of students successful in minimum time stipulated (stipulated by the scheme of study) for the degree is more than or equal to 10 in the programme group/programmes of study for which the gold medal/or exemplary performance certificate is to be awarded.

(3) For programmes of study with credit based evaluation, the student obtaining highest CPI (Cumulative Performance Index) at the end of the study in a given programme group/programmes of study shall be eligible for the award of the gold medal and/or exemplary performance certificate, if the student has passed every paper/course in the first attempt."

20. The petitioner having qualified his papers in the "first attempt" with the highest CPI was thus entitled to the award of the Gold Medal. This Court would not like to disturb the status of respondent no.3 as was in the case of Sovila Mathur (supra) wherein in a similar situation, a second Gold Medal had been awarded to the candidate who had approached the Court.

21. Accordingly, this Court is of the view that respondent no.1 shall confer a Gold Medal upon the deserving petitioner for the aforesaid academic session. Petition disposed of in the above terms.