

(2011) 10 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) No. 7365 of 2011

Aditya N. Prasad

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 24-10-2011

Acts Referred:

Citation : (2012) 1 AD 841

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Rajiv Dutta, with Mr. Rahul Sharma, Ms. Jyoti Dutt, Mr. Kumar Dushyant Singhal, for the Appellant; M.J.S. Rupal, Ms. Shawana Bari for R1, Mr. Sanjeev Sachdeva, With Mr. Preet Pal Singh, Ms. Priyam Mehta for R3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, ACJ

1. The petitioner is pursuing LLB three year course from the Faculty of Law, University of Delhi. He took admission in this course in July, 2009 after completing his degree course in BA (Hons.) History from Hans Raj College, University of Delhi.

2. Three years LL.B course of Law Faculty, University of Delhi consists of six semesters, two semesters in each year. In each semester, there are five papers. For promotion to second year (3rd semester), it is incumbent for a student to pass at least five out of ten papers. Likewise for promotion to third year (5th semester), it is mandatory to clear 15 out of 20 papers. The petitioner had cleared more than five papers in the first year and, therefore, in July, 2010 he was promoted to second year. However, after taking 4th semester examination, he could pass only 13 out of 20 papers. Since his performance was below the desired eligibility prescribed, namely, passing of 15 out of 20 papers, the respondent authorities refused to give him admission in the third year (5th

semester). We may point out at this stage that the Law Faculty also holds supplementary examination of 1st and 3rd semester in the months of July/August every year. However, chance to appear in such supplementary examinations is not given to first and second year students, but these supplementary examinations are available only for final year students. The petitioner perceived this as discriminatory. According to him, had he been given a chance to appear in the supplementary examination, he could have cleared some more papers which would have enabled him to pass at least 15 papers on the basis of which he could get promoted to third year. It is on this basis that the petitioner has filed the present petition with the following prayers:

- a. A writ of mandamus, certiorari or any other appropriate writ, order or direction to the Respondents for holding the provisions of the Law Faculty vis-a-vis examination and promotion of students to III & V Semester from II & IV Semester respectively of LL.B three year course being in violation of the fundamental rights of the students and Bar Council of India Rules and thus being ultra vires to the Constitution of India;
- b. a writ of certiorari or any other appropriate writ, order or direction to quash the present Promotion Rules followed by the Respondent University being ultra vires the Advocates Act, 1961 and the Bar Council of India Rules, 2008;
- c. a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to promote the Petitioner herein to the V Semester of the Final Year of the LL.B three year course;
- d. a writ of mandamus or any other appropriate writ, order or direction directing the Respondent No.2 to hold supplementary examinations for students in each semester so as to give better opportunity and chance to the students to clear their paper in which they have absented/failed;

OR IN THE ALTERNATIVE

to allow the students to take/write supplementary examination in respect of papers missed/failed by him/her which is conducted for only final year VIth Semester students immediately after declaration of results of the VIth Semester i.e. in the month of July;

- e. a writ of mandamus, certiorari or any other appropriate writ, order or direction directing the Respondent Nos. 1 & 2 to bring its promotion policy in conformity with the Bar Council of India and that of internationally accepted standards.
- f. to pass any further order(s) which this Hon"ble Court may deem fit in the facts and circumstances of the case and in the interest of justice.

3. Main emphasis is on prayer (d) above, namely, to allow the students to take/write supplementary examination in respect of papers missed/failed by such students and not restricting the opportunity of appearing in the supplementary examination only to final year students. It is submitted that in all other

universities where such supplementary examinations are held, all students are permitted to appear. It is also submitted that this system was introduced on the basis of recommendation of the Committee headed by Justice V.S. Deshpande in the year 1989 and has outlived its utility and should not be treated as valid in today's scenario.

4. The argument of the petitioner appears to be attractive in the first blush inasmuch as when supplementary examinations of 1st and 3rd semester in LL.B three year course are held, why it should be limited to final year students of 6th semester only and why such a chance should not be given to other students like the petitioner; however, when we go into the background and the rationale while introducing this system, a dear answer which emerges is that the system followed by the respondents is not arbitrary or discriminatory and there are proper and valid justifications for the same.

5. The respondents, in their counter affidavit, have traced out the promotion rules which were applicable from time to time. Before the present system was introduced, the earlier rules for promotion in LLB course in the Faculty of Law, University of Delhi were as under:

a) A student of LLB I/III/V terms shall be eligible for promotion to II, IV or VI terms respectively irrespective of the number of the courses in which he/she has failed to pass or failed to appear in the I, III, V term examinations.

b) A student of LLB second Term shall be eligible for promotion to third Term if he/she has passed in at least eight papers of first and second term examinations taken together and a student of fourth Term shall be eligible for promotion to Fifth Term if he/she has passed in at least eighteen papers of First, Second, Third and Fourth term examination taken together.

Note 1: A student of LLB 1st year, 2nd year and 3rd year of LLB may take supplementary examination of any of the papers as and when the supplementary examinations were held in the Faculty of Law.

6. The respondents have explained that the students were finding it difficult to cope up with these promotion rules as there was no possibility of promotion to the 3rd semester till eight papers were cleared. Apart from this, supplementary examination was proving to be burdensome to the students to have such examination immediately after the semester examination.

7. It is further submitted that there was wide spread agitation of the students who did not want the supplementary examination to be held, but were asking for clearance of less papers instead of eight and eighteen papers to be prompted respectively to the Third and Fifth semesters respectively and at the same time abolition of supplementary examination during the duration of the course of three years. The span period at that time was five years which was sought to be increased to six years.

8. The respondents further submitted that the issue whether relaxation should be

granted was referred to a Committee constituted on 22.12.1986 headed by Justice V.S. Deshpande (Retd.) and a report was submitted. In the meeting of the Academic Council held on 7.1.1989, this report was considered. The unanimous recommendation of Justice V.S. Deshpande Committee was that no student should be allowed to carry over the load of more than one semester to the next semester. It was further unanimously recommended by the Committee that under the promotion rules, in no circumstances further relaxation should be given in this respect.

9. It is further submitted that the Academic Council accepted the report and thereby decided that as far as LLB degree was concerned, no relaxation would be given in the promotion rules, that is, clearance of five and fifteen papers respectively for students to be admitted to the 3rd and 5th semester respectively was not to be relaxed. Accordingly, in view of the relaxation granted in promotions from eight and eighteen papers to five and fifteen papers, the supplementary examination for first and second year were abolished and the promotion rules thereafter were as under:

a) PROMOTION RULES:

A student of the First, Third and Fifth Term will be promoted to the Second, Fourth and Sixth Term respectively, irrespective of the number of courses in which he/she has failed to pass or failed to appear in the First, Third or Fifth Term Examinations as the case may be: provided, however that no such student shall be admitted to the Third or the Fifth Term unless he/she has passed in at least five courses offered by him for the First and Second Term. Examinations taken together in case of promotion from I year to II year and in at least fifteen courses offered by him for the First, Second, Third and Fourth Term Examinations taken together in case of promotion from II year to III year of the LLB course.

Note:- The students eligible for admission to III/V Term must seek admission not later than two weeks from the date(s) of announcement of the results of LL.B II/ IV Term Annual Examination failing which they will forfeit their right to be admitted to III/V Term.

(b) Supplementary Examinations

A supplementary examination for students of LL.B V and VI Terms would be held at the end of the VI Term examinations to give one more opportunity to such students who could not clear any one or more papers of V and VI terms. In case a student of V and VI Term had not cleared any paper of papers of I, II, III and IV Terms he/ she would clear the same by taking the respective examinations at the regular examination held at the end of each Term:

Provided that such students of V and VI Terms who could not clear any paper or papers of the V and VI Terms even after taking the supplementary examination, he/she would clear the same at the regular examinations of V and VI Terms held at the end of each Term.

Provided further that all the thirty papers, required for getting the LL.B degree has to be cleared within the over all span of 6 years.

10. It is dear from the above that as per the previous promotion rules when chance was given to the students to appear in the supplementary examination, the promotion norms were also more tough. Students were required to pass eight papers for promotion to second year and eighteen papers for promotion to third year. These promotion norms have been relaxed and made much easier by reducing the number of papers from eight and eighteen to five and fifteen respectively. That too has been done on the demand made by the students who were finding the earlier promotion rules more difficult to cope with. At their instance, matter was referred to Expert Committee and on the recommendation of the Expert Committee, the present rules came into force. It is the students who pleaded for relaxation in promotion norms in place of appearing in the supplementary examination. After achieving to get relaxed norms of promotion, the students, like the petitioner, cannot turn around and demand the restoration of supplementary examination for them as well. Such a situation would amount to having the cake and eat it too.

11. Moreover, even legally speaking, 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. No such case is made out. In *State of Tamil Nadu and Others Vs. K. Shyam Sunder and Others*, the Supreme Court held as under:

27. Undoubtedly, the Court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the Expert Body. The Constitution Bench of this Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, held that "normally the courts should be slow to interfere with the opinions expressed by the experts". It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, ; *The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others*, *Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others*, and *State of H.P. and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*,

12. For all these reasons, we do not find any merit in this writ petition which is accordingly dismissed. No order as to costs.