
(2015) 06 DEL CK 0006
In the Delhi High Court
Case No : L.P.A No. 386 of 2015

Gourav Joshiya

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Constitution of India, 1950 — Article 46

Citation : (2015) 7 AD 164 : (2015) 151 DRJ 171

Hon'ble Judges : Mukta Gupta, J;V.P. Vaish, J

Bench : Division Bench

Advocate : M. Rais Farooqui and A.Q. Zaidi, for the Appellant; Sraohananda Mohapatra and Vipin Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.P. Vaish, J.—The present intra-court Appeal has been filed against the judgment dated 25.05.2015 passed by learned Single Judge in W.P.(C) No. 3185/2015, whereby the writ petition filed by the appellant was dismissed.

2. Brief facts of the case as borne out from the present appeal are that in 2010-11, the appellant got admitted in Amity School of Engineering and Technology for the course Bachelor of Technology (Mechanical and Automation Engineering). The appellant had passed semester wise examination up till fourth semester and accordingly appeared in the fourth semester in May 2013, but could not clear the requisite papers for the promotion of next academic year despite reappearing in May 2014 for clearing the remaining papers to be promoted to the next academic year. The appellant applied for re-evaluation of answer- sheets for three papers of fourth semester within the stipulated period of 15 days from the date of notification of the result. On 16.09.2014, the appellant wrote a letter to the concerned authorities, including the Vice Chancellor of respondent No. 1 University for re-inspection of the answer sheet by some other examiner except the examiner who evaluated and awarded the marks to the appellant but the request of the appellant was not acceded to.

Thereafter, on 31.10.2014, the appellant requested for getting one last special chance to reappear in the examination and submitted a written application in this regard, alongwith an application form containing the subject/papers and particulars of the appellant to the Controller of Examination of respondents. Vide order dated 07.11.2014, the respondents decided the mercy chance applications collectively and circulated the result of the same vide notification dated 17.11.2014. In the said circular, the appellant's mercy application was not only disallowed, but his admission was also cancelled.

3. Aggrieved by the said decision of the respondents, the appellant preferred a writ petition bearing number W.P. (Civil) No. 3185/2015 seeking direction to quash the order dated 07.11.2014 passed by the Mercy Committee of the respondents. The learned single Judge after paying due consideration to the contentions of both the parties passed the impugned order dated 25.05.2015.

4. Learned counsel for the appellant contended that the learned single Judge failed to consider that the order dated 07.11.2014 passed by the Mercy Committee for cancellation of admission of the appellant is against the principles of natural justice. The respondents have exercised their discretion to give chances to reappear to some students for their respective courses on the basis of pick and choose policy despite the amendment of clause 11 of Ordinance 11 in 2009. Minutes dated 07.11.2014 categorically provides that SC/ST should be given one additional chance only this time, therefore, the appellant being an SC student is entitled for additional chance this time. The learned single Judge misconceived that the appellant is required to appear in ten papers in May-June 2015 and term semesters/ annual examination, while the appellant is entitled to appear only in five papers in May-June 2015 as it is end/annual term exam which considered as even term besides odd term exam.

5. For establishing the above contentions, the appellant has relied upon Avinash Singh Bagri and Others Vs. Registrar IIT Delhi and Another, (2009) 15 JT 139 : (2009) 11 SCALE 535 : (2009) 8 SCC 220 : (2009) 13 SCR 258 : (2009) 6 SLR 372 .

6. Per Contra, learned counsel for respondent No. 1 contended that the said notification dated 07.11.2014 was notified to the appellant on 07.11.2014 itself, however, the appellant herein filed a writ petition before this court only on 06.04.2015, which therefore, suffers from delay and laches. As per the provisions of Ordinance 11, the status of the appellant in the Academic Year 2012-13 and 2013-14 remained as "not promoted" owing to his failure to acquire the minimum credits required for promotion from second year to third year. During the Academic Year 2012-13 and 2013-14 the appellant has reappeared in the failed papers of first year and second year but could not clear the papers and hence failed to secure minimum credits for promotion to third year. Vide his representation dated 31.10.2014, the appellant applied for a mercy chance to appear in 10 papers which he had failed during successive reappearance in the examination of December 2012, May/June 2013, December 2013 and May/June

2014. The Committee constituted for considering mercy applications and making suitable recommendations to the competent authority examined the appellant's application and noticed that he has availed two academic breaks during the academic years 2012- 13 and 2013-14 and has not pursued third and fourth years of his studies. The appellant's case does not fall in the category of cases to be considered for mercy chance due to the aforesaid facts and his admission status at the time of considering his application has already changed to "cancelled". The appellant's case is different from all the other cases as the Mercy Committee considered only the application from those students who have completed all the years of study within two years but failed to achieve requisite number of credits to become eligible for award of degree.

7. It was further contended by the learned counsel for respondent No. 1 that the appellant was admitted in August 2010-11 and appeared for end term examination of first year held in December 2010 and May/June 2011. He was not promoted to the second year in academic year 2011-12 and availed first academic break during academic year 2011-12. He was promoted to second year in academic year 2012-13 and appeared for end term examination in December 2012 and May/June 2013. He was not promoted to third year in the academic year 2013-14 and availed second academic break during academic year 2013-14. He was further not promoted to the third year due to his failure to meet the requirement of Ordinance 11, Clause 11.2(iii). He was allowed to reappear during December 2011, May/June 2012, December 2012, May/June 2013, December 2013 and May/ June 2014 end term examinations in the failed papers of first, second, third and fourth semesters. After the results of reappearance in May/ June 2014 were declared, he was found ineligible for promotion to third year and occasion for third academic break arose due to which his admission was cancelled automatically in terms of Ordinance 11, clause 11.2(iii). There was no occasion for him to complete study of third and fourth years. Hence the case of the appellant is not similar to other cases where mercy chance will facilitate students to qualify for award of degree and his case was beyond the scope of Mercy Committee. Therefore, the appellant is under the mistaken impression that his admission was cancelled by the mercy committee whereas the fact is that his admission got automatically cancelled due to two academic breaks during 2012-13 and 2013-14 as per the provision of the Ordinance 11.

8. We have heard the learned counsel for the parties and have perused the material on record.

9. It is a contention of the appellant that the minutes dated 07.11.2014 categorically provide that SC/ST should be given one additional chance only this time, therefore, the appellant being an SC student is entitled for an additional chance this time.

10. Article 46 of the Constitution encourages the State to promote the educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections of the Society with special care and further to protect

them against economic and social injustice. The provision is being reiterated herein:

"Article 46 - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

11. To attain an egalitarian society, we have to urgently remove socio- economic inequalities. Therefore, in order to promote these weaker sections of the society an educational institution must take all endeavours by providing any form of additional assistance in order to bring them up at par with general category students. Principles related to equality of weaker sections of the society have been reiterated by the Constitution Bench in *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, (2008) 3 CTC 97 : (2008) 5 JT 1 : (2008) 5 SCALE 1 : (2008) 6 SCC 1 . The appellant belongs to the SC/ST category and as such deserves another chance of reappearance in the examination as the minutes of meeting of the Mercy Committee dated 07.11.2014 categorically provides that "SC/ST should be given one additional chance only this time".

12. The appeal of the appellant may have been allowed on this ground alone, if the appellant would have been able to satisfy the necessary eligibility criteria for continuance of his admission with the respondents.

13. However, perusal of the additional affidavit filed on behalf respondent No. 1 in W.P. (C) 3185/2015, suggests that the students who have been permitted by the Mercy Committee had undergone the study of all the courses but had failed to earn the minimum required credits making them eligible for award of the degree and a mercy chance. In case of such permission an extension of time was allowed to the students alongwith a chance to reappear in failed papers. It has been further stated that the appellant herein has not yet been promoted to the third year and hence does not fall within the criteria to be considered for mercy chance.

14. As far as the contention of discrimination against the appellant is concerned, the information put forward by the additional affidavit filed on behalf of respondent No. 1 suggests that there are a total of 1710 students out of which 143 are B.Tech students of the year 2010 batch and are similarly placed as the appellant herein whose admissions also stood automatically cancelled and their case has not even been referred before the Mercy Committee. Based on the information provided in the aforementioned additional affidavit and the list of students admitted in 2009 academic year and allowed mercy chance (annexed therewith), this Court is unable to establish discrimination against the appellant.

15. Further, relevant (clause 11.0) of the Ordinance 11 determining the Conduct

of Evaluation of examination for programmes leading to all bachelor's/ master's degrees and under-graduate/post-graduate diplomas following semester system is being reiterated herein:

"11.0 CRITERIA FOR PASSING COURSES, MARKS AND DIVISIONS

11.1 (i).

xxx xxx xxx

11.2. (i)..

(ii)..

(iii) A student will be promoted to the next academic year only if such student has obtained at least,

A. 50% (accurate upto two decimal digits) of the total credits of the ensuing academic year from which the promotion to next academic year is being sought, and

B. 90% (accurate upto two decimal digits and rounding of thereafter to full digits) of the total credits of all previous years excluding the credits of the ensuing academic year from which the promotion to next academic year is being sought. All such students who fail to get promoted to next academic year for the reason of deficiency in required credits as stated here in above will automatically be declared to have taken academic break to reappear in such examinations of previous semesters in which the student has failed, so as to obtain sufficient credits to be promoted to the next academic year.

Only two academic breaks are permissible for a student for the completion of the academic programmes/course. In no situation a student will be allowed to take more than two academic breaks, for any reason whatsoever, including for the reasons of detention for shortage of attendance or deficiency of credits during the two academic breaks and a further occasion arises for him or her to take academic break because of non promotion or detention, in such cases the admission of such student would automatically stand cancelled right at the time such an occasion of more than two academic breaks arise.

xxx xxx xxx"

16. Clearly, in the present case the appellant was admitted in August 2010-11 and appeared for end term examination of first year held in December 2010 and May/June 2011. He was not promoted to the second year in academic year 2011-12 and availed first academic break during academic year 2011-12. He was promoted to second year in academic year 2012-13 and appeared for end term examination in December 2012 and May/June 2013. He was not promoted to third year in the academic year 2013-14 and availed second academic break during academic year 2013-14. He was further not promoted to third year due to his failure to meet the requirement of Ordinance 11, Clause 11.2(iii). He was

allowed to reappear during December 2011, May/June 2012, December 2012, May/June 2013, December 2013 and May/ June 2014 end term examinations in the failed papers of 1st, 2nd, 3rd and 4th Semesters. After the results of reappearance in May/ June 2014 were declared, the appellant was found ineligible for promotion to 3rd year. As per Ordinance 11, clause 11.2(iii), only two academic breaks are permissible after that admission automatically stands "cancelled".

17. In the instant case, since the appellant was found ineligible after second academic break, his admission stood automatically cancelled. Therefore, there is no question of any further chance only on the ground of being SC/ST.

18. Further, the facts of the case "Avinash Singh Bagri" (supra) are not relevant to this case as in the said case two students had earned credits less than the required credits and their appeals had been allowed by the competent authority. Perusal of the additional affidavit filed in W.P.(Civil) 3185/2015 suggests that there are 143 students similarly placed as the appellant and none of them has been treated more favourably than the appellant. Therefore, this Court finds no justification in the reasoning of the appellant to establish that the appellant has been specifically discriminated.

19. Moreover, Mercy Committee has not cancelled the admission of the appellant rather the fact of automatic cancellation was communicated to the appellant on 07.11.2014.

20. In view of the above discussion, we do not find any illegality or infirmity in the impugned order dated 25.05.2015. Therefore, present appeal is without any merit and the same is hereby dismissed.

C.M.APPL.No. 10929/2015

The application is dismissed as infructuous.