

(2019) 03 DEL CK 0176

In the Delhi High Court

Case No : Civil Writ Petition No. 8991 Of 2018, Civil Miscellaneous Application
No. 34648 Of 2018

Kaustav Barua

APPELLANT

Vs

University Of Delhi And Anr

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Citation : (2019) 03 DEL CK 0176

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Seema Sharma, Mohinder J.S. Rupal, Beenashaw N. Soni, Aakash Yadav

Final Decision : Dismissed

Judgement

1. The petitioner, who claims to be a National level black belt Taekwondo champion, joined the 2016-2017 academic session, in the course in the Respondent No.2-College (hereinafter referred to as "the College").
2. The petitioner attended classes regularly during his first two semesters and also appeared in all the ten papers in the said two semesters, which he cleared.
3. The petitioner also appeared in the third semester examination in the second year of the course being undertaken by him, which, too, he cleared, though Ms. Beenashaw N. Soni, learned counsel appearing for the College, contends that the petitioner was, in fact, short of attendance during the said semester.
4. During his fourth semester, the petitioner suffered an injury to his right knee in the second week of January, 2018.
5. Though he was granted the benefit of attendance for the period for which he had to remain absent from classes owing to the said injury and the subsequent treatment undertaken in that regard, it appears that the petitioner was still unable to achieve the minimum requisite attendance of 40% of the classes in the

fourth semester, as a result whereof he was not permitted to appear in the fourth semester examination.

6. The said decision of the College, to not permit the petitioner to appear in the fourth semester examination, is not under challenge.

7. The petitioner's prayer, in this writ petition, is that he be promoted to the third/fifth semester.

8. A similar controversy had engaged my attention in a batch of writ petitions, which was decided by me vide my judgment dated 19th

February, 2019 in W.P.(C) 8779/2018 & other connected matters (Mohit Wadhwa v. The Principal Aryabhata College).

9. The petitioners in that case, too, had been detained in the second/fourth semester for want of attendance, as a result whereof they were not permitted to appear in the examination of the said semesters.

10. They, too, sought permission to be promoted to the third/fifth semesters on the ground that they had cleared all their papers in the first/third semesters and had, thereby, cleared 50% of the papers in the first/second year, as the case may be.

11. For this purpose, reliance had been placed on Clause 12 (1)(c) of Ordinance (IX) governing the University, which reads thus:

"(c) Promotion Rules:

A student shall be eligible for promotion from 1st year to 2nd year/III semester provided he/she has passed 50% papers of I and II semester taken together and similarly for promotion from 2nd year to 3rd year/V semester."

12. As against this, the College had relied on Clause 5 of Ordinance (IV), as applicable to the University, specifically sub-clause (b) thereof. The said Clause 5(b) of Ordinance (IV) may be reproduced, to advantage, thus:

" xxx xxx xxx

(b) A student of the University who was not allowed to appear in the examinations due to shortage of attendance will be re-admitted to the class he studied last in his College/Department, within the prescribed period of registration."

13. I have already taken a view, in my aforementioned judgment, that sub-clause (b) of Clause 5 of Ordinance (IV) operates as an absolute proscription on any student, who was not allowed to appear in the examinations due to shortage of attendance, from being promoted to the next semester, as the said clause mandates that such students are to be re-admitted to the class in which they studied last.

14. This, I had opined, is incompatible with the prayer for promotion to the next semester, as a student could either be a student in the second semester or the third semester. He could not be a student in both semesters at one time.

15. Inasmuch as the petitioners, in that case, had been detained in the second/fourth semester, owing to shortage of attendance, I had held that Clause 5(b) of Ordinance (IV) necessitated their readmission to the second/fourth semesters and, therefore, effectively sealed their chance for promotion to the third/fifth semesters, as sought by them.

16. I do not find that the facts of the present case can be distinguished, in any manner, from the cases which had been decided by me vide my aforementioned judgment dated 19th February, 2019 (supra).

17. Learned counsel for the petitioner has sought to emphasise the fact that the petitioner is a national level Taekwondo champion and that he has suffered his sports injury during his fourth semester.

18. In the first place, it does not appear that the said injury adversely affected the petitioner's chances, as, Ms. Beenashaw N. Soni points out that, even after the petitioner had been granted the permission to attend classes during which period he had attended classes owing to sports injury and his subsequent treatment, the petitioner, nevertheless, could not make the minimum requisite attendance of 40% in order to enable him to appear in the fourth semester examination.

19. That apart, in any event, the petitioner has not challenged the decision not to allow him to appear in the fourth semester examination.

20. Once the petitioner had not been allowed to appear in the fourth semester examination, Clause 5(b) of Ordinance (IV), in my view, would inevitably kick in and act as an insurmountable hurdle to the petitioner being promoted to the next semester. He would have, of necessity, to be readmitted in the semester for which he had not being allowed to write the examination for shortage of attendance, i.e. in the case of the present petitioner, the fourth semester. He cannot, therefore, secure promotion to the fifth semester, as sought by him.

21. Learned counsel for the petitioner has also invited my attention to a notification, dated 28th July, 2014, of the University of Delhi, which reads thus:

"It is notified that the students who have failed in the second year examinations of any of the three year (semester-based) undergraduate courses in the academic session 2013-14 or those who could not appear in the second year examinations for any reason have been allowed to move to the 3rd year (V Semester) of the respective course in the academic session 2014-2015 as regular students. Such students will have to clear their III and IV semester examinations along with the V and VI semester examinations, respectively.

(Ram Dutt)

Deputy Registrar (Academic)"

22. In my view, this notification cannot come to the aid of the petitioner, or dilute the effect of Clause 5(b) of Ordinance (IV) in any manner.

23. This notification refers to the students who had failed in the second year examination or who could not appear in the second year examinations for any reason. It obviously caters to students who, despite being otherwise eligible, were not in a position to appear owing to some unavoidable reason, and cannot be read as covering students who had been detained in the second year owing to shortage of attendance. Any such interpretation would result in the notification falling foul of Clause 5(b) of Ordinance (IV) and, consequently, would render the notification arbitrary and ultra vires even on that ground.

24. For the said reason, the reliance, placed by learned counsel for the petitioner, on the aforementioned notification, dated 29th July, 2014, too, in my view, cannot come to his assistance.

25. Learned counsel for the petitioner draws attention, at this stage, to the following Sub-clause (b)(6) of Ordinance (VII) (2) of Ordinances, governing the University of Delhi. The said clause may be extracted thus:

"b. In case of a student who

6. is required to participate in periodical training in the Territorial Army or a student who is deputed by the College to take part in Inter-College sports or fixtures, debates, seminars, symposia or social work projects or a student who is required to participate in curricular activities held in other Universities or such other activities approved by the Principal/ Head for this purpose.

In calculating the total number of lectures etc. delivered in the College, or in the University, as the case may be, for his/her course of study in each academic year, the number of lectures etc., in each subject delivered, during the period of absence and as approved by the Principal/Head for the above purposes, shall deemed to have been attended by the student."

26. Inasmuch as there is no challenge, by the petitioner, to the decision not to permit him to appear in the fourth semester examination, the reliance, by the petitioner, on the afore-extracted clause of Ordinance (VII) (2), can also be of no assistance to him.

27. In any event, Ms. Soni also points out that, even after having been granted the benefit of classes which the petitioner could not attend in the fourth semester owing to injury suffered by him, the petitioner was, unable to secure the minimum 40% attendance.

28. Accordingly, this argument of learned counsel for the petitioner, too, does not advance the case of the petitioner to any substantial extent.

29. For the aforementioned reasons, following my judgment dated 19th

February, 2019, the present writ petition is also dismissed, with no orders as to costs.