

(2015) 12 DEL CK 0152

In the Delhi High Court

Case No : W.P.(C) 4008/2015 and CM No. 7158/2015

Kumar Saurabh

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 07-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 12 DEL CK 0152

Hon'ble Judges : Rajiv Shakdher, J.

Bench : Single Bench

**Advocate : Ravi Prakash and Alok Kumar, Advocates, for the Appellant;
Mohinder J.S. Rupal, Advocate, for the Respondent**

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.

1. By this writ petition the only grievance articulated by the petitioner, is that, despite securing the highest marks in M.A. (Hindi) course (General), he has not been conferred the Professor Savitri Sinha Smriti Swarn Padak and Maithili Sharan Gupta Purashkar.

1.1 The petitioner states that he had secured admission in the aforementioned course with Hindu College (which is effectively represented by respondent No. 3), after having secured a graduation degree from Shaheed Bhagat Singh College, in B.A. (hon.), in Hindi. At the graduation level, the petitioner claims, he had secured 69.4% marks.

1.2 It is the petitioner's case that he was in the top ten meritorious students of the University of Delhi in the B.A. (Hon.) Hindi, course.

2. It is thus, the petitioner's case that, in 2012, he completed his course in M.A. (Hindi) from Hindu College.

2.1 In M.A. (Hindi), the petitioner claims, that he has secured 65.06% marks. It

is further averred by the petitioner that based on his performance his name was uploaded on the University of Delhi's website in the month of February 2013, as a recipient of the Professor Savitri Sinha Smriti Swarn Padak and Maithili Sharan Gupta Purashkar awards.

2.2 It appears, though, that without prior information, the petitioner's name was abruptly withdrawn qua the aforementioned awards. Consequently, in the convocation ceremony held on 19.03.2013, no award was conferred on the petitioner.

3. The petitioner, thereafter, took recourse to the RTI route, to discern the reasons as to why the awards referred to above, had not been conferred upon him. In response to the petitioner's RTI application, on 27.05.2013, the Controller of Examination (i.e. respondent No. 4) informed respondent No. 3 (i.e. The Principal of Hindu College) that, since the petitioner, had sat for improvement exams, the enhanced marks so obtained, could not be considered for conferring the said awards upon him.

4. It appears that the petitioner, being dissatisfied with the answer that had come to fore, filed a representation dated 24/29.07.2013, with respondent No. 2. The said representation was followed by a reminder dated 06.09.2013. Vide communication dated 18.09.2013, the Deputy Controller of Examination, reiterated the stands taken in the aforementioned communication dated 27.05.2013.

5. The petitioner, thereafter, once again, took recourse to the RTI route and filed an application dated 08.10.2013. By this application, inter alia, queries were raised, as whether any rules and regulations existed for determining of eligibility for conferment of medals and prizes. The said application was responded to, vide communication dated 25.10.2013. Along with this communication, the petitioner was given a copy of the document dated 12.09.2013. This document in effect sets out the stand of the University of Delhi. For the sake of convenience, the relevant part is extracted hereafter:--

"..Placed below is a representation received on 11th September, 2013 from Mr. Kumar Saurav, addressed to the Vice-Chancellor, University of Delhi regarding two awards (Savitri Sinha Smriti Padak and Maithilisharan Purskar) to him for M.A. Hindu 2012 examination may please be seen.

In this connection, it is submitted that a note with the facts was submitted and the Vice-Chancellor has approved that unless mentioned in the course students who have gone for improvement/got increase need not be considered. The decision has already been conveyed to the candidate through the Principal, Hindu college on 27th May, 2013.

In view of the above, if approved, we may again intimate candidate accordingly.

Submitted for information and direction please..."

6. Aggrieved by the fact that there was no substantive movement in the matter, towards conferment of awards on him, the petitioner, filed the instant writ petition.

6.1 The writ petition came up before this court on 24.04.2015, when notice was issued. Respondent No. 1, 2 & 4 were represented by Mr. Rupal. This apart, notice was issued to respondent No. 3. The matter was made returnable, on 10.08.2015.

6.2 In between the petitioner had moved an application for carrying out corrections of certain typographical errors. That application was disposed of by my predecessor vide order dated 29.06.2015.

6.3 On 10.08.2015, the court observed that the petitioner had not taken steps for impleading the candidate, who had been selected in his place, as was directed vide order dated 24.04.2015 and 29.06.2015. The court, also indicated, that pendency of this petition would not come in the way of conferment of awards, if not already conferred. Mr. Rupal sought further time to file a counter affidavit on the said date. There was no appearance, however, on behalf of respondent No. 3. The matter was posted for further proceedings on 28.09.2015. However, in the interregnum, the petitioner had filed an application for impleadment, which came before the court on 28.08.2015. On that date the application for impleadment was allowed. Furthermore, amended memo of parties so filed was taken on record. Notice was also issued to the newly added respondent i.e. respondent No. 5, which incidentally is the person who had filed the complaint against the petitioner and, I am told, was also competing for the aforementioned awards.

6.4 The next date of hearing in the matter was 28.09.2015. On 28.09.2015, once again, an accommodation was sought on behalf of Mr. Rupal, on account of personal difficulty. Respondent No. 5 was present in person. The said respondent, along with other respondents, were once again given four weeks to file a reply in the matter. The matter was posted for further proceedings today i.e. 07.12.2015.

7. Today, though, Mr. Rupal is present in court, none of the respondents are either present in court or represented by counsel. There is no counter affidavit on record, on behalf of any of the respondents including those represented by Mr. Rupal. Consequently, the averments made in the writ petition remain untraversed.

8. In this background, the short issue arises for consideration in the present petition is: as to whether or not the petitioner should be conferred with the aforementioned awards, based on the result obtained in improvement exams? The petitioner, in support of his case, says that there are, as a matter of fact, no rules framed for conferment of awards. The only yardstick fixed for conferment of the award, according to the learned counsel, is that, the recipient should have acquired highest percentage of marks; the minimum being, a first division.

8.1 For this purpose, learned counsel for the petitioner, drew my attention to the following extract appended to the petition:

".... PROF. SAVITRI SINHA SMRITI SWARAN PADAK

36. (1) There shall be a medal known as Prof. Savitri Sinha Smriti Padak to be awarded out of the annual income accruing from the endowment of Rs. 4,000/- made by the Department of Hindi, University of Delhi, Delhi...."

".... MAITHILI SHARAN GUPTA PURASKAR

15. (1) There shall be a prize known as the "Maithili Sharan Gupta Puraskar" of the value of Rs. 100/- or of the annual income accruing from the endowment of Rs. 3,000/-.

(2) The prize will be awarded each year to a candidate who obtains the highest percentage of marks at the M.A. Examination in Hindi of this University, obtaining a first division.

(3) It shall be presented in the form of books at the annual Convocation of the University.

(4) In the event of no candidate being found eligible for the award [as defined in clause (2)], the income accruing from the endowment shall be added to the endowment fund..... "

9. If one were to peruse the contents of the aforementioned extracts, it is quite clear that the only guideline put in place for conferment of awards, is that, the recipient should have obtained highest percentage of marks, with first division being the base line.

10. The record shows that the petitioner has obtained 65.06% marks in the aforementioned course i.e. M.A. (Hindi) Course. The only reason, based on which, the petitioner, has been denied his due, is that, he sat for improvement exams, whereby his total marks stood enhanced by 29 marks. The petitioner submits, and, in my view, rightly, that if, for all other purposes the enhanced marks obtained would be taken into account, with the distinct possibility of him securing marks in the improvement papers, less than what he had secured in the earlier round, the enhanced marks should be taken into account even for conferment of the aforementioned awards, upon him. In other words, once a candidate takes a decision to sit for an improvement exam, he surrenders his claim to marks obtained in the earlier round. There is in fact a clear possibility of a candidate securing in the improvement exam marks less than those which were obtained by him, in the earlier round.

10.1 This aspect of the matter, has in fact, been dealt with, in some detail, by a Division Bench of this court in the case of Nandita Narain v. University of Delhi, AIR 1983 Del. 170. The observations of the Division Bench being apposite, are extracted hereinbelow for the sake of convenience:

"..... 18. A close scrutiny of Ordinance 28-A would show that the stand of the University is clearly untenable. The said Ordinance provides that, in order to determine the eligibility of a candidate for the award, only those marks shall be taken into consideration which are obtained by him in any examination in which, in his course of study, he should have appeared in normal course, within the minimum span period prescribed. The said Ordinance is applicable to all types of examinations held by the University. Some courses of study have semester system, other courses do not. The semester system, as provided by the Rules of the University, entitles a candidate not to take all the papers at the first instance. A candidate may take one or more papers in the first semester, and if he abstains to take any examination in any of the papers he can take the same in the subsequent semester, as provided in the aforesaid rule 9. Similarly, the said rule entitles a candidate to improve the percentage of his marks by repeating the paper in a subsequent semester. In such a case, however, the candidate has to give an undertaking in writing that the marks obtained in that paper, which he wants to repeat, should be treated as cancelled. The effect of this is that if in the subsequent attempt, in that very paper, the candidate obtains lesser marks then he cannot insist on the marks obtained by him on the previous occasion being counted. It is only the marks which the candidate gets in the paper which he repeats which will be taken into consideration in the final computation. The word "in the normal course" occurring in Ordinance 28-A would mean in the course in which a candidate is normally expected to follow in accordance with the rules. In the semester system it would be in the normal course if a candidate repeats a paper or abstains from the taking examination in a paper and takes the same subsequently. It would be a normal course because the rules provide for the same. The further requirement of the said Ordinance is that the examination must be taken by the candidate within the minimum span prescribed. The expression "examination" in Ordinance 28 is the examination with respect to which the award is to be given. The examination in question in the present case is M.A. examination and not the examination of various papers in each semester. The minimum span prescribed for M.A. examination is two years. Therefore, within the period of two years, whatever marks a candidate obtains the same have to be taken into consideration for the purposes of Ordinance 28-A, irrespective of the fact as to whether the candidate has repeated a paper or had abstained from taking that paper at the first available opportunity.

19. The expression "in the normal course" occurring in Ordinance 28-A does not mean at the first available opportunity. In our view it will be making a mockery of semester system if the marks of the papers which are repeated are to be ignored for the purposes of awards and prizes. It will not be logical that, for the purposes of determining the eligibility of a candidate for the award of any prize or medal, the marks secured by that candidate in any examination which he repeats should not be taken into consideration. The candidate takes a risk when he repeats an examination in the paper. As already noted, he has to give in writing that he surrenders the marks which he has obtained earlier. According to

the respondents the moment he surrenders the marks then, for the purposes of Ordinance 28-A, it will be regarded as if that candidate gets zero in that paper. This will be clearly shutting one's eyes to the realities of the situation. Supposing a candidate, like the petitioner, had obtained in paper X in the 3rd semester 85% marks. She being a bright student, may not be satisfied -with that. She is entitled to surrender her marks and repeat the said paper. Supposing in such a case she gets 95% at the second attempt. According to the respondents, though for the purposes of the award of the M.A. degree the marks which will be taken into consideration would be 95% but, for the purposes of giving an award under Ordinance 28, the marks for that paper would be taken as zero, she having surrendered the marks of 85% obtained by her earlier and the later marks not being taken into consideration. It is conceivable that, in the example which we have given above, the petitioner may still be having the highest percentage if the marks obtained at the earlier attempt in that paper are taken into consideration. But according to the University, because she surrendered those marks then for the purposes of giving of an award the marks to be taken into consideration would be zero. We find it very difficult to accept an interpretation which is sought to be placed by the University on Ordinance 28-A, which will lead to such incongruous results.

20. The semester system had been adopted from abroad. The main idea in introducing the semester system was that bright students should get an opportunity of improving their performance. There should be no pressure of annual examination on the students and they should be entitled to take the examination as and when they feel that they are ready to take them. If for the purposes of the awarding of a degree, the marks in a repeated paper or of the paper taken in the subsequent semester are to be taken into consideration, we fail to understand the logic in not taking those marks into consideration for the purposes of deciding as to whether or not a candidate is to be given the award of a prize or of a medal...."

(Emphasis is mine)

11. Mr. Rupal, learned counsel for respondent No. 1, 2 & 4 states, albeit orally at the bar, that one Ms Priti i.e. respondent No. 5 had secured marks higher than the petitioner, albeit, before the petitioner's marks in the improvement papers were taken into account. Mr. Rupal has also placed across the Bar, a resolution dated 06.03.2014, passed by the University of Delhi which, inter alia, in effect, declares that, candidates, are to be considered for gold medal and prizes based only on the original result declared by the University. The resolution categorically states that neither the marks obtained in the "re-evaluation" nor those secured in "improvement exam", will be taken into account.

12. Apart from the fact that this resolution relates to a period post the date on which the result in the petitioner's case was declared, to my mind, the resolution prima is untenable in law. If marks obtained upon re-evaluation are not taken into account, which implicitly amounts to acceptance of a situation that the

examiner made a mistake in the first instance, it would lead to an absurd situation. More so, in a case where re-evaluation leads to enhancement of marks, in a given case. Similarly, failure to consider the marks obtained in improvement exams could lead to unfair consequences, as noticed in Nandita Narain's case.

12.1 As noticed above, in so far as the improvement papers are concerned, the logic and the rationale provided by the Division Bench, is unassailable, and to my mind, the resolution dated 06.03.2014 is in the teeth of the dicta of this court. I am concerned, that even after courts pronounce judgements on issues which relate to authorities, the authorities in turn take decision contrary to decisions rendered and, chose to litigate in every fresh case filed against them without taking into account the past precedents. This, invariably, leads to proliferation of litigation, albeit, at the cost of litigant.

12.2 I am sure the University of Delhi will take a cue from this and not repeatedly put up a defence qua matters which are already covered by the judgements of this court.

13. In any case, even de hors the judgement in Nandita Narain's case, in my view, the petitioner is right, and therefore, is entitled to the relief, as prayed for in the writ petition. Accordingly, the writ petition is allowed. The respondents will confer, the abovementioned two awards on the petitioner, as is sought for by him. The official respondents i.e. respondent No. 1 to 4 will take the necessary consequent steps in view of the mandamus issued by this court.

13.1 I would have after ruling on the issue raised in the writ petition left the final decision in the matter ordinarily to the University of Delhi. However, in this case, the respondents have chosen not to file a return in the matter. As a matter of fact, as noticed above, respondent No. 5 has also not filed her return in the matter. Undeniably the only ground on which the petitioner was denied the aforesaid awards was that marks obtained in improvement exams could not be taken into account. In these circumstances, in my view, a mandamus can be issued. In this behalf, the following observations made by me in judgement dated 19.03.2015, passed in WP(C) 871/2015, titled: Awas 39423 Ireland Ltd. And Ors. v. Directorate General of Civil Aviation and Anr. in paragraphs 21.9 and 22 are relevant:--

"..... 21.9 It is, therefore, quite possible that a statutory authority, which is vested with the power to act, under the law, chooses not to act by citing factors, with which the court finds fault: Would the court, in such a situation, be obliged to refer the matter to concerned authority for a fresh decision? I think not. The court, in my opinion, is not required to refer the matter, once again, to the statutory authority for revisiting the issue if, the necessary ingredients for exercise of that power are found to be in place, and the reasons cited, not to act, by the statutory authority, are found, by a competent court, to be legally untenable. In such a situation, the statutory authority has no other option but to act, as that is the duty cast on it, under the law. The court can thus issue a writ

of mandamus. That, courts have issued writ of mandamus in such like, situations is, evident on perusal of the dicta and directions set out in the following cases: (i) Union of India and Ors. v. Indo Afghan Agencies Ltd., (1968) 2 SCR 366; (ii) Judgment dated 02.02.2012, passed in: WP(C) 423/2010, titled: Centre for Public Interest Litigation and Ors. v. Union of India and Ors. (2G case where the court ordered an auction to be carried out); and (iii) The CAG and Anr. v. K.S. Jagannathan, AIR 1987 SCC 537.

22. In this context, I may only quote the following observations contained in paragraph 20 of the judgment in the case of the CAG and Anr. v. K.S. Jagannathan which are both instructive and illustrative of the situations in which a court can issue a writ of mandamus:--

"..There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion malafide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case, a High Court can in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.."

13.2 The needful will be done by the official respondents, within four weeks from today. There shall, however, be no orders as to costs.

14. The petition and the application are, accordingly, disposed of.