
(2015) 04 JH CK 0118
In the Jharkhand High Court
Case No : WP(C) No. 529 of 2015

Mrityunjay Kumar Thakur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 325, 34

Citation : (2016) 1 AJR 446 : (2015) 3 JLJR 173

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.N. Pathak and Diwakar Upadhyay, for the Appellant

Judgement

S. Chandrashekhar, J—Aggrieved by order dated 24.11.2014 by which the name of the petitioner has been deleted from the Institution Roll, the present writ petition has been filed. The petitioner took admission in the Academic Session 2014-16 on 6.6.2014 in M.B.A. course however, he did not submit the Migration Certificate at the time of admission. The last date for submission of certificates was 30.9.2014 and the petitioner submitted an undertaking at the time of admission that he would furnish the Migration Certificate in original on or before 30.9.2014. The petitioner thereafter also did not submit the Migration Certificate though, time for submitting the Migration Certificate was extended upto 30.11.2014. The petitioner submitted a scanned copy of the Migration Certificate and on 5.12.2014 he submitted the Migration Certificate in original along with application dated 5.12.2014 for accepting the same however, his request was refused and application dated 5.12.2014 was rejected vide letter dated 16.12.2014 informing the petitioner that the Competent Authority has regretted extension of time for submitting the Migration Certificate.

2. Heard the learned counsel for the parties and perused the documents on record.

3. Dr. S.N. Pathak, the learned Senior Counsel appearing for the petitioner

submits that the petitioner though submitted the Migration Certificate in original on 5.12.2014 by which date, the decision to restore the admission of other 8 students was not taken and therefore, the application of the petitioner seeking extension of time for submitting Migration Certificate should have been considered and allowed. It is further submitted that though a decision was taken in the meeting of the Committee of Dean, the proceeding date 28.11.2014 does not disclose that a deadline was fixed for accepting the Certificate/Migration Certificate. It is thus, submitted that the refusal to accept the Migration Certificate submitted by the petitioner and consequently, the decision not to restore the name of the petitioner in the Institution Roll, are illegal and arbitrary. It is contended on behalf of the petitioner that only in terms of Clause 6 of the Master of Business Administration (Examination and Miscellaneous Provisions) Rules, 2006, name of a student can be removed from the Institution Roll. Clause 6 provides that only in case of unauthorised absence continuously for four Academic weeks in 1st or 2nd semester or in case where the student falls short of required attendance in three or more subjects of either 1st or 2nd semester or both, his/her name would be deleted from the Institution Roll. Since the result of the 1st Semester was not declared, the name of the petitioner could not have been removed from the Institution Roll.

4. As against the above, Mr. A.K. Mehta, the learned counsel appearing for the respondent-Indian School of Mines referred to the Minutes of Meeting dated 28.11.2014 and submits that the following decisions were taken in the meeting of the Committee of Dean;

"i. All the documents should be issued before 31.10.2014.

ii. All the certificates should be of main exam and not of supplementary exam.

iii. The entire certificate should be issued for the academic year, 2013-14 only and not before that."

5. It is submitted that on examination, it was found that the Migration Certificate of the petitioner was issued way back on 25.3.2014 and thus, the petitioner was in possession of the same still, he did not submit the Migration Certificate in original within time. Since, the petitioner had completed B.Tech. course in the Academic Session 2011-12 and not in the Academic Session 2012-13 which is the stipulation in Clause 6(iii) of the Minutes of Meeting dated 28.11.2014, the application dated 5.12.2014 seeking extension of time for submission of Migration Certificate was regretted.

6. I find that in the counter-affidavit of the respondent-Indian School of Mines, it is stated that the petitioner submitted an application on 27.9.2014 undertaking that he will submit Migration Certificate by 30.10.2014 however, he again submitted representation seeking extension of time for submitting Migration Certificate which was not accepted by the Competent Authority. It is stated that in view of the decision of the Dean and the Director, 8 students were allowed to join the M.B.A. course programme vide notice dated 8.12.2014. The case of the

petitioner was further examined however, it was found that the petitioner had completed his B. Tech. degree course in the year, 2011-12 and the Migration Certificate was issued to the petitioner on 25.3.2014 that is, prior to the date on which the petitioner has taken admission on 6.6.2014. The petitioner thus was in possession of the Migration Certificate however, he did not submit the same on or before 30.9.2014 or even by 30.10.2014. Paragraph No. 4(j) of the counter-affidavit is extracted below:--

"4(j) The case of the petitioner was also considered and it was found that the petitioner had completed his B.Tech. Degree in the academic year 2011-12 and not in the academic year 2013-14 as per Condition No. (iii) of the recommendation of the Deans Committee. It was also found that the Migration Certificate in original was issued to the petitioner on 25.3.2014, which was prior to declaration of the results for the M.B.A. Programme of the Session 2014-16 or even before the date on which the petitioner had taken admission provisionally on 6.6.2014 by furnishing an undertaking. The petitioner was in possession of the Migration Certificate on 30.9.2014, the date on which the undertaking expired or even on the first extension which expired on 30.10.2014. There is no reason why the petitioner did not submit the Migration Certificate till the next extended date up to 24.11.2014 or even up to 1.2.2014."

7. Mr. Pramod Mathur, Deputy Registrar (Academic & Exam.), Mr. M.K. Singh, Registrar (Retd.), Prof. C. Bhar, DSW and Prof. S. Mohanthy, Dean (Academic) of the Indian School of Mines, Dhanbad are present in the Court with the original file which discloses that a "note" was forwarded by the Assistant Registrar (Academic) on 2.12.2014. The said recommendation was forwarded to the Dean (Academic) who approved the same on 3.12.2014. The recommendation was finally approved by the Director, Indian School of Mines on 7.12.2014. The "note" dated 2.11.2014 of Assistant Registrar (Academic) mentions the name of the petitioner at Sl. No. 9. However, from the original file which has been produced in the Court it does not appear that a decision was taken by the Committee of Dean or the Director, Indian School of Mines not to accept the Migration Certificate (scanned copy) submitted by the petitioner. I further find that in the counter-affidavit/supplementary counter-affidavit also no reason has been disclosed by the respondent-Indian School of Mines why the Migration Certificate (scanned copy) submitted by the petitioner was not forwarded for consideration. The learned counsel for the respondent-Indian School of Mines has stated that name of the petitioner was struck off from the list on 3.12.2014 before it was placed before the Dean. No reason has been disclosed by the respondents why the name of the petitioner was struck off from the list of students who had submitted scanned copy of the Migration Certificate on 1.12.2014. It is also not known under what authority the Assistant Registrar (Academic) struck off the name of the petitioner from the list of the candidates from "note" dated 2.12.2014. In my opinion, the Assistant Registrar (Academic) was under a duty to forward the name of the petitioner who had submitted a scanned copy of the Migration Certificate and it was for the Competent Authority to accept or not to accept the

recommendation. I am of the opinion that the Assistant Registrar (Academic) had no authority to struck off the name of the petitioner from the list. It is not disputed that the petitioner also submitted the Migration Certificate in original on 5.12.2014 and, the original record reveals that the Dean of the Institute approved the note of the Assistant Registrar (Academic) on 3.12.2014, which was finally approved by the Director on 7.12.2014. The necessary order was issued on 8.12.2014 by which the names of other 8 students were restored on the Institution Roll. In these facts, the Migration Certificate submitted by the petitioner on 5.12.2014 could not have been refused by the Institute. The learned counsel for the respondents refers to the Minutes of Meeting of the Committee of Dean held on 28.11.2014 and submits that it was decided by the Committee of Dean to accept the certificate, which has been issued for the Academic Year 2013-14 only and not before that. A supplementary counter-affidavit dated 13.4.2015 has been filed disclosing the date of certificates which were submitted by other 8 students. It has been disclosed in the supplementary counter-affidavit that the original documents were submitted by those 8 students on 1.12.2014. The learned counsel for the respondent-ISM submits that since the Migration Certificate of the petitioner is of the Academic Session 2011-12 the relaxation granted in the meeting held on 28.11.2014 could not have been extended to the petitioner. It is a matter of record that the petitioner completed his B.Tech. course in the Academic Session 2011-12 and the respondent-ISM has accepted his other certificate such as, B.Tech. degree certificate which is of the Academic Session 2011-12. For any reason, the petitioner could not take admission in the subsequent academic session and he was admitted in the respondent-Institute in the Academic Session 2014-15. It is common knowledge that there may be a academic break in the career of a student for several reasons. The petitioner, who completed his. B. Tech. course in the Academic Session 2011-12 and who has been duly admitted in the M.B.A. course in the respondent-Institute, cannot be directed to produce a certificate for Academic Year 2013-14, in which year he was not pursuing course in any institute. On repeated query from the Court, neither the counsel of respondent-ISM nor the officers present in the Court could disclose the reason for insistence upon producing certificate for Academic Session 2013-14 by a student, who completed his course in the year, 2012. I am of the opinion that the decision taken by the respondent-Institute is absolutely illegal and arbitrary. In the counter-affidavit, the respondent-Indian School of Mines has taken a plea that the Migration Certificate was issued on 25.3.2014 and thus, the petitioner was in possession of the same however, he failed to disclose the reason why he did not submit the same on or before 30.9.2014 or even by 30.11.2014 and therefore, a decision was taken not to accept the same. The learned counsel for the respondent-ISM has submitted that this decision was taken because a student who has already completed his course in the year, 2012 is supposed to have a certificate in his possession, which he should have submitted in due time. I do not find any logic in the submission raised on behalf of the respondent-ISM. Merely because the Migration Certificate is dated 25.3.2014 would not lead to an inference that the

petitioner had obtained the copy of the same by that date. The genuineness of the Certificate has not been doubted. The Migration Certificate is not an educational qualification for taking admission in the M.B.A. course. The Migration Certificate of the petitioner is dated 25.3.2014 which was submitted by the petitioner on 5.12.2014. A similar relaxation has been granted to the other students, who have submitted their certificates on 1.12.2014. As noticed above, the Director, Indian School of Mines finally approved the recommendation on 7.12.2014 and necessary notice was issued on 8.12.2014 and by that time the petitioner had already submitted his Migration Certificate in original on 5.12.2014. I further find that in the minutes of meeting of Committee of Dean held on 28.11.2014 though, certain conditions are mentioned in paragraph No. 6 however, no cut-off date was fixed by the Committee of Dean. The petitioner and other 8 students whose names have been restored in the Institution Roll, they all had submitted certificate/Migration Certificate after extended cut-off date, that is, 30.10.2014 is not in dispute.

8. The Master of Business Administration (Examination and Miscellaneous Provisions) Rules, 2006 provides that the name of the new entrant would be struck off if he/she has remained absent unauthorizedly continuously for four academic weeks in 1st or 2nd semester or if his/her attendance falls short of required attendance in three or more subjects of either 1st or 2nd semester or both. I find that the conditions mentioned in Clause 6.2 of 2006 Rules are not attracted in the case of the petitioner. Clause 6.2 of the 2006 Rules are extracted below:--

"6.2 The name of the NEW ENTRANT (student taking admission in first semester) will be struck off, if he/she

(a) is unauthorizedly absent continuously for four academic weeks in first or second semester.

(b) falls short of required attendance in three or more subjects of either first or second semester or both".

9. Referring to paragraph No. 3 of the Counseling letter, the learned counsel for the respondents submits that the admission granted to the petitioner was subject to submission of certificates, which included Migration Certificate in original. It is thus submitted that the conditions under Clause 6.2 of the 2006 Rules are not attracted in the present case in as much as, the petitioner was not a regular student. The submission is devoid of merits. The petitioner was admitted in M.B.A. course, is a matter of record, though provisionally. Paragraph No. 3 in the offer for Counseling letter dated 20.5.2014 indicates that the admission is subject to fulfilling of eligibility criteria. It is not in dispute that the Migration Certificate is not one of the essential eligibility criteria for taking admission in the M.B.A. course. The Migration Certificate is not rentable to the educational qualification of a candidate. It is also not related to the requirement as to the residence, institute, age etc. and thus, the Migration Certificate cannot be said to

be an essential eligibility criteria for taking admission in M.B.A. course. The learned counsel for the respondents submits that the Migration Certificate is required from a student to ensure that the student does not pursue two courses simultaneously in two different Universities. It further enable the University to register the student in the University. From the aforesaid submission also. I do not find that the Migration Certificate is the essential eligibility condition for taking admission in M.B.A. course. It is true that the petitioner was admitted provisionally and the last date for submission of the Certificate/Migration Certificate was extended from 31.9.2014 to 30.11.2014 however, the fact that the students, who submitted their certificates on 1.12.2014 have been permitted to complete their courses as their names have been restored in the Institution Roll, cannot be ignored. From the counseling letter, it appears that admission was offered on the basis of All India Written Test held on 11.5.2014. From other two writ petitions [W.P.(C) Nos. 990 of 2015* & 705 of 2015], it is noticed that large number of students have failed to submit Migration Certificate by due date which would only indicate that in the academic circle, Migration Certificate is not considered of much relevance.

10. In so far as, the alleged negligence on the part of the petitioner is concerned, I am of the opinion that even if it is assumed that the petitioner was negligent, deletion of his name from the Institution Roll is too harsh a punishment which no reasonable person could have awarded to the petitioner for the alleged negligence. In " Commr. of Police and Others Vs. Sandeep Kumar, (2011) 129 FLR 491 : (2011) 3 JT 484 : (2011) 3 SCALE 606 : (2011) 4 SCC 644 : (2011) 2 SCC(Cri) 426 : (2011) 1 SCC(L&S) 734 : (2011) 3 SCR 964 : (2011) AIRSCW 499 : (2011) 4 Supreme 262 , where a candidate had suppressed institution of a criminal case against him while submitting his declaration for appointment and the candidature of the candidate for the post of Head Constable was cancelled on the ground that he had concealed his involvement in a criminal case under Section 325/34 I.P.C., the Hon"ble Supreme Court observed that young people commit indiscretions and approach should be to condone such indiscretions rather than branding them as criminals for rest of their lives. Upholding the cancellation of his candidature illegal, the Hon"ble Supreme Court held that since the offence was not a serious offence, more lenient view should be taken. I am of the considered view that the Institute could have imposed fine, a reference of which is found in a different context in 2006 Rules, instead of removing the name of the student from the Institution Roll.

11. From the Rules, I find that there is a provision under Clause 3.1 for Special Examination in cases where a student has attained 60% attendance in a subject in the semester provided, the student makes up the short-fall in attendance. The provision under Clause 3.1 of the 2006 Rules is extracted below:--

"A student with less than 75% attendance in a subject during the semester will be awarded F grade in that subject irrespective of his/her performance in the tests.

However, a student with 60% or more attendance in a subject during the semester may be allowed special examination provided he/she makes up short-fall of attendance before special examination through additional classes and/or assignments etc. solely at the discretion and full satisfaction of the concerned subject teacher."

From the aforesaid discussion, I am of the opinion that the petitioner deserves restoration of his name in the Institution Roll. Accordingly, the communication dated 24.11.2014 insofar as, it relates to the petitioner, is hereby quashed. It is ordered that the name of the petitioner would be restored in the Institution Roll of the respondent-Institute within one week. It is further ordered that respondent Nos. 2 and 3 would provide opportunity to the petitioner to appear in the Special Examination by issuing necessary directions requiring the petitioner to attend additional classes and/or to complete the assignment.

*Ed.?Reported in Sri Chand Vs. State of Punjab, (2014) AIRSCW 5577 .