
(2005) 04 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 235 of 2001

Mukat Lal Mathur

APPELLANT

Vs

Jain Narayan Vyas University

RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Jai Narain Vyas University Ordinance — Ordinance 211, Ordinance 211A

Citation : (2005) 4 RLW 2539 : (2005) 3 WLC 492

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Kuldeep Mathur, for the Appellant; Deep Chand Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—We have heard learned Counsel for the parties.

2. This appeal is directed against the judgment of the learned Single Judge dated 4.1.2001 dismissing the writ petition filed by the appellant.

3. The appellant-petitioner was employed in National Institute for the Visually Handicapped, Dehradun from 1982 until filing of the writ petition. During the period of his aforesaid employment at Dehradun, the petitioner-appellant with the permission of his employer got himself registered as a Research Scholar for doing his Ph.D. With the University of Jodhpur. His registration was under Dr. Gopal Bhardawaj, Research Supervisor, Department of Sociology. His registration was up to 10 December, 1990. On October 11, 1990, the petitioner-appellant had submitted an application through his Research Supervisor to the respondent-University for seeking permission to Submit his Ph.D. Thesis for examination i.e., before two months of expiry of registration period.

4. That application was not accepted by the University because the petitioner was not fulfilling the residential requirement as per Ordinance 211 of the University.

5. On receipt of this communication, the petitioner's Research Superior had recommended the case of the petitioner. In the letter dated November 18, 1991, the Research Supervisor did not indicate that the petitioner has fulfilled the residential requirement under Ordinance 211 of the University but recommendations were made de hors the provisions for considering the case of the petitioner in broad perspective. It was clearly stated in the letter dated November 18, 1991 that the candidate's case is to be visualized in its totality and also in view of rather relaxed working of Research Degree's related procedures. The Research Supervisor also stated in his letter that, the period of work and attendance need not be mixed up because, as we know it from experience, attendance in this context has remained with us mostly as a provision and not that much practice.

6. This letter clearly indicated that petitioner had not fulfilled the residence requirement. The recommendations were on extraneous consideration, other than the necessity to fulfill the requirement of residence with University up to minimum level.

7. However, these recommendations were turned down by the University vide letter dated December 5, 1991.

8. The petitioner again submitted an application dated January 1, 1992 seeking permission for submission of Ph.D. Thesis (Sociology) by showing the details where he was working during this period and commended his case particularly on two grounds, which read as under:

"(x) In view of nature of data collection, research scholar's residential requirement may not be restricted to University's jurisdiction, i.e., Jodhpur and may be defined and interpreted in very broad view.

(xi) My commitment to social science field and sociology in particular for last seventeen years and association with different organizations in different positions is a sufficient evidence in support of my keen involvement to the field, i.e. I have been having all through academic and research pursuits as my profession and that I have also been doing research work publications & etc. On the basis of Ph.D. Work & others."

9. In this letter also, there is no whisper that the petitioner has in fact fulfilled the residential criteria as per requirement of Ordinance 211, but the petitioner was seeking a liberal interpretation to cover his case, notwithstanding, he did not fulfill the residence requirement as per Ordinance 211.

10. By letter dated March 4, 1992, the petitioner was informed as under,-

"UNIVERSITY OF JODHPUR, JODHPUR (ACADEMIC SECTION) No. JU/Aca./R/Socio/5375 Dated: 4.3.92 To, Shri M.L. Mathur, Research Officer, Ministry of Welfare, "A" Wing Shastri Bhawan, New Delhi-110 001. Dear Sir,

I am to inform you that your request before the Research Board, at its meeting

held on 20th January, 1991 vide item No. 14/92 and the Research Board resolved as under:

RESOLVED that the application submitted of Shri M.L. Mathur, Research Officer, Ministry of Welfare, A Wing Shastri Bhawan, New Delhi regarding permission for submission of Ph. D. Thesis in Sociology be accepted subject to the certificate to be given by the Supervisor regarding his residence required under Ordinance 211 duly forwarded by the Head of the Department.

You are requested to please submit the same so that further early action may be taken.

Yours faithfully sd/- Asstt. Registrar (Aca.)"

11. In consonance with the requirement sought by the University by aforesaid letter dated 4.3.1992, the Research Supervisor of the petitioner communicated a letter dated June 4, 1992 to the Registrar in which it has been stated that, "since Shri Mathur has done his research on Caste-managed Secondary Schools in Jodhpur, this has also required him to be in Jodhpur or keep on visiting Jodhpur to pursue his field work etc., and, therefore, this may be considered favourably for the purpose of his attendance or stay at Jodhpur."

12. Vide letter dated June 23, 1992, the respondent University conveyed that the Vice-Chancellor has been pleased to accept the letter submitted by you as a certificate by the Supervisor regarding the attendance requirement as required under Ordinance 211 of Shri M.L. Mathur as desired by the Research Board at its meeting held on 20th January, 1992.

13. Pursuant thereto, the Research Board, Faculty of Arts, Education and Social Sciences decided to consider the Thesis submitted by the petitioner and decided to re-register the petitioner with effect from 11.12.1990 with a condition that he shall required to submit his Thesis within a period of two years from the date of re-registration i.e., up to 11.12.1992, failing which his registration shall automatically treated as cancelled without further correspondence.

14. After re-submission of Thesis as per directions dated 19th November, 1992, it appears that the Research Supervisor was asked to re-submit the certificate of fulfilling the requirement of residence in terms of Ordinance 211.

15. The Research Supervisor vide his letter dated 23rd April, 1993 clearly stated that the decision of the Vice-Chancellor and Research Board should not have been subjected to the reopening which is procedurally undesirable and also discriminatively detrimental to the candidate. Further, he added in his letter that if the Research Board is still insisting upon the certificate regarding residential requirement as required under Ordinance 211 to be in specific language, the same was attached in the letter dated 23rd April, 1993.

16. It appears from the material placed on record that the former Vice-Chancellor had recommended to the Research Board to consider the case of the

candidate without verifying whether the requirement of Ordinance 211 was fulfilled. But the Academic Council insisted upon the Research Supervisor to give certificate regarding residence as required under Ordinance 211 in "clear forms". Though, the Research Supervisor initially submitted that since the Vice-Chancellor has already decided the matter, it ought not to be reopened, but as the events show that this issue was not pursued and matter was finally referred to a Committee to consider the entire material and make its report.

17. On December 12, 1993, the petitioner submitted an application to the Registrar stating that he has submitted his Thesis on 1.12.1992, but due to reopening of the case, it was not sent to the examiners for evaluation and the Research Board resolved that the Research Supervisor be requested to give a specific certificate in respect of period of residence of the candidate as required under Ph.D. Ordinance 211 and the petitioner having become a sandwich between the two authorities gave notice to the respondent University that if the matter is not decided judiciously, he would seek intervention of the Courts. The petitioner has made a request vide letter dated December 23, 1994 to all the Members of the Syndicate and the Vice-Chancellor for considering his Thesis to be evaluated by the examiners.

18. Ultimately on June 5, 1995, the petitioner submitted an application to the Vice-Chancellor that he had been in Jodhpur for approximately 495 days for completion of his field work and a detailed statement showing his physical presence in Jodhpur was also enclosed. On June 9, 1995, a certificate was also submitted by the Research Supervisor of the petitioner to the effect that, "Shri Mukut Lal Mathur has been doing Research Work for supplicating to the degree of Ph.D. under my supervision since 11th December, 1984 and he has fulfilled the requirement of residence as provided under Ordinance 211 of the University."

19. The matter was ultimately referred to a Committee headed by Professor R.C. Dixit as per the decision of the Academic Council in its meeting held on 29.1.1997. The respondent University by its letter dated 15.6.1999 informed the petitioner that, "since you have failed in complying with the formalities of residential requirement as required under Ordinance 211, you are not eligible to submit your Thesis for the decree of Ph.D. in this University."

20. This was the decision taken by the Academic Council in its meeting held on 13th March, 1999.

21. The petitioner raised a protest by stating in his letter dated 15th June, 1999 that decision of the Academic Council in its meeting held in January, 1997 and now on 13th March, 1999 is quite different. He requested the University to reconsider his case again. In this letter strangely, the petitioner refers for the first time that his Thesis has been examined by a particular examiner in 1996 and a recommendation has been made by approving his Thesis for award of the degree of Ph.D.

22. The petitioner has again made a detailed representation dated 17th June,

1999 challenging the reports submitted by the Committee headed by Professor R.C. Dixit and claimed that his work has been recommended for award of Ph.D. Degree by the Research Board. In this letter, he stated that he has availed leave for 495 days + 180 days library works and that has been supported by his employer i.e., National Institute for the Visually Handicapped, Dehradun (NIVH). However, he also claimed that, "NIVH has given my leave account of only earned leave 169 days plus medical leave (as the casual leave account, restricted holidays and gazetted holidays availed are not maintained). If the Sub-Committee arrived at its decision on the basis of only earned leave account then it is really a pity to prove their well founded intention which I have apprehended."

23. By communication dated 2.7.1999, the petitioner was informed by the University reiterating its earlier decision already communicated vide letter dated 15.6.1999.

24. The petitioner again submitted an application dated 23rd August, 1999 to reconsider his case. Along with this letter, he claimed for the first time improving upon his all previous statement that, "I again worked out all details of leave availed by me in Jodhpur for my Ph.D. Work in Jodhpur. I worked out 750 days leave availed by me for pursuing my Ph.D. Work and thus fulfill the requirement of two years period of residence in Jodhpur under Ph.D. Ordinance 211."

25. He submitted the details of the government holidays, Sundays and Saturdays to make the fill of 750 days apart from the leave availed by him between 1985 and 1992. He also produced a letter from his Research Supervisor dated June 1, 1987 by which he was recommended to the Director, Rajasthan State Archives, Bikaner for permitting the petitioner to avail library facilities at Bikaner with forwarding letter dated January 24, 2000.

26. On 17.5.2000 the S.B. Civil Writ Petition No. 1534/2000 was presented.

27. On 22.5.2000, the learned Single Judge issued the notice only to the extent whether the petitioner has complied with the requirement of residential period in Jodhpur.

28. A reply to the writ petition has been submitted by the respondent University in which it has been stated that the petitioner has not fulfilled the residential criteria as required under Ordinance 211, the report of Dixit Committee was also produced as Annexure-R/1.

29. In rejoinder submissions, the petitioner reiterated that he has fulfilled the residential requirement as required under Ordinance 211 and that he availed facilities of library like Indian Council of Social Sciences Research and National Archives, New Delhi. The petitioner was allowed to avail this facility as provided under Ordinance 200-A of the Ph.D. Ordinances, therefore, he has completed the period prescribed to reside at Jodhpur under Ordinance 211 of the Jai Narain Vyas University Ordinance.

30. The learned Single Judge vide his order dated 4.1.2001 dismissed the writ petition by noticing that the show cause notice was limited only to the extent whether petitioner has complied with the requirement of residential period in Jodhpur. The respondents have filed the reply specifically dying that petitioner had completed the requirement of law and the same has not been denied by the petitioner, no relief can be granted to the petitioner.

31. In the special appeal, learned Counsel for the petitioner has reiterated the submissions and desired the Court to re- examine the residential requirement as required under Ordinance 211.

32. Having perused the record, Ordinance 211 of the University of Jodhpur and after having carefully considered the submissions, we are of the opinion that the petitioner-appellant cannot be held entitled to relief prayed for by him. The Ordinance 211 around which the controversy centers reads as under:-

"Order 211 "Every accepted candidate shall be required to be in residence in the University or in the institution approved by the University for a period of not less than two years from the date of commencement of research the date of commencement of research work shall be the date of forwarding of the application by the Head of the Department or the date of the actual starting of the work whichever is later. Provided in special cases the period of residence can be reduced by the Vice-Chancellor up to the extent of the period the candidate has worked in other University subject to a maximum of one year, if a candidate had been duly registered in another University and has subsequently migrated to this University or in any special circumstances that shall be recorded in writing, and approved by the Research Board." .

33. A perusal of the aforesaid Ordinance which governs the petitioner's case and about which there is no dispute, it is clear in its term that every accepted candidate shall be required to be in residence in the University or in the institution approved by the University for a period of not less than two years from the date of commencement of research. The date of commencement of research work shall be the date of forwarding of the application by the Head of the Department or the date of the actual starting of the work whichever is later.

34. Apparently, as noticed above, the requirement of the candidate is to be in residence in the University for a period of two years and alternatively that he would have such residence in the Institution approved by the University for the purpose.

35. The fact that a person in service may be permitted to pursue the research work by getting himself registered as a research scholar does not do away with the requirements of Ordinance 211. His employment away from the University is not to be counted unless that period is spent in the University or other Institution approved by the University for such work.

36. The requirement of Ordinance 211 is of residence in the University itself and

not the residence at Jodhpur or not at any particular place. This only suggests that petitioner must carry out his work within University or outside University at Institution approved by the University. To do Research Work at any or every place, shall not be countable against the residence requirement. The residence requirement apparently is not referable to physical presence in the township, but is referable to working time spent at University of Jodhpur or any other Institution approved by the University for this purpose. There is no such assertion by the petitioner that any time spent outside Jodhpur University was spent at any such approved Institution. Taking any other view will be contrary to necessity of pursuing Research Work under a Research Supervisor within the Curriculum Discipline of University.

37. The petitioner's entire contention that since the period of commencement of research work, until the date of submitting the research work, he had 750 days on which he has not discharged his duties at his employers establishment and that he should be presumed to be in Jodhpur for every single day during that entire period including Sundays, Saturdays, Government Holidays and Restricted Holidays he spent time on the research work. It is not his averment in his petition that entire period of 750 days as submitted under his own calculation was the time spent by him for doing research work in University. Remaining in Jodhpur without devoting time to the research work does not fulfill the requirement of residence as he resides away from the University and does not reside in the University which is mandatory for a research scholar. As a special connotation, the time spent by the petitioner in the territorial jurisdiction of University of Jodhpur has to be counted for the purpose of Ordinance 211, if he is a resident student and if he is not a resident then he has to be on the research work for the normal working days under his Research Supervisor for two years. The petitioner has not placed any material that all days on which he was not in employment, even if it was single weekly holiday, he was in University or at any approved Institution for that purpose by the Jodhpur University.

38. It is rather unfortunate that the petitioner who has been labouring for research, is under Illusion about the merit of his own research work so much so that he commended his Work in his letter Annexure-4 dated January 3, 1992 by stating that, "my commitment to social science field and sociology in particular for last seventeen years and association with different organizations in different positions is a sufficient evidence in support of my keen involvement to the field, i.e., I have been having all through academic and research pursuits as my profession and that I have also been doing research work publications & etc. On the basis of Ph.D. Work & others."

39. In this letter, he further says that, "in view of nature of data collection, research scholar's residential requirement may not be restricted to University's jurisdiction, i.e., Jodhpur and may be defined and interpreted in very broad view."

40. As a matter of fact, this letter gives a clear indication that the petitioner did not fulfill the requirement of residence in University but was seeking introduction

of his research work on the basis of his professional commitment to social science field and sociology without adhering to Ordinance 211, a necessary requirement to spend his time in the University or at any other Institutions approved by the University where he was required to do his research work. Time spent on discharging of the duties of the employer cannot be considered as time spent on research work in view of the terms of Ordinance 211 of the University of Jodhpur.

41. We are clearly of the opinion that two years" period means that two years should be spent on research work in University Campus or any other Institution approved by the- University of Jodhpur for the purpose of carrying out the research work. Having residence at Jodhpur or at any other place in Jodhpur is hardly of any relevance.

42. At the cost of repetition, it is reiterated that the residential requirement as required under Ordinance 211 is not residence in Jodhpur or within the territorial jurisdiction of University of Jodhpur but the requirement is residence in University or any other Institution approved by the University for the purpose of carrying out such work. Working in University of Jodhpur or any other Institution approved by University can only be considered as fulfilling the criteria of residential requirement as required under Ordinance 211. Expression "residence" for the purpose of carrying out such work is pregnant with the above interpretation, which commends us.

43. This fact is further clear from the chain of correspondence, noticed by us above, that notwithstanding the clear requirement, the Research Supervisor of the petitioner was not prepared to give a clear certificate of petitioner's having worked for two years with him at Jodhpur or at any other Institution approved by the University. He time and again recommended for consideration of the petitioner's case by taking liberal view regarding spending time as a research scholar. He even pointed out that the requirement of attendance is not in practice to be insisted upon. This unprincipled stand was taken only because of the Research Supervisor who wanted to help the petitioner to get Ph.D.

44. We regret to say about a Research Supervisor who is a member of an Education Institute and repository of trust for excellence in education within the University discipline, should have persistently insisted on conferment of a Ph.D. Degree on a person de hors the rules of Ordinance. We are not making any suggestion that no work of merit can come out of the University discipline, but regular degrees are not or cannot be conferred on that basis. The conferment of a degree in regular course by a University which is the result of pursuing the disciplined course or disciplined research work, cannot be left to the judgment of merit de hors the requirement of rules.

45. Conferment of degrees honoris causa in recognition of contribution by any individual is not within the purview of regular conferment of degrees.

46. Apart from these facts, the petitioner has claimed that during the entire

period of 495 days including medical leave for 35 days, he has spent time in research work. There is nothing to suggest that the petitioner has taken leave for the purpose of working on his research. He wants to suggest that apart from his working days at office, every single minute, day and hour he has spent time for research work at Jodhpur on different dates which accounted exactly for 750 days (i.e., Period of two years) or the requirement of two years of residence as required under Ordinance 211 is fulfilled in such a long span of time. It doesn't stand to reason that apart from the earned leave, even while on medical leave, he has spent time on the research work. Either, he has unlawfully availed the medical leave by producing false medical certificates for doing his research work or his claim of carrying on research work while he was sick, the same cannot be counted for the purpose of fulfilling the residential requirement under Ordinance 211. He has said that he had 495 days holidays inclusive of the leaves availed by him through applications except Government holidays and then he says that he has 750 working days on his research. He further makes a bald statement that he worked in the library at Indian Council of Social Sciences Research and National Archives, New Delhi. He has placed on record the letter submitted by his Research Supervisor recommending the Director, Rajasthan State Archives, Bikaner for making him available the facility of library at Bikaner and access to the Archives Library. Even if this recommendation is accepted on face value, he has not even claimed that he ever visited Bikaner for the purpose of library work and that the said time may be counted for his residence requirement.

47. In our opinion, the petitioner, rather than fulfilling the requisite residence requirement of Ordinance 211 for completing his research work by staying at University, has spent his time in pressurizing the University to admit his Thesis for consideration, cleverly pointing out that two years residence in University in his case may not be insisted upon and a liberal view be taken by considering the "fallen in disuse" the attendance requirement as suggested by Research Supervisor, and suddenly a turnabout takes place by saying that, he has detail of 750 days working at Jodhpur to fulfill criteria. This defies any credibility.

48. All these facts and conduct of the petitioner goes to show that he is not entitled to any relief by seeking a mandamus from this Court to the University for entertaining his Thesis and for considering it to grant him a degree of Ph.D.

49. In view of the aforesaid, the appeal fails and is hereby dismissed with costs.