

(1959) 10 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Case No. 352-D of 1959

Parma Nand Bhutani

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 15-10-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi University Act, 1922 — Section 31

Citation : AIR 1960 P&H 150

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Judgement

(1) This is a petition under Art. 226 of the Constitution in which a writ of mandamus or other appropriate direction or order is sought to admit the petitioner as a student in the day classes of the Law Faculty in LL. B. (Previous).

(2) The petitioner passed his Matriculation Examination as long ago as the year 1936. He then joined service and is still employed drawing a salary of Rs. 400- per mensem. He obtained the B. A. Degree of the Punjab University appearing as a private candidate under regulation 8 of that University which enables a candidate not to appear in all the subjects at one examination. In June 1959 the University of Delhi, respondent No. 1, invited applications for admission to the different classes in the Faculty of Law. After specifying the date for the receipt of application and specifying the age limit, it was stated that admission to the different classes would be made on selection from eligible candidates on a scrutiny of the applications and according to merits and where circumstances required after an interview and only up to the accommodation facilities available (Annexure "E" tot he affidavit of the Dean dated 11-9-1959). The petitioner submitted his application on 3rd July 1959 but when the lists of selected candidates were published between 15-7-1959 to 31-7-1959, the name of the petitioner was not included among those who were admitted. It was in these circumstances that the present petition was filed on 31st July, 1959.

(3) It is common ground that the B. A. Degree of the Punjab University under Regulation 8 would entitle the petitioner to be qualified for admission to the LL. B. Degree course and the main grievance of the petitioner is that admission could not have been refused in his case as he had obtained 52.2 percent marks which were more than the marks obtained by certain candidates who had been admitted and who had also passed the B. A. examination of the Punjab University though not under Regulation 8. The case of the petitioner is that no distinction could be made between those candidates who had passed under regulation 8 and others who had passed in the ordinary way offering all the subjects at one time.

(4) On behalf of the University a number of reasons have been for not admitting the petitioner. These inter alia are-

(1) Employed persons can join the evening shift classes only and they have to file a certificate of employment in the prescribed form and such a certificate was not filed by the petitioner;

(2) The petitioner did not file a character certificate from a Judge or a first Class Magistrate as required by the "Bulletin of Information" and the "Instruction to Appellant". The certificate which was in fact filed was an Additional Settlement Commissioner of the Rehabilitation Department;

(3) The detailed list of marks obtained was not filed along with the application and only total number of marks were shown; and

(4) Rules of principles had been laid down by the Admission Committee prescribing the categories of candidates in order of preference and candidates who had obtained the B. A. Degree under regulation 8 of the Punjab University fell within the last category and consequently no candidate of that category including the petitioner was admitted. It appears that the real reason why the petitioner was not admitted was the last one mentioned above as is clear from the endorsement made on his application in red pencil (Annexure "I" to the Dean's affidavit). None of the other reasons are mentioned there and they seem to be an afterthought. Moreover, little attention need to be given to such technical pleas as the absence of proper certificate from a Judge and non-filing of the detailed list of marks because those formal defects could have been brought to the notice of the petitioner and he could have easily rectified them.

(5) It has now to be seen whether the admission was lawfully refused in view of the so-called rules or principles relating to admission contained in Annexure "A" to the affidavit of the Dean. The learned counsel for the petitioner, however, submits that the aforesaid rules were framed only a short time before the admission was to take place and that there was no mention of them in the "Instruction to Applicant", the "Bulletin of Information" and the general notice given (Annexures "C", "D" and "E" to the affidavit of the Dean) and therefore the respondents are estopped from refusing admission on any ground outside the aforesaid documents.

In the alternative it is contended that the rules contained in Annexure "A" are ultra vires the Delhi University Act, 1922, the ordinances and the statutes framed thereunder. In support of his contention, the learned counsel for the petitioner relied on Kumari Akhtar v. Admission Committee, represented by the Kumari Akhtar Vs. Admission Committee and Another, in which the principle of estoppel was applied in the matter of admission to Medical College, Aurangabad. It was held in that case that having made an implied representation that if a candidate satisfied the standard set up for selection of candidates, it was not open to the authorities concerned to retract from it and the writ petition of the candidate was allowed. It has, however, been pointed out by the learned counsel for the respondents that in the form prescribed for admission (Annexure "B" to the Dean's affidavit) it is stated as follows at No. 3 at p. 1.:

"Before filling in the form and signing it, read the whole of it carefully and also the leaflet entitled "Instructions to Applicant" and the "Bulletin of Information". The latter will give you an idea of the courses of studies, summary of the ordinances, the regulations, expenses, etc. The student should acquaint himself with the Ordinances, proper Regulations and Rules regarding payment of fees, attendance, examination and all other matters pertaining to the students of this Faculty. No plea will be entertained that the students were ignorant of such Ordinances, Regulations, Rules, or other provisions."

It is contended that no question of estoppel has arisen in face of what is contained in the by the Admission Committee for the purpose of selection. Even if the rule of estoppel is applicable in such matters, I am not at all satisfied that any question of estoppel arises, especially when the applicant for admission is clearly told that he should acquaint himself with all matters pertaining to the students of the Faculty and when it is expressly stated that no plea will be entertained that the student was ignorant of ordinances, regulations, rules or other provisions

(6) The next challenge of the learned counsel for the petitioner is to the vires of the so-called rules contained in Annexure "A" which lay down the categories in their order of preference for the purpose of selection of students for admission. It has been strenuously contended that these rules were wholly ultra vires as the procedure prescribed by S. 31 of the Act read with S. 30 was not followed. Section 30 lays down that the ordinances may provide for all or any of the following matters:

"(a) the admission of students to the University and their enrolment as such;

application form and it was the business of the student to acquaint himself with any rules or principles laid down

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According to S. 31(1), the Ordinances of the University as in force immediately

before the commencement of the Delhi University (Amendment) Act, 1952, may be amended, repealed or added to at any time by the Executive Council; Provided that--(i) * * * * (ii) no Ordinance shall be made--(a) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations, or (b) effecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study, unless a draft of such Ordinance has been proposed by the Academic Council. Ordinance I at page 40 of the University Calendar for 1957-58 is to the effect that no person shall be eligible for admission to the University unless he has passed * * * *, or an examination recognised as equivalent to either of these examinations by the Academic Council from time to time, and possesses such further qualifications as may be prescribed by the Ordinances.

According to the regulations at page 371, the B. A. Degree of the Punjab University is recognised as equivalent to the B. A. Degree of the Delhi University and no distinction is made in the regulations with regard to a degree conferred under regulation 8 or in the ordinary way by appearing in all the subjects at one time. It is thus urged that when the rules contained in Annexure "A" were framed creating such a distinction and placing candidates who had obtained in the B. A. Degree under regulation 8 in the last category that could only be done in compliance with the procedure prescribed by S. 31 as they related to and affected the admission of students.

It is admitted on behalf of the respondents that the aforesaid rules were not framed after complying with the procedure prescribed in S. 31 and it is not the case of the respondents that any ordinance, statute or regulation was framed laying down those rules. It is, however, pointed out on behalf of the respondents that S. 28 of the Act gives the power for the constitution of various Councils including the Academic Council and such other bodies as may be deemed necessary to constitute from time to time.

Statute 7 at page 17 of the University Calendar gives the Constitution of the Academic Council. Statute 8 at page 18 gives powers to the Academic Council to appoint Committees for admission to the University. Ordinance II at page 43 says that there shall be a number of Admission Committees including a Central Admission Committee and a Law Courses Admission Committee. In accordance with Ordinance II (4) (1) the Law Courses Admission Committee has to determine the principles on which admissions are to be made and then to recommend to the Central Admission Committee the students when they are prepared in accordance with those principles to recommend for admission.

These principles are embodied in Annexure "A" and it is inherent in the process of selection for the purpose of admission that certain categories have to be made that have to be given preference according to the qualifications possessed by each student. As the Admission Committee has framed the principles as contemplated by the Ordinance, no question of their vires arises and it cannot be

said that in laying down these principles the Admission Committee was guilty of violating anything enjoined by the Act or the ordinances and statutes framed thereunder.

There seems to be good deal of force in the contentions raised on behalf of the respondents and it is not possible to hold that the machinery prescribed by S. 31 had to be followed in evolving certain principles or rules for the purposes of selection of candidates. An Admission Committee has to decide, according to the number of application received each year and the other sets of circumstances, the order in which candidates would be given preference. When an Admission Committee has been properly constituted for the purposes of selection, there is no question of any ordinances being made under S. 31(1)(ii) of the Act nor can it be said that these rules in any way come into conflict with the Ordinances which have been made relating to the admission of students to the Law Faculty.

(7) It is then contended on behalf of the petitioner that the rules or principles contained in Annexure "A" are of a discriminatory nature inasmuch as a student who has obtained a B. A. Degree under regulation 8 is relegated to the last category even though he may have obtained more marks than the other students who passed the B. A. examination in the ordinary way as regular students and obtained less marks. My attention has been called to Annexure "C" to the petition which shows that a number of students were admitted who had obtained B. A. Degree of the Punjab University and had got marks between 43.20 per cent and 43.80 per cent whereas the petitioner had admittedly obtained 52.2 per cent marks.

The reason given for preference to regular students have been stated in the affidavit of the Dean in paragraph 24 and these reasons appear to be logical and sound. It is stated *inter alia*, that it is the experience of the teachers on the Admission Committee that a person who has undergone a regular course of instruction in a College makes a better student than one who has passed the examination privately and has not had the advantage of the training and discipline of having been a regular student in a College and that a regular student maintains much better and pleasanter relations with the staff than one who has not been a regular student and that both from the point of instruction and from the point of membership of the Faculty in all its educational aspects, a student who has had the training and discipline by being a regular student in the College, before coming to the Law Faculty, is better fitted to be a student of Law than one who had discontinued his studies. Moreover, a student who was able to pass in all the subjects simultaneously as shown better stamina and calibre than the one who has passed in the subjects separately. Thus the classification that has been made by the Admission Committee is based on reasonable data and it is not possible to accede to the contention raised on the ground of discrimination. It is not the case of the petitioner at all that any discrimination was shown to him and that any other student who had similarly passed under regulation 8 has been admitted.

(8) One of the other reasons suggested on behalf of the respondents disentitles the petitioner to any relief as according to the arrangements made by the Law Faculty the total number of 375 students are admitted out of whom half attend the day classes and the other half attend the evening classes. Persons who are in service or employment are taken in evening classes only and are not allowed to attend the day classes. The petitioner admittedly being in employment was not entitled to join the day classes. As he wanted to join the day classes and still persists in asking for admission to those classes, his prayer should be declined on this ground as well.

There seems to be a good deal of force in this point as it is for the University to regulate and provide for the number and type of students who would be allowed to attend day classes and those who would have to attend the evening classes and it was not for the petitioner to make his own choice. It is clear from the affidavit of the Dean (paragraph 19) that no person in employment has been admitted to the day-shift class. An example is given of Mr. Riaz Umar who is employed as a Lecturer in the evening shift of the Delhi College and who applied to be admitted to the day-shift class but was refused admission on that ground. In addition to the case of Mr. Riaz Umar, there were two other cases of applicants, namely, Messrs. Karam Vir Chawla and Roshal Lal who while in employment sought admission to the day classes but were not admitted to those classes on the ground that they were in employment, even though they belonged to a higher category in the matter of qualifications than the petitioner. I consider that the respondents had every justification for not admitting the petitioner on this ground also.

(9) A number of authorities were cited by the learned counsel for the petitioner as well as for the respondents on the question whether in the matter of admission of a student a writ of mandamus can be issued and the University can be directed to admit a student whom it has refused admission on certain grounds. It is unnecessary to discuss them or give any decision on this point as I have held that the respondents were justified in declining to admit the petitioner as a student to the LL. B. (Previous) class both on the ground that he belonged to a category, the turn of which was not reached after the other categories had been exhausted and that he wanted admission to day classes while in employment which he could not ask for.

(10) In the result, this petition fails and is dismissed, but considering all the circumstances of the case, I leave the parties to bear their own costs.

(11) Petition dismissed.