
(2001) 03 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 33286 of 2000

Prashanth E.L.

APPELLANT

Vs

Kuvempu University, Shimoga and Others

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Regulations of Kuvempu University regarding Assignment of Ranks of Students 1991
— Regulation 4

Citation : AIR 2001 Kar 448 : (2002) ILR (Kar) 684 : (2002) 3 KarLJ 364 :
(2002) 1 KCCR 108

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : G. Krishnamurthy, for the Appellant; N, Devadas, Chandrashekar, for R.S. Ravi, for the Respondent

Final Decision : Allowed

Judgement

P. Vishwanatha Shetty, J.—The question of considerable importance that would arise for consideration in this petition is, what is the interpretation to be placed to the word "repeater" at the University Examinations?

2. The few facts which are not in serious dispute and which are relevant for the disposal of this petition, may be stated as hereunder:

(a) The petitioner and respondents 3 and 4 were the students pursuing their Post graduation Degree Course in Sociology in the first respondent-University (hereinafter referred to as "the University"). The Post graduation Degree Course in Sociology is of two years' duration. The examination for the I Year Post graduation Degree commenced on 2nd June, 1999. It is the case of the petitioner that immediately after the petitioner started writing the first question, he could not write further since he suddenly suffered "acute muscle spasm of the right hand and associated c.ulnar nerve irritation of right hand"; and this serious deteriorating health condition of the petitioner having been informed to the

Invigilator, the petitioner was immediately removed to the University hospital and was treated at the University hospital; and he was advised 15 days' rest by the University Doctor; and thereafter, pursuant to the representation given by the petitioner to the University requesting the University not to treat the examination taken by him on 2nd June, 1999 as an attempt, the Chief Examiner for Post graduation Studies, by means of his letter dated 24/26th of June, 1999, a copy of which has been produced as Annexure-C along with the writ petition addressed to the Vice-Chancellor of the University, recommended to the Vice-Chancellor of the University that the examination to which the petitioner had appeared on 2nd June, 1999, should not be treated as an attempt made by him. However, the University, by means of its communication dated 12/16th August, 1999, rejected his request. After the receipt of the said communication, it is the case of the petitioner that he approached the second respondent- Registrar (Evaluation) and requested him to reconsider the earlier decision of the University; and thereafter, he appeared for the I and II Year Examinations of the Post graduation Degree along with other students during the month of May 2000. The results of the said Examinations were announced in August 2000. In the rank list published by the University, a copy of which has been produced as Annexure-F, the third respondent was assigned I Rank and the 4th respondent was assigned in Rank and one Smt. Nagaveni P.G., was assigned n Rank. In respect of the I Year Post graduation Degree Examination, while the petitioner has secured 308, the third respondent has secured 301, out of 500 marks. Insofar as the II Year Post graduation Degree Examination is concerned, while the petitioner has secured 355, the third respondent has secured 354, out of 550 marks.

(b) From the facts set out above, it is seen that the petitioner has secured in all 663 marks as against 655 marks secured by the third respondent out of 1050 marks prescribed both for I and II Year Post-graduation Degree Examinations. Therefore, if the case of the petitioner is not treated as a "repeater" in respect of the I Year Post graduation Degree Examination, the petitioner would be entitled for assignment of I Rank in Post graduation Degree. However, the same was denied to him on the ground that he was a repeater as he had not passed the I Year Post graduation Degree Examination held during the month of June 1999.

3. Sri Krishnamurthy, learned Counsel appearing for the petitioner, submitted that the interpretation placed by the University on the Regulations of the University regarding the assignment of ranking to a student, is totally erroneous in law. It is his submission that since the petitioner had secured higher percentage of marks than all other candidates who had passed the Post graduation Degree Examination during the academic year 1999-2000 and since it is not in dispute that the petitioner was forced to leave the Examination Hall within a few minutes of his writing the examination on account of his ill-health and physical disability to write the examination, he cannot be treated as a "repeater" at the University examination in terms of regulation 6 of the Regulations of the University. It is the submission of the learned Counsel that the

object of the Regulation is to assign ranking to a more meritorious student and that being the object, if a student is prevented from writing the examination on account of the circumstances beyond his control, like serious ill-health, within few minutes of his writing the examination, such a student cannot be treated as a "repeater" for the purpose of Regulation 6 of the Regulations. Therefore, he submits that in this case, since there is no dispute that the petitioner was compelled to leave the Examination Hall on account of his serious ill- health within a few minutes of writing the examination; and his subsequent performance clearly shows that he is academically far superior to other students who had pursued their Post graduation Degree Course during the academic year 1999-2000, it will be totally unjust and unfair on the part of the University to deny the first rank to the petitioner. In this connection, learned Counsel further pointed out that no student would take a risk of writing the I Year Examination papers along with the papers of the II Year Examination. The fact that the petitioner though has written the papers of I and II Year Post graduation Degree Examinations simultaneously and in the said examinations, he has secured more marks than all other students, who had appeared for the II Year Examination, only shows that the petitioner is academically far superior to the other students who had appeared for the examination. Sri Krishnamurthy, in support of his contention, relied upon the decision of the Supreme Court in the case of Abhijit Vs. Dean, Government Medical College, Aurangabad and Another, and that of this Court in the case of Sandeep Shenai Vs. Mangalore University, Mangalore and another, and also that of the Delhi High Court in the case of Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another,

4. However, Sri Devadas, learned Counsel appearing for the University, and Sri Chandrashekar, learned Counsel appearing for respondents 3 and 4, strongly countering the submissions of Sri Krishnamurthy, submitted that since it is not in dispute that the petitioner had written the 1 Year Examination on 2nd June, 1999, the only interpretation that can be placed under the circumstances is that he is a "repeater". According to them, for the purpose of Regulation 6, each of the examinations must be considered as one attempt and even if the petitioner writes for some time in one paper, he should be considered as a "repeater". They submitted that if the interpretation sought to be placed by the learned Counsel for the petitioner is accepted as correct, it will give scope for a student to withdraw from the Examination Hall if he finds that the paper he is writing is tough, so as to take a chance in the next examination. They also submitted that the Regulations are made applicable to all the students and at all times and, therefore, individual case of some hardship or inconvenience cannot be kept in mind while interpreting Regulation 6 of the Regulations. However, Sri Chandrashekar relying upon the decision of this Court in the case of Shamarao Jahagirdar Vs. University of Agricultural Sciences, submitted that since the Authorities of the University, who have framed Regulation 6 of the Regulations, having considered the case of the petitioner, taken a decision that the petitioner is not entitled for the Rank, it is not permissible for this Court to interfere with

such decision in exercise of its writ jurisdiction.

5. In the light of the rival contentions urged by the learned Counsel appearing for the parties, as noticed by me earlier, the only question that would arise for consideration in this petition, is as to whether the petitioner can be considered as a "repeater¹ in respect of the I Year Post graduation Degree Examination?

5-A. Before I do that, it will be useful to have a look at Regulations 2, 4 and 6 framed by the University as amended by means of its notification dated 16th December, 1991, which provide for award of rank. The said Regulations read as follows:

"2. Ranks shall be based on the total marks of examinations of the entire degree/diploma programme of the marks of a limited set of particular years of semesters like the final year or the last two/four semesters on the basis of which classes are declared at the end of final examination, as per regulations governing the course.

4. If more persons than one are bracketed with the same marks, all of them shall get the same rank which is the highest possible rank for them. If two people are bracketed with the same marks for the top position, both will get the same rank (Rank I). Person obtaining the next highest marks will be awarded the next rank.

6. Repeaters at the University examinations shall be those who take the same examination once again for the sake of improvement of class, shall not be eligible for ranking".

6. No doubt, the petitioner had appeared for the paper "Development of Sociological Thought" on 2nd June, 1999; and in the said paper, he has scored 7 marks. Medical Certificate dated 2nd June, 1999, a copy of which has been produced as Annexure-B, issued by the Medical Officer shows that the petitioner was suffering from acute muscle spasm of the right hand and associated ulnar nerve irritation of right hand, and he was advised to take 15 days' rest for the right hand from 2nd June, 1999 to 17th June, 1999. The Chief Examiner of Post graduation, by means of his letter dated 24/26th June, 1999, a copy of which has been produced as Annexure-C, had made recommendations to the Vice-Chancellor of the University not to treat the case of the petitioner as an attempt on account of his ill-health. Therefore, there cannot be any dispute and as a matter of fact, there is no dispute, that the petitioner was prevented from writing the I Year Post graduation Degree Examination in the month of June 1999 along with other students, on account of the circumstances beyond his control; and on account of his acute ill-health, he was compelled to leave the Examination Hall within a few minutes of writing the examination. He did not withdraw from the examination on account of his own volition or with a view to improve his performance in the next examination. The facts of this case would clearly demonstrate that the petitioner is academically far superior to other students who had appeared for both I and II Year Post graduation Degree Examinations. This is clear from the fact that though the petitioner had appeared

simultaneously for both I and II Year Post graduation Degree Examinations during the academic year 1999-2000, the petitioner has secured higher percentage of marks in both the said Examinations. There is no dispute that other students, who had appeared for the I Year Post graduation Degree Examination held in month of June 1999, have secured lesser percentage of marks than the petitioner. There is also no dispute that though respondents 3 and 4 and other student had appeared only for the II Year Post graduation Degree Examination during May 2000, they have secured lesser percentage of marks in said examination than that of the petitioner. Therefore, as noticed by me earlier, it needs no further elucidation to take a view that the petitioner is academically far superior to all other students who had appeared for I and II Year Post-graduation Degree Examinations. In this fact situation, the question that would arise for determination is whether the petitioner could still be considered as a "repeater". In my considered view, the petitioner cannot be treated as a "repeater". "Repeater" in the examination, in my view, in the light of the language employed under Regulation 6 of the Regulations, are those who take the same examination once again for the sake of improvement of the class/rank. This is clear from the words used in Regulation 6 of the Regulations wherein it is stated that repeaters at the University examinations shall be "those who take the same examination once again for the sake of improvement of class". The word "repeater" cannot be read in isolation from the words "those who take the examination once again for the sake of improvement of class". From the language employed in Regulation 6 of the Regulations, it is only such of those students who repeat the same examination once again for the purpose of improving the class or performance, are only made ineligible for ranking and not those students who are compelled to withdraw from the Examination Hall in the middle of the examination on account of serious ill-health. In a given case, whether a student has repeated the examination for the purpose of improving his class or withdrew from the Examination Hall on account of his serious ill-health, is a matter on which the University has to take a decision. However, it is necessary to point out that if a decision is taken by the University one way or the other on appreciation of the fact situation, normally this Court would not interfere with such decision in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India unless the decision taken is highly arbitrary, unreasonable or perverse. But, in the instant case, as noticed by me earlier, there is no dispute that the petitioner was compelled to withdraw within a few minutes of writing the first paper on account of his serious ill-health. Therefore, in my view, Regulation 6 of the Regulations, which suites that a repeater at the University examination is not eligible for ranking, cannot be made applicable to the case of the petitioner as the petitioner did not repeat the I Year Examination for the sake of improving his class. Therefore, if Regulation 6 of the Regulations, referred to above, cannot be applied to the case of the petitioner, the petitioner, in terms of Regulation 2 of the Regulations, is entitled for assignment of First Rank. The Hon"ble Supreme Court, in the case of Abhijit, supra, while considering the question that non- appearance of students at an

examination when due, should be treated as deemed to be an attempt at the said examination for the purpose of reduction of marks while considering the case of such students for selection to Post graduation Degree Course, has observed at paragraph 3 of the judgment as under:

".....We are also of the view that if the rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of five per cent of marks when seeking admission to a Postgraduate course the rule is indeed arbitrary".

This Court, in the case of Sandeep Shenai, *supra*, following the decision of the Supreme Court in the case of Abhijit, *supra*, has taken the view that non-appearance of a student at the final M.B.B.S. Examination on account of his ill-health, cannot be considered as an attempt and. therefore, such a student cannot be denied of his right for declaration of having passed the examination in First Class with distinction in terms of the Regulations of the University.

7. However, at this stage, it is necessary to advert to the contention of Sri Chandrashekar that since the University has taken a decision holding that the petitioner is a "repeater", it is not permissible for this Court to interfere with the said decision of the University. As noticed by me earlier, if there was a dispute with regard to the question as to whether the petitioner withdrew from the examination for the purpose of improving his class or rank; and the University, on consideration of the facts, has recorded a finding that the petitioner withdrew from the said examination with a view to improve his performance, normally this Court would not interfere with such decision in exercise of the power conferred on it under Articles 226 and 227 of the Constitution of India, unless the said decision is either arbitrary, unreasonable or perverse in law or arrived at in disregard of the provisions of the law or the regulations framed by the University. But, in the instant case, as noticed by me earlier, undisputedly the petitioner was compelled to withdraw from the Examination Hall within few minutes from writing the first paper on account of his serious ill- health. Under these circumstances, the only question that has arisen for consideration in this petition is, as to whether Regulation 6 of the Regulations can be made applicable to deprive the petitioner of his right for grant of First Rank in terms of Regulation 2 of the Regulations. As noticed by me earlier, Regulation 6 of the Regulations has no application to the case of the petitioner. Therefore, merely because the University has taken a decision; even when the said decision taken by the University is manifestly wrong, unreasonable and arbitrary, this Court cannot refuse to interfere with the said decision on the sole ground that the decision is taken by an educational body like the University. The ranking secured by a student in pursuit of his education will be of great importance and value to the student to improve his future prospects or career. Therefore, any wrong decision taken in a matter like this by an academic body like the University, cannot be allowed to stand without rectifying the error by this Court when a grievance is

made only on the ground that the academic body has taken a decision. As pointed out by the Full Bench of the Delhi High Court in the case of Master Vibhu Kapoor, supra, relied upon by the learned Counsel for the petitioner, where gross injustice is done by an Institution to a student, it will be mockery of the fundamental rights and justice delivery system, if Courts hesitate to exercise their powers to set right the injustice done to the student on the ground that the Authority, which has taken the decision, is an educational body. In my considered view, while matters concerning academic excellence, curriculum and the nature of the curriculum to be introduced in an educational body and also enforcement of discipline in an educational body, the decision of such bodies should not normally be interfered with by this Court, however, if such bodies totally misinterpret the regulations framed by them or the provisions in a Statute, and on that ground, deny the relief to a student, it is prime duty of this Court to set right the wrong decisions of such bodies and remedy the injustice done to the students. Therefore, I am of the view that the petitioner is entitled for the relief sought for by him.

8. However, at this stage, it is necessary to notice that though the petitioner, at the time of preliminary hearing of this petition, had prayed for an interim order, but the same was not granted; and the University was permitted to assign ranking to other students and the assignment of ranking to other students was made subject to the result of this petition. Therefore, the Question that would now arise for consideration is whether the ranking already given to respondents 3 and 4 and one Smt. Nagaveni P.O., should be recalled? Having regard to the facts and circumstances of the case, I am of the view that it would not be in the interest of justice to direct the University to recall the ranking assigned to respondents 3 and 4 and one Smt. Nagaveni P.G, Regulation 4 of the Regulations provides that if two students secure equal marks, the University shall assign the same rank to such students. Under the peculiar facts and circumstances of this case, since respondents 3, 4 and one other student Smt. Nagaveni P.O., have already been given Ranks I, III and II respectively, in the Convocation held on 22nd December, 2000, I am of the view that the ends of justice would be met if a direction is given to the University to assign first rank to the petitioner also. Learned Counsel for the petitioner fairly submits that he is not keen in getting a direction to the University to withdraw the first rank given to the third respondent and others. I find that the stand taken by the learned Counsel is fair and reasonable.

9. In the light of the discussion made above, I make the following:

ORDER

The first respondent-University is directed to assign I Rank in the Post graduation Degree Course in Sociology to the petitioner in respect of the examination held for the II Year Post graduation Degree during the academic year 2000, in the next Convocation, with all other entitlements which a first rank holder is entitled as per the Regulations of the University.

10. In terms stated above, this petition is allowed and disposed off.