

(2009) 03 JH CK 0072
In the Jharkhand High Court

Randhir Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Citation : (2009) 03 JH CK 0072

Hon'ble Judges : R.R. Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This letters patent appeal is directed against the order/judgment dated 19.07.2006 passed by the learned Single Judge in W.P.(S) No. 5861 of 2002, whereby prayer made for quashing the order, whereunder the petitioner's name was struck off from the roll of the Indian School of Mines, Dhanbad and for direction to the respondents to readmit the appellant in sixth semester for completing the B. Tech. Course, was rejected.

2. The facts giving rise this appeal are that the appellant was admitted in B. Tech. Course in the Indian School of Mines, Dhanbad during Sessions 1995-96. The appellant failed in both first semester regular examination and first semester special examination during Sessions 1995-96. Subsequently, the appellant did not choose to appear in the second semester regular examination during Sessions 1995-96.

3. According to the appellant, when he was in second year, he fell ill seriously and remained under treatment of various doctors for quite a long time and ultimately the appellant underwent surgical operation as a result of which, he could not pursue his study, though the appellant was provisionally registered for third semester of B. Tech. Course for the Sessions 1996-97. The appellant appeared in the second semester special examination but failed in five papers of the second semester. He again opted to appear in the first and second semester during the Sessions 1996-97 as per old Rules and was allowed to continue study,

but he did not appear in the first and second semester during the Sessions 1996-97 and under that situation, his name was struck off from the Institute under an order, as contained in Memo No. 6905(H) dated 26.7.1997, which was challenged by the appellant before this Court vide C.W.J.C. No. 1556 of 1998R. Said case was disposed of by this Court vide order dated 8.4.1999 directing the respondents to consider the case of the petitioner sympathetically. Pursuant to that order, the appellant was readmitted in the Sessions 1999-2000 on a condition of giving undertaking by the appellant and his guardian to abide by the conditions mentioned in the letter dated 15.7.1999 (Annexure-2) which conditions are being reproduced hereinbelow:

- (a) You have to undergo study and appear in the examination under new course structure as being followed during the Session 1999-2000 and onwards;
- (b) You have to complete the B. Tech. programme in the remaining 8 semester period out of the maximum 12 semesters provided for completion of B. Tech. programme under old Rule 9.3 with effect from 1999-2000 session;
- (c) The academic sessions 1997-98 & 1998-99 shall be treated as dies-non for the purpose of counting the period of 12 semesters;
- (d) In the event of your failure to clear I & II semesters in one year period i.e. 1999-2000, which provides for Regular and special examination, your name will automatically be struck off from the rolls of the School. Further, if you fail to clear any of the semesters from III semester and onwards within Regular & Special examinations, your name shall be deleted from the rolls of the School;
- (e) No relaxation in the matter of application of Old Rules shall be given to you in future.

4. Thereafter, according to the appellant, he cleared all the papers of the second semester in the Sessions 2000-01 and then passed the examination of fifth semester during Sessions 2001-02 and then took examination of sixth semester but could not clear one paper and, therefore, his name was again struck off on 20.9.2002 in view of the undertaking given by the appellant in terms of the Letter dated 15.7.1999.

5. Being aggrieved with the said order, the appellant again preferred a writ application bearing W.P.(S) No. 5861 of 2002, which was rejected by this Court on 19.7.2006 holding therein that the appellant did not complete all the semesters in time and has taken about ten years in pursuing study of two or three years and still one and half years" course is left and as such the appellant is not entitled to get any relief. Being aggrieved with the said order, this L.P.A. has been preferred.

6. Learned Counsel appearing for the appellant submits that the appellant did have brilliant past career but unfortunately, he fell ill when he was in second year of B. Tech. Course. When he fell ill seriously, a considerable time got consumed in getting cured and thereby he could not pursue study and could not clear

examination held in the Sessions 1995-96 and then in the Sessions 1996-97 and, therefore, his name was struck off, but when he was readmitted, a very stringent clause was put in, whereby the appellant was to clear B. Tech. programme in eight semesters instead of twelve semesters which, under the rule, is to be provided to the students to complete the course and when the appellant could not clear one paper in the sixth semester, his name was struck off from the course, which is quite illegal, as the respondents should have given the appellant chances for clearing all the subjects in as many as 12 semesters, as per the rule, but the Authority made this appellant to furnish an affidavit under coercion that he would be completing course in eight semesters only and in that event, the appellant cannot be scuttled of his right of availing 12 semesters for completing the course.

7. As against this, learned Counsel appearing for the respondents submits that the appellant was bound by the Rules And Regulations of the School as well as the terms and conditions agreed to by him at the time of re-registration in the School and, therefore, the learned Single Judge rightly rejected the case of the appellant when the appellant could not complete the course even after ten years of his admission and as such the order passed by learned Single Judge does not warrant to be interfered with.

8. Having heard learned Counsel appearing for the parties and taking into consideration the facts and circumstances of the case, it does appear that under the old rule, one is supposed to complete B. Tech. programme in 12 semesters, whereas in case of the appellant when he was readmitted in the year 1999, a condition was imposed, whereby the appellant was asked to complete B. Tech. programme in 8 semesters instead of 12 semesters. Thereupon, the appellant, as per his case, cleared second year course in the Sessions 2000-01 and even took examination of the fifth semester in the Sessions 2001-02 but could not clear one paper in sixth semester and on that account, the appellant's name was struck off perhaps keeping in view the clause "(d)" as contained in Letter dated 15.7.1999 stipulating therein that if the appellant fails to clear any of the semesters from third semester and onwards, his name shall be deleted from the rolls of the School but that clause does not seem to be part of the Rules, rather it was imposed upon through undertaking given by the appellant and, therefore, the argument was advanced on behalf of the respondents that it is now not open to the appellant to raise the legality or propriety of the conditions accepted by the appellant by giving an undertaking, but this submission advanced on behalf of the appellant does not seem to have sanction of the law. Perhaps this submission has been advanced under the doctrine of *pari delicto* but that doctrine of *pari delicto* is not designed to reward the wrong-doer or to penalize the wronged by denying to the victim of exploitation access to justice. The doctrine is attracted only when none of the parties is a victim of such exploitation and both parties have voluntarily and by their free will joined hands to flout the law for their mutual gain. Here in the instant case when the appellant under the situation, as aforesaid, was called upon for re-admission in the year 1999, he

was certainly in position of oppressed and thereby an undertaking was given of clearing B. Tech. Programme in 8 semester, whereas as per the Rule, one needs to clear the programme in 12 semester and further other clause was included disentitling the appellant from continuing his study if he fails in any of the paper of third semester which clause was not shown to us to be part of the Rule and in this situation, the appellant cannot be restrained from enforcing his legal right. In this connection, reference may be made to a decision of the Supreme Court in the case of Mohd. Salimuddin Vs. Misri Lal and Another, .

9. Thus we do find that learned Single Judge did not take into consideration the aforesaid fact that under the Rule one is to be provided 12 semesters for clearing the B. Tech. programme, but the appellant in contravention of the rule was provided with only 8 semesters and that too before completion of 8 semesters his name was struck off. That apart, learned Single Judge dismissed the case of the appellant on the ground that the appellant did not clear B. Tech. programme even after passing off ten years but while observing so, it could not be taken notice of that out of ten years, six years lost in the litigation and one year was lost while the appellant was ill.

10. Under these situations, order passed by learned Single Judge seems to be unsustainable and hence it is set aside.

11. Consequently, taking into consideration the entire circumspect of the case, the appellant, who needs three semesters to complete the course, be given opportunity to complete the B. Tech. programme.

12. Accordingly, the Authority is directed to re-admit the appellant in the third year and provide him three semesters for clearing all the papers for completing the B. Tech. programme.

13. Accordingly, this L.P.A. is allowed.