

(2019) 09 DEL CK 0551

In the Delhi High Court

Case No : Civil Writ Petition No. 9217 Of 2019

Saiprasad R G

APPELLANT

Vs

Jawaharlal Nehru University

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Citation : (2019) 9 AD(Delhi) 592

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : V. Shashank Kumar, Ginny J. Rautray, Anushka Ashok, Rachit Dhawan, Mrinal Harshvardhan

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. A direction sought in the writ petition is to the effect that the petitioner is admitted to the Ph.D. course at the Centre of Law and Governance, Jawaharlal Nehru University (JNU) for the academic session 2019-2020.
2. This writ petition has been filed in the background of the following facts.
3. The petitioner avers that he passed his B.A. LL.B. course in 2004 from Karnatak University, Dharwad. The petitioner further avers that he obtained his LL.M. degree from the National Law School of India University, Bangalore in 2006.
4. Between 2008 and 2014, the petitioner was engaged with a civil society organization and was also employed as an Assistant Professor at Damodaram Sanjivayya National Law University, Visakhapatnam. Crucially, in and about July 2015, the petitioner obtained employment with Symbiosis Law School, Noida, Faculty of Law - Symbiosis International University (in short "SIU") in the capacity of an Assistant Professor.
5. While the petitioner was employed with SIU, he applied for a seat in the Ph.D. programme in the Centre of Law and Governance, JNU, on 30.05.2019.

5.1 Consequently, the petitioner was required to sit for an entrance exam entitled "JNUEE-CEEB, 2019".

6. It is not in dispute that the petitioner qualified the entrance exam and was thereafter via a letter dated 23.06.2019 called to attend a viva-voce exam on 04.07.2019. Admittedly, the petitioner qualified the viva-voce exam, the result qua which was declared on 12.07.2019.

6.1 Consequently, the petitioner put in his pre-enrolment registration application and blocked his seat for the Ph.D. programme in consonance with Clause XXVIII of the e-prospectus issued by the JNU. The petitioner, along with his application, deposited the requisite fee for blocking the seat.

7. Pertinently, on 17.07.2019, the petitioner was called for being accorded admission/registration qua the Ph.D. programme.

7.1 It is at that stage, the petitioner claims, that he informed the concerned authorities in JNU that he was still employed by SIU and, therefore, would not be in a position to produce the relieving order, as was stipulated in the prospectus.

8. It appears that the petitioner asked for an extension of time to submit his relieving order which, as indicated, had to be obtained from SIU.

9. Undeniably, JNU accepted the request of the petitioner and thus accorded extension to the petitioner to submit the relieving order, albeit, on or before 14.08.2019.

9.1 For some strange reason, the petitioner tendered his resignation to SIU only on 27.07.2019. It is averred by the petitioner that to obtain the relieving order at the earliest, he also gave up his notice period salary.

10. Given the position that even by 14.08.2019, the petitioner had not secured the relieving order from SIU, he appears to have submitted a letter in the prescribed form to JNU that his admission to the Ph.D. programme be deferred.

10.1 There is some controversy as regards the period for which the deferment was accepted by the JNU. Therefore, for the sake of convenience, the contents of this document, which are brief, are extracted hereafter :

"Received application from Saiprasad. R.G. who has been selected for admission to Ph.D. (Law and Governance) deferment of admission to Winter Semester 2019 (in case of M.Phil. and Ph.D. programme only)/Next year 2020-21 i.e. Monsoon Semester 2020-21. Candidate will submit the copy of marksheet by 1st November, 2019 for verification of qualification and also eligibility for deferment as mentioned in the application."

11. I may also indicate that it is asserted by the petitioner that the submission of the deferment application was done under coercion.

12. It is in this background that the instant writ petition came to be filed. The writ petition was moved before this court on 26.08.2019. It is important to note

that even on that date, the petitioner had not been able to secure the relieving order from SIU.

13. Having regard to these circumstances, on 26.08.2019, I had passed an order for impleading SIU in the matter. It appears that SIU was served with a copy of the order dated 26.08.2019, in and about, 06.09.2019.

13.1 The fact that the petitioner had obtained the relieving order from SIU is recorded in the proceedings of this court dated 13.09.2019.

13.2 On that date, I had asked learned counsel for the JNU to take instructions as to whether the petitioner could be admitted to the Ph.D. programme for the academic session 2019-2020 against the seat retained for the petitioner.

Submissions of counsel

14. Given this background, Mr. V. Shashank Kumar, Advocate, has addressed the arguments on behalf of the petitioner while on behalf of JNU, submissions have been made by Ms. Ginny J. Rautray, Advocate. Insofar as SIU is concerned, it is represented by Mr. Mrinal Harshvardhan, Advocate.

15. The arguments advanced on behalf of Mr. Shashank are, broadly, as follows:

(i) The petitioner was not responsible for not being able to file his relieving order. In other words, according to Mr. Shashank, no fault could be attributed to the petitioner. The fault, if any, lay with the SIU.

(ii) Since the seat is already retained which, if not, allotted to the petitioner in the academic session 2019-2020, would go waste.

(iii) The court should take a benign view of the purported infirmity which is of not having submitted the relieving order within the extended deadline by taking an equitable view of the matter. In support of his submissions, learned counsel for the petitioner has relied upon the following judgments of the learned single judges of this court:

(a) Sunny Goel v. Ram College of Commerce passed in W.P.(C)No.4415/2014 dated 25.08.2014.

(b) Rt. Rev. Dr. Aldo Maria Patroni, S.J. & Anr. v. The Assistant Educational Officer & Ors. passed in O.P.No.1138/1973 dated 20.11.1973.

(iv) In case of migration, the prospectus gives far greater leeway and that admissions are given based on an undertaking that the documents will be filed by the concerned candidate. In this behalf, my attention has been drawn to the relevant portion of the prospectus wherein the date for such undertakings is set out as October 30 of the relevant academic session.

16. On the other hand, Ms. Rautray, before proceeding with her submissions on merits of the case informed me that she had obtained instructions on the grant of admission to the petitioner to the Ph.D. programme.

16.1 Ms. Rautray stated that the petitioner would be granted admission to the Ph.D. programme, albeit, from the monsoon semester of the academic session 2020-2021.

17. As far as the submission advanced by Mr. Shashank is concerned, which is that the petitioner should be given admission in the academic session 2019-2020, Ms. Rautray says, that this would not be possible as the final deadline for commencement of the course which is 14.08.2019 has already been crossed.

17.1 Furthermore, Ms. Rautray submits that while no fault can be attributed to the petitioner, a similar measure would have to be applied to the JNU as well. According to Ms. Rautray, no fault could be attributed to the JNU as well as it had no role in the petitioner fulfilling the requirement of submitting the relieving order which he had to obtain from SIU.

17.2 Besides this, Ms. Rautray brought to fore the fact that the petitioner knew of the requirement of obtaining the relieving order, if not earlier, certainly on 12.07.2019 when he had blocked a seat for the Ph.D. programme.

18. Learned counsel went on to submit that the JNU had been more than indulgent in extending the date for submitting the relieving order till 14.08.2019 though the petitioner, as per the prospectus, was required to fulfil all requirements on or before 17.07.2019.

19. In addition to the above, Ms. Rautray says that while a seat is available, it would not serve the interest of the petitioner if he is admitted in the academic session 2019-2020 as he would have missed crucial tutorials (foundation and compulsory course) which would impact the outcome of his Ph.D. programme.

20. Learned counsel also informs me that the Ph.D. programme for which the petitioner has gained admission has no tutorials (foundation and compulsory course) in the winter session of 2019-2020.

20.1 Ms. Rautray takes a categorical stand that the tutorials (foundation and compulsory course) qua the Ph.D. programme will commence only in the monsoon session of 2020-21.

21. Mr. Harshvardhan, who appears on behalf of the SIU, says that the petitioner did not make SIU aware of the fact that he had to submit the relieving order by 14.08.2019. The submission of the learned counsel is that, had SIU been made aware of such a requirement, surely steps would have been taken to relieve the petitioner on an earlier date.

21.1 In this behalf, Mr. Harshvardhan has drawn my attention to the resignation letter dated 27.07.2019 tendered by the petitioner.

Analysis and Reasons:

22. I have heard learned counsel for the parties and perused the record. In my

view, the following facts emerge qua which there cannot be any dispute:

(i) The petitioner had sat for the entrance exam and qualified the same. Thereafter, the petitioner took the viva-voce exam and passed the same. The petitioner filed his pre-enrolment application on 12.07.2019 whereby he blocked a seat for himself in the Ph.D. programme.

(ii) The petitioner tendered his resignation to SIU only on 27.07.2019. In the resignation letter, the petitioner did not refer to the fact that he would be required to handover the relieving order before 14.08.2019.

(iii) The e-prospectus, undoubtedly, required the petitioner to fulfil all requirements which included the submission of a relieving order on or before 17.07.2019.

(iv) The petitioner sought an extension for submission of relieving order which was granted to him on 17.07.2019, which in effect required him to fulfil the pre-requisite conditions by 14.08.2019.

(v) Lastly, it is not in dispute that one seat has been retained and the same is offered to the petitioner qua the monsoon semester pertaining to the academic session 2020-2021.

23. Given this backdrop, the argument advanced on behalf of the petitioner by Mr. Shashank Kumar that this court should take a benign view of the matter as the petitioner had done whatever was necessary and no fault can be attributed to him, is something I cannot accept. When the petitioner applied for the programme, he was in the know of the contents of the e-prospectus. More specifically, the petitioner was aware of the condition that since he was employed, he had to obtain the relieving order from his employer i.e. SIU.

23.1. Furthermore, as correctly put forth by Ms. Rautray, on 12.07.2019, when the petitioner blocked his seat for the Ph.D. programme, he should have at least, then, taken the necessary steps to have himself disengaged from SIU. For some strange reason, the petitioner sat quietly and tendered his resignation only on 27.07.2019. Curiously, even in the letter dated 27.07.2019, the petitioner did not bring to the notice of SIU that he required the relieving order at the earliest given the deadline prescribed by the JNU for joining the course in the academic session 2019-20.

23.2 Thus, if anyone is to be blamed for what has happened to the petitioner, it is the petitioner himself. As noted in my narration above, it is only when I had passed an order impleading SIU as a party that there was a movement in the matter.

23.3 Mr. Harshvardhan says that had the petitioner brought to the notice of the SIU that he required the relieving order at an earlier date, relevant steps in that behalf would have been taken.

23.4 Therefore, given these circumstances, I am unable to appreciate the

argument that Mr. Shashank has advanced that I should exercise my equitable jurisdiction in favour of the petitioner. As is well-known, equity follows the law and not the other way. The petitioner, in this case, has not shown necessary alacrity to further his cause and, therefore, I am disinclined to exercise my equitable jurisdiction in his favour.

24. Be that as it may, I may have exercised equitable jurisdiction in petitioner's favour had it been in his interest. JNU, in my view, has been more than accommodating in not only in granting extension to the petitioner on 17.07.2019 but in also agreeing to retain one seat for him in the monsoon semester of the academic session 2020-2021.

25. Therefore, for the foregoing reasons, I am not inclined to grant any relief to the petitioner of the kind prayed for in the writ petition. That being said, JNU will stand by its commitment given to the court that the petitioner will be allowed to join the Ph.D. programme in the monsoon semester of the academic session 2020-2021.

26. The captioned writ petition is disposed of in the aforesaid terms.