

(1996) 10 AHC CK 0112
In the Allahabad High Court
Case No : C.M.W.P. No. 2470 of 1996

Sandeep Kumar Dwivedi

APPELLANT

Vs

Vice-Chancellor, Banaras Hindu University and Another

RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

Citation : (1996) 10 AHC CK 0112

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : M.D. Mishra, for the Appellant; V.K. Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—It is a case in which the Petitioner, a second year student of Master of Computer Application (In short the "M.C.A") in Banaras Hindu University, has been rusticated from all the privileges of the University w.e.f. 11.7.1996, debarred from appearing in all Entrance tests in future and further debarred from taking admission to Ph.D. courses for his indiscretion vide order impugned in this petition. The genesis for this extreme action was that he appeared in M.C.A. Entrance Test, 1996, held on 6.7.1996 even though he was already on the rolls of the University as a bona fide student of M.C.A. second year course. The accusation was that the Act on the part of the Petitioner of appearing in M.C.A. Entrance Test, 1996, held on 6.7.96 was an act which amounted to "misconduct" being concealment of facts that he was already a bona fide student of M.C.A. second year course. Indisputably, there was no occasion for him to appear in the M.C.A. Entrance Test, 1996.

2. It brooks no dispute that the Petitioner was a bona fide student of M.C.A. second year course and had also appeared in M.C.A. second year examination, 1996 as well as in the back-paper of M.C.A. 1st year. He, however, sought mitigation of his conduct by stating that he was induced to appear in the M.C.A. Entrance Test, 1996 by the gauntlet thrown by some fellow students that he

could not romp home a second time on his own merits which hurt his pride of a meritorious student and in a moment of ill-considered action born of his immaturity, he appeared in the test albeit there was no occasion for it. The University authorities, however, fished out this conduct of the Petitioner, being act amounting to concealment of facts and accordingly, inflicted punishment aforestated.

3. The learned Counsel appearing for the Petitioner urged that mere participation in M.C.A. Entrance Test, 1996 by non-disclosure of fact that the Petitioner was already a bona fide student of M.C.A. second year course, did not amount to "misconduct", warranting "disciplinary action" under Ordinances governing "maintenance of discipline and grievances procedure". In opposition, the learnt Counsel for the Respondent University, contended that the concealment on the part of the Petitioner that he was already a bona fide student of M.C.A. second year course, is a species of "misconduct" warranting "disciplinary action" under the Ordinances aforestated. The learned Counsel attempted to suggest that the Petitioner had in fact appeared in M.C.A. Entrance Test, 1996 with a design to help another student to pass muster on his merits and secure admission and owing to timely vigilance and detection, he was filed in his designs.

4. I have bestowed to my anxious consideration to the submissions made at the bar.

5. The Ordinances clearly postulate that no student of the University shall indulge in an act of indiscipline which inter alia includes "misconduct". The Counsel for the Respondent University rightly submitted that the word "misconduct" is of wide connotation. Any Act which is unbecoming of a student would constitute "misconduct" within the meaning of the Ordinances aforestated and the Petitioner had actually done something which was unbecoming of a student of M.C.A. second year course. But the question is whether the punishment awarded to the Petitioner, was commensurate to the said misconduct.

6. A perusal of the "Information Bulletin of Banaras Hindu University Entrance Test, 1995-96" for courses other than B.A. (Honours) and B.Sc. (Honours) would indicate that it expressly inhibited candidates who were admitted as regular students to any courses of studies in the University through Entrance Test in the earlier years and who were eligible for appearing in the concerned examinations, from re-appearing in the Entrance Test for admission in the same courses or same combination of subjects. Similar inhibitions are embodied in the "Information Bulletin" pertaining to Banaras Hindu University Entrance Test, 1996-97, for courses other than B.A. (Honours) B.Sc. (Honours) and M.C.A. but the "Information Bulletin" pertaining to Post-Graduate Entrance Test, 1996 for post graduate courses including M.C.A. does not find mention of a similar inhibition. One of the general requirements mentioned in the said "Information Bulletin" is that the application form of candidates who have submitted fake/fraudulent certificates shall be rejected without any reference to the candidates and further that such candidates are exposed to punitive action, i.e. are likely to

be prosecuted with a further stipulation that the candidates who were found to have submitted fake certificates for admission in the Banaras Hindu University for under-graduate post-graduate courses, shall not be allowed to appear in Post-Graduate Entrance Test but nothing therein provides that in a situation like the one in the instant case, the candidate would be exposed to be hauled up for misconduct. There is no material, direct or intrinsic, substantiating that the Petitioner indulged in any act of impersonation or any act of helping another student to pass muster in M.C.A. Entrance Test, 1996.

7. In the circumstances of the case, I am of the view that non-disclosure in the application form of the fact that the Petitioner was already a bona fide student of M.C.A. second year, by itself does not amount to concealment in that there was no such column in the application form but the conduct of the Petitioner was certainly unbecoming of a post-graduate student and so an act of misconduct understood in its wider connotation. However, the punishment of debarring the Petitioner from appearing in all Entrance Tests in future and further debarring him from taking admission in Ph.D. courses, errs on the side of severity being disproportionate to the act of misconduct aforesaid.

8. The office of the Vice-Chancellor who is the repository of all powers regarding discipline and disciplinary action in relation to students, is no doubt of pivotal importance in the life of the University around whom wheels, the tone and temper of the Institution and on whom depends the continuity of its traditions but in relation to students, he has a dual role to play, viz., the role of an administrator and that of a guardian. As enshrined in the preamble to the Ordinances governing maintenance of discipline and grievances procedure, the University is charged with the task of educating youngmen and women-a task which requires not merely imparting information, a development and academic insight and promotion of potentiality for independent research but also nurturing of the whole personality of an individual and inculcating in him the qualities that go to make him a responsible citizen dedicated to the rule of law. A punishment disproportionate to his misconduct would not be conducive to the development of aforesaid faculties in the student. Undeniably, sometimes sympathetic and benign approach by the Vice-Chancellor who, as stated above, is the repository of all powers relating to discipline and disciplinary action in relation to students, could help generate a better atmosphere for all round development of the personality of students in the campus. The maximum punishment, in my opinion, should be reserved for rarest of the rare cases. In the instant case, impersonation or helping another student to pass muster on his merits and secure admission was not the charge against the Petitioner. It is more than obvious in the set of circumstances that the Petitioner was not actuated by any improper motive but was stimulated to be taking Entrance Test by the gauntlet of fellow students in a moment of ill-considered action of immaturity and puerile behaviour and it should provide mitigation for the extreme punishment inflicted on the Petitioner. I would not resist observing that the circumstances may be insufficient to downgrade the misconduct but they are sufficient to mitigate the

extreme punishment inflicted by the University.

9. In the result, the petition is partly allowed. While maintaining the impugned order in so far as it inflicts the punishment of rustivating the Petitioner from the privileges of the University for the sessions 1995-96 with effect from 11.7.96, the order providing punishment of debarring him from appearing in all the Entrance Tests of the University in future and further debarring him from taking admission to Ph.D. courses is quashed.