
(2015) 01 RAJ CK 0224
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13633 of 2014

Shabnam Ara

APPELLANT

Vs

University of Kota and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 01 RAJ CK 0224

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Kaleem Ahmed Khan, for the Appellant; Anita Agarwal, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alok Sharma, J.—The case set up by the petitioner is that she was admitted into the three year L.L.B. course in the University of Kota (hereinafter the University") in the academic year 2008-09 and passed the first year examination on 04.12.2009. Thereafter (for reasons which are not set out in the writ petition) she let go three academic years i.e. 2009-10, 2010-11 and 2011-12 and wrote the second year examination of three year L.L.B. course in the academic year 2012-13, result whereof was declared on 29.08.2013. Therein the petitioner was found to have failed in one paper i.e. Company Law. The supplementary examination for back papers of second year L.L.B. three year course were held in October, 2013 but the petitioner as per her own admission did not write the said examination as she states that she collected the mark-sheet from the college only on or about 7th November, 2013. The petitioner then represented to the University to allow her to write the supplementary examination in the subject of Company Law pertaining to second year L.L.B. course. Having elicited no response, she first approached this Court in writ petition No. 3768/2014. However, during the course of arguments, it appears that the counsel for the petitioner abandoned the said writ petition on merits and sought liberty of the

Court to make a representation to the University, to allow her to write the second year supplementary examination in the subject of Company Law which she had missed out for reasons of her own making in October, 2013. Then in pursuance of the liberty granted by this Court the petitioner made a representation afresh on 19.05.2014 to the University demanding that either she be allowed to appear in the supplementary examination pertaining to back paper of Company Law in second year L.L.B. course or that she be allowed to appear in third year L.L.B. examination which was to be held in 2014 under the old scheme along with the back paper of Company Law in issue. In the meantime, the petitioner availed the option presented by the University to be inducted into the IIIrd semester of the third year law course (new scheme) which had commenced in 2013 and was admitted thereto. The writ petition does not state the date of the petitioner's admission into the IIIrd semester under the new scheme of the Three Year Law Degree course of the University. But as per the petitioner's own say (para 7 of the writ petition) prior to filing of the writ petition, she had deposited the examination form and fee for writing the IIIrd semester examination of the 3rd year Law Course (new scheme), quite obviously after attending the requisite number of class and having the mandated percentage of attendance.

2. Now the case of the petitioner in this petition, in the facts detailed herein above, is that the action of the University is illogical, arbitrary and against the principles of natural justice. It has been submitted that the petitioner ought to have been promoted to the third year L.L.B. course (old scheme) despite having one back paper (company law) in the second year. It is submitted that even otherwise the petitioner could not be required to migrate to the new scheme of three year L.L.B. course commencing 2013 after having been admitted under the old scheme in the academic year 2008-09. The further submission is that in the alternative the petitioner ought to have been admitted into the fifth semester of the three year law course (new scheme) and not the third semester thereof as has been done in her case. It has been finally submitted that in any event as per the ordinances of the University of Rajasthan which ought to apply to the courses under the University for purported reasons of analogy, the petitioner was entitled to three chances for writing the back paper (Company Law) in second year L.L.B. course (old scheme) and having been denied such number of chances, the action of the University in requiring her to take admission into the IIIrd Semester of the 3 year Law Course (New Scheme) is wholly illegal and liable to be quashed and set aside. In these circumstances, it has been prayed that the petitioner be allowed to appear in the third year law examination under the old scheme along with the due paper of Company Law pertaining to the second year L.L.B. or in the alternative to be admitted to the Vth semester of the 3 year Law Course (New Scheme).

3. The petition was filed on 23.11.2014, but the matter was listed and came up before this Court on an application for early hearing on 20.01.2015. The application for early hearing was allowed for reason of urgency expressed. Notices were issued to the respondents on the same day and the petitioner was

directed to supply a copy of the petition in view of the urgency of the case to Ms. Anita Agarwal, Advocate who had earlier appeared in cases for the University. Thereafter the matter was taken up today i.e. on 23.01.2015.

4. Before addressing the merits of the case, it is important for this Court to observe that in several cases where purported rights of students to write an examination are agitated, the matters even if earlier filed as in this case, are activated just short of the date of the examinations lending the matter an unwarranted urgency and leaving the court little time to notify the opposite parties and obtain their return on the allegations made in the averments and the grounds agitated in the writ petition. This, to my mind, entails conferring unjust advantage on the petitioners, corresponding difficulty on the respondents, and exerts wholly avoidable time pressure on the Court for interim orders half baked for reason of inadequate assistance from the opposite party for paucity of time with the potential of derailing the course of justice. Interim orders are no solution in academic matters and quite undesirable, as held by the Hon'ble Supreme Court as they only entail adding to the confusion, uncertainty and ad hocism with regard to academic matters. Such orders are destructive of discipline in University and Colleges and can contribute to dilution of academic standards. Be as it may, as directed by this Court, Ms. Anita Agarwal has appeared for the University obviously without a formal reply to the writ petition in view of the paucity of time but has assisted this Court on the basis of instructions of the respondent-University.

5. It has been submitted by counsel for the University that the petitioner has not pointed out any provisions under the governing ordinances relevant to the University to establish that the petitioner having failed to write the supplementary examination pertaining to Company Law relating to the second year of three L.L.B. course (old scheme) in October, 2013, she was entitled to demand as a matter of right that she be allowed to subsequently write the said supplementary examination on her askance even if subsequently that purported right was sought to be buttressed by the innocuous direction of this Court by its order dated 12-4-2014 in S.B. Writ Petition No. 3768/2014, that her representation be considered. Counsel submitted that the petitioner did not pursue her earlier writ petition i.e. SBCWP No. 3768/2014 before this Court "on merit". Thus having failed in the first instance before this Court and having only required that liberty be granted by this court to make a representation to the University, the petitioner cannot agitate the same issue afresh before this Court on merit without the representation being first decided. Counsel submitted that the purported right of the petitioner first abandoned before this Court in SBCWP No. 3768/2014, cannot now be reagitated on principles analogous to res judicata and for reasons of good practice. The petitioner would now only have a cause of action on the dismissal of the representation as made following the liberty granted by this Court under its order dated 12.04.2014 in SBCWP No. 3768/2014. And no such case has been set up. She submitted that any other view would only entail encouragement of forum-hunting where an earlier writ

petition praying for the same relief is abandoned as was in SBCWP No. 3768/2014 and a fresh writ petition for the same relief is thereafter filed without any fresh cause of action- such as by way of rejection of the representation made. Counsel submitted that the petitioner appears also to have filed SAW No. 841/2014 before the Hon''ble Division Bench of this Court as referred to in para 11 of the petition, but neither the order of the Hon''ble Division Bench in the said SAW has been enclosed with the writ petition, nor even reproduced therein. However, the petitioner avers in para 11 aforesaid that the Hon''ble Division Bench granted liberty to file an application for review or recall of the order of the learned Single Judge (passed on 12-4-2014). Counsel submitted that in the circumstances, the petitioner instead of approaching this Court by way of this fresh writ petition on the same cause of action ought to have complied with the order passed by the Hon''ble Division Bench and moved an application for review or recall of the order passed by the learned Single Judge in SBCWP No. 3768/2014 decided on 12.04.2014.

6. Aside of the aforesaid, the right to promotion to higher class or of writing the examination therein or in examination of a back paper are all matters governed by the relevant University ordinances. The entire writ petition under consideration is shorn any reference to a governing ordinance which would substantiate the case of the petitioner as has been detailed hereinabove in this writ petition. It has not been stated under which relevant ordinance of the Kota University the petitioner as a second year L.L.B. student under old scheme in the of 2013 was entitled to a grant of a second chance for writing the supplementary examination in the back paper (Company Law). It has also not been stated as to under which provision or ordinance the petitioner despite having failed in one paper in the second year L.L.B. of three year law course (old scheme) was entitled to be promoted to third year with a right to write the back paper in the second year L.L.B. course along with final examination of the third year L.L.B. course. It has been submitted by the counsel for the University that beginning the academic year 2013-14 the University has discontinued the three year law course (old scheme) and substituted it by a new three year course (new scheme). The case of the petitioner was yet sympathetically considered by the academic counsel of the University whereupon the Examination Controller, University vide his letter dated 28.08.2014 informed the Principal, Government Law College, Kota that the petitioner could be admitted as a regular student into the third semester of the three years law course (new scheme) subject to the condition that in the event of her not having studied and passed any paper prescribed for the first semester and second semester of the three year law course (new scheme) while reading as the student of three year law course (old scheme), the said papers would also be required to be written by her as back papers as a student of the three year law course (new scheme). It has been submitted that the petitioner in fact appears to be responsible for the situation in which she finds herself inasmuch as even though she was admitted into the three year law course under old scheme in 2008-09 and in spite of having passed the

first year in 2009, she let go three academic years and wrote the second year examination 2013 following the academic year 2012-13. Therein having failed in one paper in the result declared on 29.08.2013, she again was not vigilant and obtained a copy of the mark-sheet only in November, 2013 during which period in October, 2013 the supplementary examination for back paper/s in the second year L.L.B. course (old scheme) were held. Consequently she could not write the supplementary examination. It has been submitted that in these circumstances the case set up by the petitioner has no force and is liable to be dismissed.

7. Heard the counsel for the petitioner and the respondent-University.

8. The powers of this Court under Article 226 of the Constitution of India are to protect the legal and fundamental rights of the citizen and sans a right or discrimination this court has no roving power to interfere with the decisions of statutory authorities. It is incumbent upon the petitioner student approaching this Court under Article 226 of the Constitution of India to satisfy the Court as to which provision of the statute/ordinance to her benefit has been contravened or overlooked. In cases of students seeking admission into a course or promotion or permission to write examinations through the intervention of the court, it is incumbent upon them to satisfy this Court as to rights claimed with reference to a specific ordinances/regulations of the concerned university. It does not suffice to generalize and claim relief on the vaguely stated grounds of alleged arbitrariness, discrimination or denial of principles of natural justice.

9. The facts of the present case and the grounds agitated in support thereof indicate that the petitioner has not referred to any governing ordinances of the University which have allegedly been contravened. Absent any such contravention it is not for this Court, and this court in fact cannot exercise its extraordinary equitable jurisdiction and come to the petitioner's aid, and in the process negate the opinion of academic administrators on the governing rules/regulations/ordinances. In the case of Medical Council of India Vs. Sarang and Others, (2001) 7 AD 93 : (2001) 7 JT 103 : (2001) 5 SCALE 542 : (2001) 8 SCC 427 : (2001) 4 SCT 332 : (2002) 1 UJ 50 : (2001) AIRSCW 3350 : (2001) 6 Supreme 521 , the Hon"ble Supreme Court has held that "in matters of academic standards, courts should not normally interfere or interpret the rules and such matters should be left to the experts in the field." The matter of the petitioner has been considered by the academic council and decision communicated by the Examination Controller, University of Rajasthan vide his letter dated 28.08.2014 to the Principal, Government Law College, Kota, pursuant where to the petitioner lake admission into the 3rd semester 3 year Law Course (new scheme) of the University sometime in the month of September, 2014, wherein she is presently studying. She also has apparently filled up her examination form for Semester IIIrd Year Law course (New Scheme) and then approached this court belatedly, on an afterthought. No explanation of this conduct has also been given. This by itself would suffice for the petition being liable to be dismissed on grounds of acquiescence and laches.

10. Reference to the ordinances of the University of Rajasthan in support of the petitioner's case is wholly irrelevant because admittedly the aforesaid ordinances do not attract to the rights of the students-such as the petitioner, pursuing their studies in the University of Kota.

11. In the facts and circumstances of the case, the writ petition is without force, completely baseless and liable to be dismissed for reasons detailed herein above. Dismissed.

12. Stay application is also dismissed.