
(2016) 07 JH CK 0118
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3386 of 2015

Shashi Ranjan

APPELLANT

Vs

Indian School of Mines University, Dhanbad

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Citation : (2016) 4 JCR 557

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/s. M.S. Anwar, Senior Advocate and Shivani Verma, Advocate, for the Petitioner; Mr. Anoop Kr. Mehta, Advocate, for the Respondent-ISM

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Petitioner originally came aggrieved by an order dated 21.07.2015 issued by the Respondent No. 4 - Deputy Registrar, Examinations, Indian School of Mines University refusing permission to appear in the special exam of two subjects namely, Waste Water Engineering and Remote Sensing & GIS of M. Tech in the 2nd Semester, apparently on account of failing to complete the minimum 75%/60% of attendance in the said subjects.

3. By an order dated 28.07.2015, a Coordinate Bench of this Court permitted the petitioner to appear in the examination scheduled to be held on 29th and 31st July 2015 in the aforesaid two papers which were made subject to the outcome of the writ petition. Relevant stand of the parties including Rule position were considered in the said order, which is quoted hereunder:

"Aggrieved by order contained in letter dated 21.07.2015 issued by Deputy Registrar (Exam & Acad), Indian School of Mines whereby, the petitioner has been debarred from appearing in 2nd Semester Special Examination in two subjects namely, Waste Water Engineering and Remote Sensing & GIS, the present writ petition has been filed.

2. The learned senior counsel for the petitioner refers to representation dated 31.03.2015 seeking permission to attend special classes, on which the Head of Department made an endorsement "permitted". The learned senior counsel further refers to certificate issued by the Head of Department of the Environmental Science and Engineering, a copy of which is annexed as Annexure-5 to the writ petition and submits that the petitioner, who was suffering from Spinal Spondylitis due to which, he was not able to attend classes, was permitted to attend special classes. The petitioner completed more than required 75% attendance in both the subjects and thus, he is eligible for appearing in the special examination, which has commenced from 27.07.2015.

3. Mr. Anoop Kr. Mehta, the learned counsel for the respondent-ISM submits that since the petitioner failed to attain minimum 60% attendance, which would have made him eligible for grant of permission for attending special classes, the petitioner has been debarred from appearing in two papers. It is submitted that the Head of the Department has tendered an apology on 27.07.2015 to the Director, ISM.

4. A perusal of Clause 3.1 of the Master of Technology (Examination and Miscellaneous Provisions) Rules, 2006 mandates that a student must attend 75% classes actually held in the subject. However, an exception has been made for the students, who did not achieve 75% attendance. The condition permitting a student with 60% or more attendance to make up short-fall of attendance of special examination does not deal with the medical condition of a student, who was completely rendered immobile. Mr. Anoop Kumar Mehta, the learned counsel for the respondent-ISM tries to read the expression "late registration, sick, family calamities and such other contingencies" in Clause 3.1 into Clause 3.2. However, at the first glance, I am not satisfied that in any eventuality, a student cannot be permitted to appear in special examination unless he/she has 60% or more attendance in a subject. The petitioner has attended requisite number of special classes by virtue of the permission granted by the Head of Department on 01.04.2015.

5. Keeping in view the aforesaid facts and circumstances, I am of the opinion that at this stage not permitting the petitioner to appear in the examination would result in irreversible consequence, which may not be remedied, subsequently. Accordingly, the respondents are directed to permit the petitioner to appear in the examination, which would be held on 29th and 31st of July, 2015. However, the same shall be subject to the outcome of the writ petition.

6. Four weeks" time is granted to the respondent-ISM for filing counter-affidavit. The petitioner is directed to produce medical reports.

7. Post the matter after four weeks. "

4. On 26.11.2015 the petitioner again made a prayer to allow him to be registered in the 4th Semester Exam as by then, he had cleared two papers of 2nd Semester Exam. On the said date, petitioner was permitted to be registered

in the 4th Semester, subject to payment of Rs. 25,000/- as fine, which again however was subject to final decision of the writ petition. By the same order, it was directed that results of the petitioner shall be declared for the 2nd Semester. Now, the petitioner has completed 4th Semester and also undertaken the exams, results of which has been withheld due to pendency of the writ application.

5. As the sequence of facts on record and taken note of in the order dated 28.07.2015 also indicate that the petitioner was short of requisite attendance in the said two papers of 2nd Semester Exam, but Head of Department had allowed him to complete the attendance before the special examination. Finding it contrary to the Rules, Director however refused permission to him to appear in the said exam. In the aforesaid background of facts, learned Senior Counsel for the petitioner submits that reasons for shortage of attendance have been considered earlier by this Court while allowing him to appear in the two papers of 2nd Semester Exam in the light of the fact that shortfall of attendance had already been cured pursuant to the decision of the Head of Department of the Institute. Petitioner has also paid fine, as directed, before permitting his Registration in the 4th Semester Exam. Therefore, at this stage, when the petitioner has cleared the necessary papers before the 4th Semester exam and has also taken 4th Semester paper, it would be unjust if his results are withheld for the same reason, which may jeopardise his future career.

6. Learned counsel for the Respondent submits that they have filed counter affidavit to I.A. No. 3634/2016 also on 04.07.2016. Papers of 1st, 2nd and 3rd Semester Exams were cleared by the petitioner. The Respondent also do not dispute that the petitioner has undertaken 4th Semester course pursuant to the interim order passed earlier and taken the exam. Learned counsel for the Respondent however harped upon the provisions of Clause 3.1 of Master of Technology (Examination and Miscellaneous Provisions) Rules, 2006, where under in case of exception, student with less than 75% attendance during the Semester, may be allowed to take the special examination, provided that he has 60% or more attendance. Petitioner admittedly was having less than 60% of attendance, though thereafter because of permission of the Head of Department, he has completed the requisite attendance and taken the exams. These circumstances therefore may allow other students to take it as precedent to violate the Rules and affect the academic culture of the Institute.

7. I have considered the submissions of the parties in the light of the relevant material facts pleaded. From the facts of the present case, it is apparent that shortfall of attendance on the part of the petitioner, though in teeth of clause 3.1 of Rules of 2006, was cured because of conscious decision of its own Head of Department, pursuant to which, petitioner was permitted to take the said two exams of two papers by the interim order passed earlier on 28.07.2015. Petitioner has explained the reasons for his failure to attend the minimum classes on medical ground as he was suffering from Spinal Spondilitis for certain period which may have handicapped him from attending all the classes regularly. Now,

petitioner has not only completed the entire course and has successfully passed 1st, 2nd and 3rd Semester exams, but has also taken 4th Semester exam pursuant to his registration in 4th Semester on deposit of Rs. 25,000/- as fine as per the interim order dated 26.11.2015.

8. In the aforesaid facts and circumstances, this Court is of the view that results of the petitioner should be declared for M. Tech Course, however without treating it as a precedent. Writ petition is accordingly disposed of. Pending I.As. are also closed.