
(2016) 07 DEL CK 0017

In the Delhi High Court

Case No : W.P. (C) No. 9679 of 2015 and CM No. 23142 of 2015 (stay)

Shubhi Singh

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ADDelhi 761

Hon'ble Judges : Mr. Sanjeev Sachdeva, J.

Bench : Single Bench

Advocate : Mr. R.K. Saini with Mr. Varun Nagrath and Ms. Minal Sehgal, Advocates, for the Appellant; Mr. Mohinder J. S. Rupal with Ms Simran Jeet, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J.(Oral)—The petitioner has filed the present petition seeking quashing of the action on the part of the respondent in not permitting the petitioner to appear in the compartmental examination for the paper of "Modern Indian Education" of B.Ed. one year course. The petitioner has not been permitted to appear in the examination in view of Clause 6 of Appendix-II to Ordinance V(2) and VII of the Ordinance of the University regarding course contents and distribution of marks for B.Ed. examination (hereinafter referred to as the Ordinance).

2. The petitioner claims to be a meritorious student and had taken admission in one year B.Ed. course for the session 2014-2015. The final examination of the said course was held during the month of May 2015. The examination of the Modern Indian Education paper was held on 11.05.2015.

3. It is contended that the petitioner had a stroke of severe spinal pain on 10.05.2015, because of which the petitioner was hospitalised in the Indian Spinal Injuries Centre, Vasant Kunj, New Delhi. The petitioner thereafter immediately

provided information to the Central Institute of Education about her admission in the hospital. The petitioner was discharged from the hospital on 15.05.2015. Because of the illness and hospitalisation, the petitioner could not appear in the paper "Modern Indian Education" on 11.05.2015. The petitioner had however appeared in the internal assessment of the said subject but could not appear in the theory examination which was held on 10.05.2015.

4. On 29.06.2015, when the final result was declared, the petitioner was declared "fail" as the petitioner had not cleared all the five papers. The petitioner had secured 19 marks out of 25 in the internal assessment of the said paper and in aggregate i.e. the total of four subjects plus the internal assessment, the petitioner scored a total 629 marks out of 1000.

5. The petitioner sought permission of the respondent University to appear in the compartmental examination. However, the petitioner was not permitted in view of Clause 6 of the said Ordinance. The petitioner, thereafter, made several representations to the respondent. However, the respondent refused to accede to the request of the petitioner and directed that the petitioner could only appear in the final examination and not in the compartmental examination.

6. The contention of the petitioner is that the absence of the petitioner was on account of circumstances beyond her control. It is contended that if the petitioner is permitted to take the compartmental examination, the petitioner would be required to take the examination of only the paper in which she had failed to appear. However, in case she was required to appear in the annual examination then the petitioner would have to take the examination in all the five subjects.

7. Learned counsel for the respondent contends that in view of Clause 6 of the said Ordinance, the petitioner had not been permitted to take the compartmental examination as the petitioner had absented herself. He contends that a candidate is permitted to take compartmental examination only if a candidate has obtained not less than fifty per cent of the aggregate marks but has failed in one subject obtaining not less than twenty five percent marks in that subject. Since the petitioner had absented herself from the said examination completely, she was not qualified under Clause 6 of the said Ordinance to take the said examination. Learned counsel for the respondent submits that the respondent is bound by the Ordinance and has to strictly apply the same and no deviation can be made from the said Clause. Reliance is placed on the decision in the case of High Court of Gujarat v. G.K.M. Panchayat, 2003 (3) Scale Page 66 to contend that a Court has to interpret the provisions of a Statute strictly and should not attempt to rewrite the Statute so as to render a particular provision redundant or otiose.

8. Clause 6 of the said Ordinance reads as under:-

"6. Any candidate who has obtained not less than fifty per cent of the aggregate marks but has failed in one subject only under Part "A" or in Part "B" of the examination, obtaining not less than twenty five percent in that subject under

Part "A" or Part "B" as the case may be, may be admitted to a Compartmental Examination in that subject only to be held on any date within 6-8 weeks of the announcement of the University Annual examination results in that year, or if he fails to pass or fails to present himself at the Compartmental Examination, then at the next annual examination on payment on each occasion of the same fees as are prescribed for the B.Ed. examination and he shall be declared to have passed, the examination in the year in which he successfully completes his examination."

9. By interim order dated 12.10.2015, in the present writ petition, the petitioner was permitted to sit in the compartmental examination which was held on 17.10.2015. The petitioner did take the said examination and has qualified the same.

10. The facts of the present case are peculiar. The petitioner is a bright student and has secured 610 marks out of 900 in the remaining four subjects which aggregates to over 67%. In the Modern Indian Education subject, the petitioner has secured 19 marks out of 25 in the internal assessment which translates to approximately 76%.

11. The petitioner could not take the said examination because the petitioner was admitted in the Indian Spinal Injuries Centre. The petitioner has also annexed a copy of the Discharge Summary dated 15.05.2015 issued by the said hospital which records the date of admission as 10.05.2015 and discharge as 15.05.2015. Because of her illness and admission in the hospital, the petitioner could not take the examination which was held on 11.05.2015.

12. The petitioner, admittedly, is a bright/meritorious student and could not take the examination because of her illness. The University by the said Ordinance is contending that a student, who is not having enough merit to clear an examination, would still be permitted to take the compartmental examination, if the student appears in the paper and fails securing more than 25%. On the other hand, a bright student like the petitioner, who could not take the examination because of her admission in hospital, would have to repeat all the papers including the papers in which she has aggregated over 67%.

13. It may be noted that the ordinance provides that the compartmental examination would be held within 6 - 8 weeks of the declaration of the result whereas the annual examination is held after one year. A candidate who qualifies in the compartmental examination would be in a position to pursue further education or take up employment and would thus save a year but the petitioner because of circumstances beyond her control would be forced to waste a year.

14. One has to also keep in mind that illness of the nature that the petitioner had suffered was not in her hand. She was admitted in hospital and the Discharge Summary records that the petitioner was evaluated by a team of spine surgeons and was diagnosed as a case of Extra for aminal left Prolapse intervertebral disc L5-S1, S1-S2 (lumbarised sacrum) with left S1 radiculopathy. She was managed

conservatively with IV analgesics and hydrotherapy and physiotherapy. The Summary further records that Neurology reference was taken for c/o pain in left side of head and face which is radiating to left half of body and managed accordingly. The petitioner was discharged though in stable condition but with the certain advice/precautions. It cannot be said that the petitioner for the purposes of skipping the examination has fudged the medical record. The petitioner, in the present case, had genuinely suffered and could not take the examination because of her illness and admission in the hospital.

15. The contention of the learned counsel for the respondent that if the ordinance was not strictly applied and relief were to be granted to the petitioner, then the same could be misused by other students and students who were not well prepared in a paper may feign illness and procure medical documents and avoid an examination and then seek to appear in the compartmental examination, cannot be accepted in view of the peculiar facts of the present case. The petitioner was admitted in the hospital because of a serious illness. It is not a case of a candidate relying on a medical certificate showing illness of a general nature. The two situations cannot be compared. The judgment in the case of G.K.M. Panchayat (Supra) is not applicable in the facts of case of the petitioner. The ordinance of the University has to be read in a purposeful manner. The ordinance has been framed for the benefit of the students and to ensure that a student does not lose a year. Certainly if a student skips an examination at his/her own violation, the student cannot be permitted under the ordinance to take the compartmental examination. The intention of the ordinance is not that a whole year of a bright student should go waste because of circumstances like the ones that exist in the case of the petitioner. Not only would a whole year go waste but also the petitioner would have to repeat all the papers including the ones in which she has scored over 67% marks. In the peculiar facts of the present case, to deprive the petitioner of the benefit of the compartmental examination would be too harsh.

16. It may also be noted that the petitioner was permitted by an interim order in this petition to appear in the compartmental examination. The petitioner has passed in the compartmental examination. Not only has the petitioner passed in the compartmental examination but she has also appeared in the entrance examination for the higher course i.e. M.Ed. and has qualified the same and has secured a seat in the higher course.

17. Denying relief to the petitioner would, in the above noted facts, amount to wastage of two years of the petitioner. The examination in issue was held in 2015. The annual examination for the year 2016 is already over and the next annual examination would be held in 2017. The petitioner would be required to then appear in all the subjects of B.Ed. and would lose her seat that she has secured in the higher course (i.e. M.Ed.) which would be too harsh.

18. In view of the above, the writ petition is allowed. It is clarified that the present order is being passed in the peculiar facts and circumstances of the case

of the petitioner and is not to be treated as a precedent.

19. Since the petitioner has already appeared and qualified in the compartmental examination, the result of the petitioner shall be formally declared and all benefits of the said result shall enure to the petitioner. The petitioner would also be entitled to seek admission in the M.Ed. course, if otherwise qualified.

20. Dasti under the signatures of the Court Master.