

(2005) 04 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : LPA (OW) No's. 102 and 106 of 2004

University of Jammu and Another

APPELLANT

Vs

Janshruti Mehta and Another

RESPONDENT

Date of Decision : 11-04-2005

Acts Referred:

Citation : (2005) 04 J&K CK 0013

Hon'ble Judges : S.N. Jha, C.J;S.K. Gupta, J

Bench : Division Bench

Advocate : J.P. Singh, for the Appellant; L.K. Sharma and Sunil Hali, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, C.J.—The dispute in these two letters patent appeals being common, they were heard together and are disposed of by this

common order. Before referring to the nature of dispute the facts of the cases may, briefly, be stated.

2. Writ petition, OWP No. 915/2003 giving rise to LPA (OW) No. 102/2004, was filed by respondent Janshruti Mehta seeking direction upon

the University of Jammu and its officials, appellants herein, to admit him to the eighth semester of the Bachelor of Engineering (Mechanical) course

and allow him to attend the classes provisionally on condition that he should pass the examination of the seventh and eighth semesters. His case is

that he was admitted to the Bachelor of Engineering (Mechanical) Course in the Government College of Engineering and Technology, Jammu on

the basis of a competitive examination conducted by the Competent Authority in the year 1999. He passed six semesters without any 're-appear' in

any subject and joined the seventh semester. The examination of the seventh semester was scheduled to commence on 29th August, 2003. On

24th August, 2003 he met with an accident and sustained serious injuries. He was admitted to the Government Medical College Hospital, Jammu

and then shifted to Dr. Karam Singh Memorial Orthopaedic Hospital and Research Centre, Amritsar where he was operated upon. He remained

in the said Hospital as an indoor patient from 25th August, 2003 to 31st August, 2003. On discharge he was advised bed rest for two months. On

16th September, 2003 he submitted an application to the Registrar of the University seeking permission to join the eighth semester course. Along

with the application he submitted certificates issued by the Hospital, On reference the hospital confirmed the incident and the Principal,

Government College of Engineering and Technology, Jammu recommended that the statute which bars admission of a student to the next higher

semester be relaxed. Despite recommendation of the Principal, the University authorities did not permit the respondent to join the eighth semester

and in the circumstances he approached this Court seeking the aforementioned reliefs.

3. By an interim order dated 15th November, 2003 the respondent was allowed to attend the classes of eighth semester. By another interim order

dated 4th March, 2004 he was permitted to appear in the examination of the eighth semester.

4. Writ petition, OWP No. 1092/2003, giving rise to LPA (OW) No. 106/2004 was filed by respondent Manjit Singh seeking similar direction as

in the other case. According to him, he had cleared the subjects of the first six semesters except one subject each in the second, fourth and sixth

semesters. Before he could sit at the examination of seventh semester which was to commence on 29th August, 2003, he fell ""sick"" and remained

under treatment of Dr. R.L. Chowdhary for Pyrexial respiratory illness from 29th August, 2003 to 10th September, 2003. When his condition

became ""from bad to worse"", he was admitted to the Government Medical College Hospital, Jammu for treatment from 4th September, 2003 to

10th September, 2003. As a result of said illness he could not appear in the examination, and as he did not appear at the examination he was not

allowed to join the eighth semester course. He submitted an application to the Principal, Government College of Engineering and Technology,

Jammu to allow him to attend the classes which did not bear any result. He filed the writ petition on 28th November, 2003 seeking direction to

allow him to attend the eighth semester classes of the Bachelor of Engineering (Computer) course.

5. By interim order dated 24th December, 2003, while admitting the petition to hearing, the appellants were directed to provisionally permit the respondent to eighth semester. By another interim order dated 7th June, 2004 the respondent was allowed to appear in the examination of eighth semester provisionally at his own risk without conferring any right- the result thereof was not to be declared till further orders of the Court.

6. OWP No. 915/2003 was finally disposed of by the judgment and order under appeal on 30th September, 2004. The learned Single Judge held

that the statute (to be referred to soon hereinafter) does not create absolute bar to prevent the candidate from appearing in the next semester under

all circumstances. While a willful defaulter may be prevented from appearing in the next semester taking advantage of the statute, it should not be

applied against a person who is ""victim of the circumstances beyond his control"". The learned Judge observed that if by virtue of the statute a

candidate, who failed in the seventh semester can be permitted to attend the classes of eighth semester ""why a person who has been prevented

from circumstances beyond his control to appear in seventh semester examination, be not permitted to sit in eighth semester?"" The learned Judge

observed that ""there does not seem to be any logic, rationale or valid purpose for proviso (2) attached to statute 12.1"". The learned Judge further

observed that in an appropriate case 'shall' can be read as 'may' and a provision can be 'read down' if it appears to the Court that the same does

not serve the legislative purpose or gives an absurd meaning to defeat the purpose for which it has been enacted. Observing thus the learned Single

Judge regularized the respondent's admission of the petitioner to the eighth semester and directed the appellants to declare his result of the eighth

semester examination.

7. The writ petition of Manjit Singh, OWP No. 109/2003, came up for hearing on 12th September, 2004 and was disposed of following the

judgment and order in OWP No. 915/2003, in the case of Janshruti Mehta, in the same terms.

8. The University has preferred theses appeals against the said judgments and orders of the learned Single Judge on the ground that the learned Judge has virtually re-written the statute by placing an interpretation which is contrary to its plain and unambiguous language and intention. It is submitted that the statutes have been framed by experts on the subject and though the Courts have power to interpret it, it cannot be interpreted in a manner as to make it superfluous and redundant. The statute confers power on the Vice Chancellor to remove any difficulty or anomaly arising out of its application, but usurping the power of the Vice Chancellor, the learned Single Judge accepted the case of the respondents as if he were deciding the representation on behalf of the University. It is said that the judgment has opened a flood-gate of spurious claims and the nature and scope of the statute therefore needs to be decided.

9. At this stage the relevant statute i.e. statute 12.1 of the Revised Statutes governing the Degree of Bachelor of Engineering dated 17th April, 2003 may be noticed as under:

12.1 If a candidate after attending the course of studies in the college, appeared in any semester examination and failed in one or more courses for that examination, he can re-appear for such courses at subsequent examination(s) without attending a fresh course of studies for that semester in the college. Such a candidate may, in the meantime, prosecute his studies for the next semester(s) and appear in the examination(s) for the same along with the examination for the lower semester(s).

Provided that a candidate shall not be allowed to attend classes and appear in the semester examination(s) mentioned in column (a) unless he/she has passed 50% of the theory courses in semesters mentioned in column (b) below:

(a) (b)

5th semester 1st to 3rd semesters

6th semester 1st to 4th semesters

7th semester 1st to 5th semesters

8th semester 1st to 6th semesters

Provided further that a candidate shall not be allowed to attend classes in the next higher semester unless he has appeared in the examination of

immediate preceding semester.

10. On a plain reading it would appear that a candidate who attended the course of studies and appeared in any semester examination but failed in

one or more courses, he can re-appear for such course in subsequent examination(s) without attending fresh studies for that semester. He may

also, in the meantime, prosecute his studies in the next semester(s) and appear in the examination(s) along with the examination for the lower

semester(s). However, he cannot be allowed to attend the classes and appear in the examination for the higher semester(s) unless he has passed

50% of the theory courses in the relevant semesters as mentioned in the columns. Relying on these provisions, the learned Single Judge observed

that if a Tail' candidate can be allowed to attend the classes and also appear in the examination(s) of the next higher semester(s), why he cannot be

permitted to attend classes of the next semester(s) if he did not appear in the examination? In other words, if a candidate who appears but fails in

the examination can be permitted to attend the classes and also appear in the examination of the next higher semester, a candidate who did not

appear at the examination of the lower semester cannot be denied the opportunity to attend the classes of the next higher semester.

11. The reasoning appears to be attractive but not without a caveat. The main part of statute 12.1 is an enabling provision which enables a

candidate to re-appear in the subjects of the course in any semester examination without attending fresh course of studies in that semester(s) in the

college. He may also prosecute his studies in the next higher semester(s) and also appear in the examination(s). The first proviso puts a rider. The

facility is not available to a candidate who has failed to clear 50% of the theory courses in the relevant semester(s). Thus a candidate who has not

passed 50% of the theory course in the first to third semesters cannot be allowed to attend the classes and appear in the semester examination of

the fifth semester. A candidate who likewise has not passed 50% of the theory course in the first to fourth semesters cannot be allowed to attend

the classes and appear at the semester examination of the sixth semester, and so on. The second proviso which is the bone of contention in the

instant case puts a further rider. It prevents the candidate from attending the classes in the next higher semester if he did not appear in the

examination of the immediate preceding semester.

12. The question which immediately arises for consideration is whether while making a judicial review of the action of the University, the Court can

ignore the mandate of the statute? As seen above, the learned Single Judge observed that ""there does not seem to be any logic, rationale or valid

purpose"" underlying the second proviso, but he did not declare the proviso to be ultra vires or strike it down on any other ground. Besides, we do

not think that the proviso is bereft of any logic, rationale or purpose. The object of the proviso apparently is to ensure that the candidate regularly

attends the classes and also appears at the examination which in the ordinary course a student does or is required to do at the end of the course.

Under statute 3.1 of the aforesaid Statutes, the candidate is required to have attended not less than 75% of the total number of lectures delivered in

each subject in the semester concerned to be eligible to appear at the examination, Though, of course, there is provision for condonation of

shortage of attendance under statute 4 but then that is a matter to be dealt with by the authorities themselves.

13. It appears to us that the object of the second proviso is to ensure that the candidate has regularly attended the classes and prosecuted his

studies. No doubt there may be cases where despite regularly attending the classes and prosecuting the studies a candidate is not able to appear in

the examination, but then, whether he has sufficient cause for not appearing at the examination is a matter to be considered by the concerned

authority and not by courts. The courts in exercise of power of judicial review cannot usurp the discretion and functions of the administrative

authorities. It goes without saying that if the authority omits to perform its functions and discharge its duties, or its action is found to be arbitrary or

capricious or mala fide, it is open to the person aggrieved to approach the Court and seek relief. Statute 17 of the Statutes empowers the Vice

Chancellor to remove any difficulty or anomaly arising from application and implementation of the statute, and give authoritative interpretation of the

statutes.

14. It was submitted that the manner in which the proviso to statute 12.1 has been interpreted has virtually obliterated the requirement of appearing

at the semester examination and made the provision superfluous. As observed

by the learned Single Judge, the Statute has to be read as a whole.

So read, it would appear that the three parts of Statute 12.1 cover different fields. While the main or the first part enables the candidate to re-

appear in the 'failed' subjects and also simultaneously attend the classes and appear in the examination(s) of the next higher semester(s), the first

proviso curtails the right to attend the classes and appear in the examination to a certain extent if his performance in the examination of the previous

semester(s) has not been upto the mark, the second proviso restricts his right to attend the classes, if he was not diligent in prosecuting the course.

Thus different parts of the Statute occupy different fields and reading down the second proviso in the manner as to make it superfluous will mean

that the candidate -- by virtue of the first part, but subject to second part -- must be allowed to attend the classes in the higher semester(s) and

also appear in the examination(s) notwithstanding that he did not even attend the classes and prosecute the course and finally did not appear in the

examination of the concerned semester.

15. We are in agreement with the appellants' counsel that the genuine hardship of a candidate who could not appear at the semester examination

for a valid reason can be redressed by the Vice Chancellor in exercise of power under statute 17 of the Statutes and, therefore, it is not necessary

to read down the proviso. The rule of reading down a provision of law is a rule of harmonious construction. It is to be resorted to, to smoothen the

crudities or ironing the creases found in a statute to make it workable. In the garb of reading down it is not open to read words and expressions

not found in it and venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular

provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to

fulfill its purpose *Calcutta Gujrati Education Society and Another Vs. Calcutta Municipal Corporation and Others*,

16. Coming to the instant cases, it transpired in the course of hearing that during the intervening period Janshruti Mehta, respondent in LPA No.

102/2004, appeared in the seventh semester examination and passed it He also appeared, pursuant to interim order of this Court, in the eighth

semester examination. The result thereof has not been declared in view of the

Court's order. Mr. J.P. Singh, learned Counsel for the appellant

University, fairly stated that as the position now stands, there has been compliance of the statute in the case of the said respondent and, therefore,

his result of the eighth semester examination may be declared. However, as regards Manjit Singh, respondent in LPA No. 106/2004, Mr. Singh

pointed out that unlike Janshruti Mehta, he did not appear/pass the seventh semester examination. On facts also, Mr. J. P. Singh submitted that the

explanation of non-appearance at the seventh semester examination appears to be concocted. The respondent claims to be under treatment of Dr.

R. L. Chowdhary from 29th August, 2003 to 10th September, 2003. During part of the period he also claims to be in Government Medical

College Hospital from 4th September to 10th September, 2003. Mr. Singh submitted that the examination was to commence on 29th August,

2003 and it was no simple coincidence that he fell "sick" on 29th August, 2003 itself -- allegedly suffering from respiratory problem which has kept

him in bed rest upto 10th September, 2003. Mr. Singh pointed out that the respondent claims to have obtained the certificate on 10th September,

2003 but approached this Court on 28th November, 2003.

17. Having taken the view that sufficiency or otherwise of the cause shown by the candidate for his non-appearance at the examination in the lower

semester is to be considered by the authority i.e. the Vice Chancellor, it is not desirable for us to express any opinion on merit of the case. It is for

the Vice Chancellor to consider the same and take appropriate decision.

18. In the above premises, while setting aside the judgments of the learned Single Judge, we direct the appellant-University to declare the result of

eighth semester examination of respondent Janshruti Mehta. As regards respondent Manjit Singh, we permit him to make representation to the

Vice Chancellor.

19. In the result, the letters patent appeals are allowed.