

(2011) 01 DEL CK 0376

In the Delhi High Court

Case No : Writ Petition (C) 7869 of 2010 and CM No. 20309 of 2010

Vikash Kumar Singh

APPELLANT

Vs

University of Delh and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 01 DEL CK 0376

Hon'ble Judges : Rajiv Saha Endlaw, J

Bench : Single Bench

Advocate : Prithvi Pal, for the Appellant; Amit Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Saha Endlaw, J.—The Petitioner was admitted to the M.A.(Social Work) course of the Department of Social Work of the Respondent No. 1 University in the year 2009 and was also provided Hostel accommodation in the said Department. The Petitioner could not clear the first semester examination held in or about December, 2009. However as per the Rules he was still promoted to the second semester and successfully cleared the second semester examination held in April, May, 2010 and was promoted to the third semester. The Petitioner was required to take both the first and the third semester examinations scheduled to be held in November, 2010. It is the case of the Petitioner that the Respondent No. 2 being the Head of Department of Social Work and who is also a Provost of the Hostel of the said Department developed enmity towards the Petitioner and owing whereto he first issued notice to show cause to the Petitioner on the ground of misconduct in the Hostel, on false and frivolous grounds and upon being not in a position to prove, ended merely in a warning. The Petitioner pleads that in furtherance of the said enmity, the Respondent No. 2 first issued a Memo dated 20th September, 2010 to the Petitioner to the effect that the Petitioner had not submitted the Field Work Reports "from last one month" and that the Petitioner had not attended any individual conference "for last three weeks" and

thereafter issued another Memo dated 30th September, 2010 complaining that the Petitioner had not attended Field Work "for the last two months" and also not submitted any report for the same and had also not attended or submitted group conference paper or made presentation thereon. It was also mentioned in the Memo dated 30th September, 2010 that the Petitioner had thus rendered himself ineligible to appear in the Field Work examination. It was yet further mentioned in the said notice that the classroom attendance of the Petitioner was also negligible and as such the examination form of the Petitioner could not be forwarded to the Examination Branch.

2. The Petitioner contends that the falsity of the Memos dated 20th September, 2010 and 30th September, 2010 is evident from inconsistencies therein, though only 10 days apart.

3. It is further the case of the Petitioner that the Respondent No. 2 thereafter sent a letter dated 8th October, 2010 to the father of the Petitioner informing that the Petitioner had attended only 2 out of 22 lectures in the Paper No. 6301, 6 out of 19 lectures in Paper No. 6302, Nil out of 23 lectures in Paper No. 6303, 3 out of 13 lectures in Paper No. 7101 and Nil out of 17 lectures in Paper No. 7201. It was thus stated that the Petitioner had attended only 11 out of 94 lectures. It was yet further stated in the said letter dated 8th October, 2010 that the Petitioner had not attended any Field Work which was compulsory and was thus unlikely to be allowed to appear in the semester examination as per the University Rules.

4. The Petitioner contends that thereafter yet another undated Memo was served on him complaining that he had not attended Field Work "since past two months" and not responded to the earlier Memo of 20th September, 2010 also. The Petitioner pleads that the Respondent No. 2 in his zeal to punish the Petitioner, signed the undated Memo also at the place earmarked for Director.

5. The Petitioner on 29th October, 2010 submitted to the Department that he was suffering from a viral fever from 21st August, 2010; he had tried to attend Field Work activities but from 5th September, 2010 had been unable to attend the Field Work activities also. The said letter was accompanied with a Medical Certificate issued by a Doctor at Allahabad who certified that the Petitioner was under his treatment from 21st August, 2010 to 29th September, 2010.

6. The Petitioner pleads that though the examination fee was collected from him and his name was also included in the list of students to take the third semester examination in November/December, 2010 to commence from 24th November, 2010 but he was not issued the admit card. This writ petition has been filed claiming the relief of directing the Respondents to release the admit card of the Petitioner.

7. The writ petition came up before this Court first on 23rd November, 2010 i.e. just a day before the commencement of the examination. The writ petition was accompanied with an application for interim relief. Attention of the counsel for

the Petitioner was invited to the judgment dated 20th October, 2010 of this Bench in W.P.(C) No. 2790/2010 titled Gagandeep Kaur v. GNCTD holding inter alia that illness is not a ground for not meeting the requisite attendance criteria. However, notice of the writ petition was issued and vide interim order the Petitioner permitted to take the examination subject to the final outcome of the writ petition and without creating any equities in his favour and with a further direction that the result of the Petitioner be not declared.

8. The Respondents have filed a counter affidavit pleading that as per the Rules, a student is required to have minimum 75% attendance with discretion in the Head of Department to condone shortage of attendance of not more than 10%; that the Petitioner having attended only 11 out of 173 classes held in the 5 theory papers of the third semester, had an attendance of only 6.35% and was rightly refused permission to sit in the examination.

It is further pleaded that the attendance record of the Petitioner in the previous two semesters was also poor and dismal; that the Petitioner had failed to attend the Block Field Work throughout the semester; his attendance in the Field Work Practicum (Paper No. 6304) is zero; that he had never appeared in the internal assessment tests of any paper of the third semester; that he had not attended Block Field Work Training (Paper No. 6305) held in summer 2010 and its viva-voce examination held on 15/16th November, 2010; that as per the Rules, a student who fails in Social Work Practicum has to repeat both practical and all theory papers of that semester for promotion to the next semester. The Respondents in the counter affidavit have denied any enmity of the Respondent No. 2 towards the Petitioner and have pleaded that the Respondent No. 2 has acted in the discharge of his duties as the Head of Department and as the Provost of the Hostel. It is denied that there is any inconsistencies in the Memos of 20th September, 2010 and 30th September, 2010; it is explained that the Memo of 20th September, 2010 was with regard to non-submission of Field Work Report, while the Memo of 30th September, 2010 was with regard to non-attendance of Field Work. It is explained that at the time when the Respondent No. 2 signed the Memo at the place marked Director, the Director was on leave and the Respondent No. 2 was officiating in his place. It is further pleaded that though the Medical Certificate was only till 29th September, 2010 but the Petitioner has not provided any justification for absence thereafter also. It is pleaded that the attendance report of all students upto 18th September, 2010 was displayed on the Notice Board on 22nd September, 2010 and the final attendance was displayed on 22nd October, 2010. It is pleaded that deposit of examination fee does not create any right.

9. When the matter was called out today, the counsel for the Petitioner sought an adjournment inspite of having been warned on the last date of hearing that repeated adjournments may deprive the Petitioner of any efficacious relief. The counsel for the Petitioner then stated that though rejoinder had been filed but it was not on record. He was told that the copy could be handed over in the Court.

He then contended that he had received an advance notice of an application filed by the Respondents for correcting an error in the counter affidavit filed. The said application however is not listed today. The counsel for the Respondents has handed over a copy of the said application in the Court. The counsel for the Petitioner then offered to argue the writ petition today itself. The counsels have been heard.

10. The Petitioner in his rejoinder to the counter affidavit has not pleaded anything new.

11. The crux of the arguments of the counsel for the Petitioner is that the Respondents in the counter affidavit filed have falsely pleaded that the Petitioner inspite of obtaining the interim order from this Court did not appear in the examination held on 1st December, 2010. It is urged that upon the Petitioner controverting the said fact in the rejoinder. The application aforesaid was filed by the Respondents for correcting the other error. It is argued that when the Respondents in the counter affidavit have indulged in falsehood then neither the other pleas of the Respondents in the counter affidavit nor the records of attendance maintained by the Respondents could be believed.

12. The Respondents in the application for correction of the counter affidavit have stated that the mistake in wrongly pleading that the Petitioner had not appeared in the examination held on 1st December, 2010 occurred owing to the Respondent No. 2 having inadvertently provided wrong information to the Registrar of the Respondent No. 1 University who has filed the counter affidavit.

13. The aforesaid contention of the Petitioner cannot be accepted. The wrong statement made in the counter affidavit is not such of which the Respondent No. 2 could have derived any advantage which could tilt the decision of this writ petition against the Petitioner. In the circumstances, the version of the Respondents of the reason for the error is found plausible and the counter affidavit is permitted to be corrected as sought.

14. The counsel for the Petitioner has next argued that the present is a case of mala fides. It is urged that the other Lecturers in collusion with the Respondent No. 2 have been marking the Petitioner absent when he has been present in the classes. It is pleaded that along with counter affidavit also the attendance record has not been filed and only a summary thereof has been filed.

15. The aforesaid arguments raised by the Petitioner, raise factual controversy which cannot be gone into in writ jurisdiction and if the Petitioner is desirous of agitating the same, his remedy is by way of a suit and not under Article 226 of the Constitution of India. Suffice it is to state that the averments of mala fide do not inspire confidence. The Petitioner has not stated any reason for the Respondent No. 2 and the other Lecturers who are averred to have marked the Petitioner absent inspite of being present, to be inimical towards him.

16. I have in judgment dated 7th December, 2010 in W.P.(C) No. 3163/2010

titled *Vibhor Anand v. Vice Chancellor, GGSIP University* already held that the said pleas cannot be entertained in this jurisdiction and the records of attendance maintained by the Colleges/Universities have to be believed and the Colleges/Universities cannot be put to proof thereof and if so directed, would forever be involved in the same only rather than in their academic pursuits. Merely because the Head of Department in his capacity as the Provost of the Hostel has initiated disciplinary action qua misconduct by the Petitioner in the Hostel, is no reason for him to vent his anger against the Petitioner on the academic side. Moreover, the misconduct averred was also not of such a nature. The allegation against the Petitioner was of locking out his roommate. The fact remains that though the Petitioner was meted out a warning, he did not challenge the same. Thus at this stage, the Petitioner cannot allege that he was wrongly warned. Moreover, no antecedent incident for Respondent No. 2 to be inimical to the Petitioner, has been disclosed.

17. In the judgment aforesaid, it has also been held that the principles of *audi alter am partem* or natural justice cannot be extended to matters such as of attendance.

18. There is no material before this Court to disbelieve the statement of the Respondents of the Petitioner having only 6.5% against the requisite of 75% attendance. It is not as if, such stand was taken for the first time just before examination. The Petitioner admits the Memos issued from time to time. From the said Memos it is apparent that the Petitioner was being warned since at least three to four months prior to the examination.

19. The counsel for the Respondents has also argued that the Petitioner even if passing the theory papers and in which he was allowed to appear under the interim orders of this Court, under Promotion Rules, would still not be entitled to be promoted to the fourth semester for the reason of having not appeared in the practical examination and is required to repeat all the theory papers also.

20. The counsel for the Petitioner has rejoined by contending that the Petitioner was not given an opportunity to appear in the practical examination. It is stated that unlike the other students, no time for the practical examination was given to the Petitioner. It is contended that in the document filed by the Respondents also though time for practical examination of each student is mentioned, instead of mentioning any time against the name of the Petitioner, merely absence is recorded.

21. The counsel for the Respondents has contended that the Petitioner if had been attending the Institute/Department, would have been aware that the practical examination of all the students was held on two days only and could have appeared in the same. Without any other material before this Court, the version of the Respondents is found to be more believable than that of the Petitioner. The Petitioner admits of being at Allahabad till 29th September, 2010. There is nothing to show that the Petitioner was in Delhi thereafter and when the

practical examinations were held. The plea of the Respondents is of the Petitioner having not attended any lectures thereafter also. The Petitioner at least then was aware of the controversy and if had been present, ought to have taken care to have his attendance marked.

22. In the circumstances, no merit is found in the writ petition. The same is dismissed. Resultantly, the examination which the Petitioner was allowed to take under the interim orders in these proceedings, is ordered to be cancelled and no result thereof be declared.

No order as to costs.