

(2016) 12 KL CK 0027

In the High Court Of Kerala

Case No : WA.No. 2420 of 2016, IN WP(C).31866 of 2016

Vishnu Prakash A.

APPELLANT

Vs

University of Calicut

RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

Citation : (2017) 1 RSJ 122

Hon'ble Judges : Mohan M.Shantanagoudar, CJ. and Sathish Ninan, J.

Bench : Division Bench

Advocate : Sri. Rajit and Sri. C. Dheeraj Rajan, Advocates, for the Appellant;
Sri. P.C. Sasidharan, Standing Counsel, Calicut University, for the Respondent No. 1;
Sr. Government Pleader and Sri. S. Santhosh Kumar, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, C.J.—The judgment dated 6.10.2016 passed in W.P(C). No.31866 of 2016 is the subject matter of this appeal. The unsuccessful writ petitioner has approached this Court through this intra court appeal.

2. The appellant/writ petitioner is a student of five year LLB Course. As of now, the appellant, after repeatedly failing in several subjects and having completed the same in subsequent supplementary examinations, has completed the course except in one subject of 9th semester i.e., Labour Laws-I.

3. He has got only 30 marks in the latest supplementary examination in which he appeared in respect of the said subject. The appellant has approached the University to get the benefit of Ext.P2 order dated 13.3.2013 to get himself declared as passed in the said subject also. Ext.P2 order reads thus :

"As per paper read as first above, EPR section, Pareeksha Bhavan has informed that the Vice Chancellor had ordered to place the request of the LL.B students for granting special moderation on the ground of moderation granted to B.Tech

students, before the Board of Studies, Faculty and the Academic Council.

Vide paper read as second above, the Board of Studies in law (UG) held on 7.11.2012 examined the representation submitted by the candidates for granting a moderation in the line of the moderation granted to B.Tech students as per order No. PW/JCE/B.Tech/Misc/2012 (SF) dated 12.6.2012. The Board also perused the judgment of the Hon''ble High Court dated 6.8.2012 and the reference made by the Hon''ble Vice Chancellor to the Board vide UO Note read as first above in this regard. The Board unanimously decided to recommend granting of special moderation to candidates who have completed the LL.B course (old Scheme without internal assessment), but stands failed only in a single paper in all the semesters and only for the finalization of the result. The Board suggested that moderation may be awarded to candidates who have secured 30% marks in the relevant paper subject to a maximum of 20 marks and moderation may be made applicable only in the case of external examinations."

As per paper read as third above, the Faculty of Law at its meeting held on 9.1.2013 unanimously approved the above resolution of Board of Studies in Law (UG) held on 7.11.2012 vide item No.1 with regard to granting special moderation to LL.B Students (old scheme without internal assessment), which was approved by the Academic Council, vide paper read as fourth above.

Sanction is therefore accorded to implement the above decision of the Board of Studies in Law (UG) held on 7.11.2012 approved by Faculty and the Academic Council and following orders are issued :

"1. A maximum moderation upto 20 marks will be awarded to those candidates (who have completed the LL.B course-old scheme without internal assessment) and have failed only in a single paper in all of the semesters and have scored 30% marks in relevant paper for the finalisation of the result.

2. The moderation will be applicable only in the case of external examinations."

According to the appellant, since he has failed only in one subject, as of now, he is entitled for a maximum moderation of 20 marks as per the said order.

4. After failing in his attempt before the University, he has approached this Court in W.P(C). No.31866 of 2016, which also came to be dismissed by the impugned judgment.

5. Learned counsel for the appellant, taking us to the material on record submits that as per the very order interpreted by the University many number of similarly situated candidates as that of the appellant were given the advantage of moderation of 20 marks. Only in the case of the writ petitioner, the said benefit is not accorded.

6. He further submits that Ext.P2 order nowhere discloses that the student, who has passed in other subjects in supplementary examinations only, will not get the

benefit of Ext.P2 order. In the absence of such clause, according to the appellant, he is entitled to the benefit of Ext.P2 order. Learned counsel for the appellant also relied upon the judgment of this Court dated 10.7.2015 passed in W.P(C). No.17524 of 2015 in support of his case.

7. It is no doubt true that this Court in the said judgment passed in W.P(C). No.17524 of 2015 has observed that if the University was against granting moderation to the students who appeared in supplementary examination, they should have issued orders clarifying the position. As long as there is no exclusion of supplementary students in Ext.P2 order, the only logical conclusion that can be arrived at is that the students who are appearing in supplementary examinations are also entitled to the moderations as provided in Ext.P1.

8. With great respect, we are unable to subscribe to the same view. We have gone through Ext.P2 order carefully. In paragraph 2 of the said order, it is abundantly clear that the Board unanimously decided to recommend granting of special moderation to candidates who have completed the LL.B course (Old Scheme without internal assessment), but stands failed only in a single paper in all of the semesters.

9. It is clear that in case a student has failed only in a single paper in all of the semesters, the benefit of Ext.P2 would be granted. In the matter on hand, it is not in dispute that the appellant has failed in many subjects in different semesters. For eg., Ex.P1 series of documents can be looked into. These documents make it clear that the appellant had failed in five subjects of IXth semester examinations held in the month of April, 2012. He had also failed in four subjects in the IXth semester examination held in the month of March 2013. So also, he had failed in three subjects in the supplementary examination of IXth semester held in the month of November 2013. All these facts would clearly show that the petitioner has repeatedly failed in several subjects in different semesters. Ultimately, after several attempts, he had got through the papers in supplementary examinations repeatedly held. As of now, the Labour Law - 1 of IXth semester still remains to be passed by him. The intention of the University was to help the students who have passed all the papers in an attempt, but has failed only in one subject by getting 30% marks. Such students alone should be given the benefit of Ext.P2 order. Under the facts and circumstances the appellant is not entitled to the said benefit. Consequently, no interference is called for. The appeal fails and the same stands dismissed.