

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 09.12.2011

+ **W.P.(C) No.20/2011 and C.Ms. No.7198/2011 & 19466/2011**

IN THE MATTER OF

SHIVAM CHHABRA Petitioner
Through : Mr. Amit Goel, Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR.
..... Respondents
Through : Mr. Mukul Talwar, Adv. for R-1.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. An interim application, registered as C.M. No.19466/2011, has been filed by the petitioner seeking some interim orders. However, counsel for the petitioner requests that the main writ petition may be taken up for hearing today itself in view of a recent judgment dated 24.11.2011 passed by the Division Bench in **LPA No.899/2011** entitled "Arpit Singh vs. Guru Gobind Singh Indraprastha University & Anr.", the facts of which case are almost identical to that of the petitioner herein. He hands over a copy of the aforesaid judgment, which is taken on record.

2. Counsel for respondent No.1/University states that he has no objection if the main writ petition is taken up for hearing today instead of

on the date already fixed in the matter, i.e., on 8.2.2012. It is conceded that the facts of the case of the petitioner are almost identical to the facts of the case of the appellant in LPA No.899/2011, except that in the present case, the petitioner was not permitted to sit for the second year third semester examinations, unlike in the aforesaid case.

3. Briefly stated, the facts of the case are that the petitioner is a student of second year, third semester in the B.Tech. (Information Technology) course of respondent No.2/college, which is affiliated to respondent No.1/University. He was permitted to migrate to respondent No.2/college, vide migration order dated 27.9.2010, wherein respondent No.1/University had directed the petitioner to submit his marks sheets with all the papers cleared within a period of 15 days so that his migration could be finalized. The petitioner had informed respondent No.1/University that a compartment examination, for which he had to appear, would be held on 11.12.2010 and thereafter the result would be declared on or before 13.12.2010. However, the results of the compartment paper were declared on 16.12.2010 and the same were communicated by the petitioner to respondent No.1/University on the very same date. Thereafter, the petitioner requested respondent No.1/University for issuance of a permanent enrolment number as also an admit card to sit for the written examinations which were scheduled to commence from 27.12.2010. However, respondent No.1/University failed to do the aforesaid, because of which the present petition came to be filed

praying *inter alia* for directions to respondent No.1/University to issue a permanent enrolment number and an admit card in favour of the petitioner.

4. Notice was issued in the aforesaid petition on 4.1.2011. On the said date, the petitioner had pointed out that he had already missed out Third Semester End Term Examinations which had commenced on 27.12.2010. As a result, it was ordered that subject to the final outcome of the petition and without creating any equities in favour of the petitioner, he be permitted to take the remaining Third Semester Examination papers conducted by respondent No.1/University, but his result would not be declared. Vide order dated 21.2.2011, the request of the counsel for the petitioner for permission to the petitioner to attend his classes was allowed without prejudice to the rights and contentions of the parties and without creating any equities in favour of the petitioner. As a result, the petitioner continued attending the classes. On 20.5.2011, an application was filed by the petitioner praying *inter alia* for directions to respondents to issue an admit card in his favour to enable him to appear in the internal as well as external examinations for the 4th Semester. The said application was allowed and the respondents were directed to issue an admit card to the petitioner to enable him to appear in the internal as well as external examinations of 4th Semester while making it clear that no special equity would flow in favour of the petitioner and that the interim order would be subject to the final outcome of the writ petition.

5. Counsel for the petitioner states that another student similarly situated as the petitioner, namely, Mr. Arpit Singh, had also filed a writ petition seeking an identical relief, registered as **WP(C)No.8765/2010** entitled "Arpit Singh vs. GGSIU & Anr.". The aforesaid writ petition was dismissed, vide judgment dated 13.10.2011, on the ground that the petitioner therein had concealed from the University the fact that he had not cleared all his exams inasmuch as he had submitted his marks sheet for migration, even when he was aware that he had a compartment exam pending and that migration would be granted only on his having cleared all the exams of the previous years. The aforesaid decision was challenged in an intra court appeal, registered as LPA No.899/2011, which was allowed on 24.11.2011, wherein the letter issued by the respondent/University cancelling permission to the appellant therein for his migration was set aside and he was permitted to continue with his course.

6. Counsel for the petitioner relies on the aforesaid judgment to contend that the petitioner is in a better position as compared to the appellant in LPA No.899/2011 for the reason that there was no concealment of facts on his part. He submits that the result of the compartment examination of the petitioner ought to relate back to the year in which the main examination was held, rather than the subsequent year in which the compartment exam was held and on having cleared his compartment examination, it ought to be held that the petitioner had

passed the main examination in the year in which it was originally held.

7. A perusal of the aforesaid judgment passed in the case of Arpit Singh (supra), shows that the Division Bench examined various judgments on this issue and finally concurred with the decision of another Division Bench in the case of University of Delhi vs. Varun Kumar, reported as **179 (2011) DLT 549** and held that once the compartment examination was cleared, it could not have been said that the appellant therein had not satisfied the criteria laid down for migration, i.e., clearing of the exams of the previous years and hence he would be ineligible for migration. The other consideration that weighed with the Division Bench was the fact that if migration was not permitted, then the seat vacated by the appellant therein would go abegging.

8. Guided by the aforesaid judgment of the Division Bench, the present petition is also allowed on the same lines by holding that the result of the compartment examination, which the petitioner had cleared, would relate back to the year in which he had sat for the main examination and thus, the migration certificate issued to the petitioner shall be valid. Consequently, respondent No.1/University shall take necessary steps to issue a permanent enrolment number to the petitioner and his results in respect of his third semester examination and the fourth semester examination, which are stated to be lying in a sealed cover, shall be declared, under written intimation to him. It is further directed that an admit card shall be issued to the petitioner and he shall be

permitted to sit for his second year third semester examination as and when it is held by respondent No.1/University. In case the results of the petitioner are favourable and he is eligible to sit in the fifth semester examination, he shall be permitted to take the said examination.

9. As counsel for the petitioner states that the examinations of the fifth semester are scheduled to commence from 19th December, 2011, the petitioner is directed to approach the Controller of Examination tomorrow itself, i.e., 10.12.2011 at 11.00 AM, for declaration of his previous results.

The petition is disposed of along with the pending application. The date already fixed in the matter, as 8.2.2012 stands cancelled.

A copy of this order be given ***dasti*** to the counsels for the parties, under the signatures of the Court Master.

DECEMBER 09, 2011
sk

HIMA KOHLI,J