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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2499/2012

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Judgment dated 27.09.2012

PALLAVI VERMA

..... Petitioner

Through Ms.Urmil Sharma, Advocate

versus

UNIVERSITY OF DELHI AND ANR

..... Respondents

Through Mr.M.J.S.Rupal, for R-1.

Ms.Beenashaw Soni for R2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The petitioner had appeared in the first paper of the B.A.Hons.(English) on 16th May, 2011, two printed papers were found from her possession in the examination room. The petitioner was permitted to appear in the rest of the examination, subsequently on 29th July, 2011 a show cause notice was issued to the petitioner. Reply was sought as she had violated Ordinance X-A of the University. She was asked to explain as to why she should not be punished for the use of unfair means in the examination.
2. In the reply dated 8th August, 2011, petitioner tendered her apology for the mistake, so committed. On 23rd September, 2011, the petitioner was punished under Clause-C of the guidelines circulated to her along with the admission ticket, which reads as under:-

“Cancellation of entire examination taken by the candidate during the year. Further debarred from appearing at any

examination of the University within a span period of one year (12) months”.

3. The petitioner was debarred from appearing in any examination until the annual examination of 2012. Accordingly, in view of the decision so rendered, the petitioner was illegible to appear in the examination to be held in March/April, 2012. She was also not eligible to attend any classes in the college. Meanwhile the University switched over to the semester system.
4. By a notification dated 25th October, 2011 issued by the respondent/university, the petitioner was permitted admission as a regular student in her college in Semester mode of teaching and was allowed to appear in odd and even semester examination as per her punishment. The governing body of the College permitted her to fill her examination form on 20th January, 2012 for the examination to be held for the second semester in the month of April, 2012. The petitioner also paid the requisite examination fee and a receipt was issued to her. She also continued to attend the classes and prepare for the said examination. The request of the College to permit the petitioner to appear in the second semester examination was rejected by the University, which led to the filing of the present writ petition.
5. By order dated 2nd May, 2012 passed by this court, the petitioner was permitted to appear in the second semester examination. The result of the said examination was to be kept in a sealed cover. It was also clarified in the said order that no special equity will flow in favour of the petitioner.
6. The petitioner now seeks admission in the third semester, which is opposed by the counsel appearing for the University and the College, firstly on the ground that without appearing in the examination for the first semester, the petitioner could not have been permitted to appear in

the second semester and secondly, out of four papers in which the petitioner had appeared, she has qualified only three papers and as per the promotion rules, in one academic session, the petitioner has to qualify four papers in all and must also obtain 40% aggregate marks in the theory as well as internal examination.

7. Counsel appearing for the petitioner submits that the punishment melted out to her was for a period of one year and the said period of one year came to an end in April, 2012. The petitioner could not appear in the first semester examination on account of the fact that the period of punishment which was melted out to her had not come to an end and consequently for the reason that in the year 2011 when she had joined the College, the University was following the annual examination system and in case the University continued with that system, the petitioner would have appeared in the first year examination in the annual mode in April, 2012. Her non-appearance in the first semester examination was on account of the fact that the College had misinterpreted the notification dated 25th October, 2011 and despite the petitioner attending classes of the first semester, the college did not permit the petitioner to take the said exam.
8. It is also the case of the petitioner that her examination form was not forwarded by the College to the University and thus she cannot be deprived of admission to the third semester.
9. Counsel further submits that out of the four papers of the second semester, the petitioner has qualified three essential papers and thus going by the percentage of papers to be qualified, as per the promotion rules, she should be promoted to the third semester.
10. Learned counsel for the University submits that as far as notification dated 25th October, 2011 is concerned, the petitioner was entitled to take examination in the first semester which she did not and, in fact the college

should have permitted her to take the examination. He submits that according to the promotion rules, the petitioner should have appeared in the first semester papers and also qualified four papers out of seven papers for the second semester.

11. Ms.Soni, counsel appearing for the College, submits that the notification issued by the University was ambiguous as the same did not clearly state that the student was entitled to appear in the first semester examination. Neither the petitioner filled up the examination form for 1st Semester Exam nor the College was of the view that she was entitled to appear in the said examination.
12. I have heard the learned counsel for the parties, who have taken me through the pleadings on record.
13. It is not in dispute that unauthorized material was recovered from the possession of the petitioner during the 1st year examination held in May, 2011 in pursuance to which the petitioner was punished under Clause-C of the guidelines circulated to her along with admission ticket. As per the punishment which was melted out to her she was debarred from taking any examination till March-April, 2012. In view of the change of examination system of the University from annual to semester system, the University in its wisdom, and with a view to avoid punishment awarded to students including the petitioner from being increased from one year to two years, issued a notification dated 25th October, 2011, which reads as under:-

Admission File

265
31/10/11

IMMEDIATE/MOST URGENT
No.Exam.V/SO-V(i)/2011/2071
Dated:25.10.2011

NOTIFICATION

It is notified that the students who had used unfair means in the Examinations held in 2011 and have been awarded punishment of debarring them from one year or more (i.e. Category 'C' or above under the Ord. XA) are being allowed to take admissions as regular students in the respective college in Semester mode of teaching, if otherwise eligible, and allowed them to appear in odd Semester Examinations. However, they will be allowed to appear in even Semester Examinations as per the punishment awarded to them (i.e. 1st year students awarded "C" punishment should be given admissions in Sem. I of 2011 so that they can appear in Sem.II in 2012. The students awarded "D" punishments should be given admission in I Semester in 2012 so that they can appear in Sem.II in 2013 and similarly students awarded "E" punishment should be given admissions in I Semester in 2013 and so on). These students will be treated as supernumerary and their year of admissions will be treated as 2011-2012 and so on.

Sd/-

OSD-CONTROLLER OF EXAMINATIONS

21.10.2011

Admission File

Examination File

S.O.(Admn) D.Asstts.

S.O.(Accts) Ms.Geeta/Ms.Seema/Mr.Saurabh

A.O.

Sd/-31/x/11

Convener Admission Committee & Academic Committee

Sd/-27/10

- 14.** As per the above notification, a student who has been awarded punishment in Category-C, would be allowed to take the examination in the first semester of the year 2012. The case of the petitioner falls in category C. Relying on the said notification, the petitioner applied and she was granted re-admission in the College. Upon having been granted re-admission, the petitioner should have been allowed to sit in the first semester examination, however, she was not permitted to appear in the first semester examination, although she was granted re-admission. As she was not being allowed to appear in the second semester as well, she

filed the present writ petition. By way of an interim order dated 2nd May, 2012, the petitioner was allowed to appear in the second semester examination. Out of the four papers, she has qualified three essential papers.

15. Counsel for the University has also interpreted the notification dated 25th October, 2011 in favour of the petitioner to the extent that the petitioner should have been allowed to appear in the first semester examination. It is the stand of the college that the college proceeded according to the instruction of the university and there was no wilful lapse on the part of the college. Having regard to the aforesaid facts, the short question which arises for consideration is whether the petitioner can be allowed to appear in the II semester examination in the absence of her non-appearance in the first semester examination and secondly should the petitioner be permitted to join the third semester. The petitioner was found using unfair means in the examination held on 16th May, 2011, she was debarred from appearing in any examination of the university for a span of one year i.e. she would be eligible to appear in the annual examination to be held in April / May, 2012. It would be useful to reproduce para 5 to 8 of the counter affidavit filed by the University:

“5) In the interregnum the University of Delhi switched over to Semester Mode w.e.f. Academic Session 2011-12 and hence the Annual Examination of 1st year which was otherwise to be held in April/May 2012 was scrapped. The petitioner was thus required to take examination under Semester Mode. Since this would have resulted, in the admission and other similarly placed students, taking admission in the first semester only from academic year 2012-13 and to appear in the 1st Semester Examination to be held in November/ December 2012 which would consequently have increased the term of punishment unnecessarily, the University of Delhi, to overcome this difficulty and for the benefit of such students decided to allow such students to be admitted in the 1st

Semester 2011-2012 itself as regular students. Accordingly Notification dated 25th October, 2011 was issued for the benefit of such students who were booked under unfair means including the petitioner herein.

6) The petitioner having notice of the said Notification indeed took admission in the 1st Semester 2011-2012 Academic Session as a regular student and obviously was also allowed to appear in the 1st semester (Odd Semester Examination to be held in November/December, 2011), as per the Notification dated 25th April, 2011.

7) However, the Petitioner for the reason best known to her did not full (sic. fill) up the examination form in the 1st Semester. The petitioner was well aware that there are now two (2) Examination spread for the 1st Semester for one set of papers and for 2nd Semester for another set of papers and the examination for 1st semester under the said papers cannot be held along with the 2nd Semester Examination.

8) Since the Petitioner did not appear in the 1st Semester Examination therefore the petitioner became ineligible to appear in the 2nd Semester Examination. The University of Delhi has clarified the same vide Notification dated 7th September, 2011.”

16. The stand of the University makes it abundantly clear that the case of the petitioner was fully covered by the notification dated 25.10.2011. It is not in dispute that consequent to the above said notification the petitioner was granted re-admission and allowed to attend classes. While it is the case of the petitioner that her examination form was not forwarded by the college, the stand taken by the college is that the notification was ambiguous and further the petitioner did not fill up the examination form. It is hard to believe that a student would seek re-admission to attend classes and thereafter not fill up the examination form and further in case this was true there was no reason for the college to state in the affidavit filed in this court that the notification was ambiguous. In my view the

petitioner cannot be made to suffer on account of mistake of the college & on account of misreading of the notification & thereby in not permitting her to appear for the first semester examination.

17. In view of these peculiar facts, since the petitioner has appeared in four papers, subject to orders passed by this court and she has cleared three papers, the objection raised by the respondent that since she does not fulfil the requirement of clearing at least four papers in two semesters, she cannot be permitted to the third semester, is not tenable. This case is also peculiar as the University switched over to the semester mode w.e.f. academic session 2011-12 and for this reason the University had to issue a notification dated 25.10.2011.
18. Thus, in my view the petitioner cannot be made to suffer on account of the bona fide mistake, which may have been made by the College and deprived her of admission to the third semester. As far as the examination rules are concerned, the same would not be applicable to the facts of the present case for the reason that it is the petitioner who was prevented from appearing in the examination and not that she did not appear in the examination by choice. It was for the college to have applied to the University for the admission card of the petitioner. The petitioner admittedly had been attending classes for the first semester and thus she cannot be faulted for not sitting in the first semester examination.
19. Going by the ratio of the papers to be qualified in the present stream, the petitioner was to qualify four papers out of seven. She has qualified in three papers out of four. Therefore, benefit must accrue in favour of the petitioner.
20. The writ petition is allowed. Rule is made absolute. Petitioner would be entitled to join third semester. Her attendance should be marked from

tomorrow i.e. 28th September, 2012. It is made clear that this order has been passed in the peculiar facts of this case and the same shall not be treated as a precedence. She will appear in the first semester examination along with third semester. If during the third semester she does not qualify seven papers of the first and second semester together, then she will be detained. Result of the petitioner be declared.

G.S.SISTANI, J

SEPTEMBER 27, 2012

sjs