

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 6499/2011**

Date of Decision: 18th January, 2012.

IN THE MATTER OF:-

KALEEM FATIMA

..... Petitioner

versus

JAMIA MILIA ISLAMIA AND ORS

..... Respondents

AND

W.P.(C) 7692/2011

IN THE MATTER OF:-

MOHD. ASLAM

..... Petitioner

versus

JAMIA MILIA ISLAMIA AND ANR

..... Respondents

Present:- Mr. Vijay Kishore, Adv. with Mr. Vikram Jetly, Adv. for the petitioner in W.P.(C) No.6499/2011.
Mr. Jayant Nath, Sr. Adv. with Mr. Masood Alam, Adv. for the Petitioner in W.P.(C) No.7692/2011.
Ms. Jaya Goyal, Adv. with Mr. Rohit Gandhi, Adv. for the Respondents.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HIMA KOHLI, J (ORAL)

1. In the present petitions filed by two petitioners, who had appeared for admissions in the BDS (Dentistry) Course in respondent No.1/University in the academic year 2010-11 and were admitted to the said course, challenge has been laid to the action of the

respondent No.1/University in detaining them due to deficiency in attendance and in refusing to grant them permission to appear in the annual examination for the course in question. The petitioners have also sought directions to the respondents to re-admit them in the BDS (Dentistry) course in the first year for the academic year 2011-12. As the facts of both the cases are almost similar, for the sake of convenience, the facts submitted in W.P.(C) No.6499/2011 are being taken note of.

2. The undisputed facts of the case are that on 30.06.2010, the petitioners had appeared for the written examination for admission in the first year BDS (Dentistry) Course in the academic year 2010-11. On 08.07.2010, the result of the written examination was declared and the petitioners were duly selected. On 28.07.2010, the petitioners were admitted by the respondents in the first year BDS (Dentistry) Course for the academic year 2010-11. Classes for the first year of the said course were held w.e.f 02.08.2010 to 30.05.2011. The annual examination of the aforesaid course was to be held w.e.f. 30.05.2011, but the said date was deferred to 28.07.2011. However, the petitioners were not permitted to appear in the final examination due to shortage of attendance which was intimated to them by the respondents vide letter dated 14.06.2011.

3. Counsels for the parties have drawn the attention of this Court

to the prospectus issued by respondent No.1/University for the academic year 2010-11. Sub-rules (9) & (10) of Rule 5 relating to admissions is relevant for consideration and the same are reproduced hereinbelow:

"5. Rules Relating to Admission:-

1 to 8. xxx

9. A student who fails in the Annual/Semester Examination or who could not appear for the Annual Examinations for reasons other than shortage of attendance will not be re-admitted. However, he/she may be allowed to reappear as an ex-student in the next annual examination. The concerned Faculty/Department/Centre may provide to such students the facility of attending classes/sessional test etc.

10. A student of 1st year/1st Semester of any course who is detained due to shortage of attendance will no longer remain the student of the University. Such students will have to seek fresh admission and will be required to go through the entire admission process."

4. It may be noted that the aforesaid Rule 5 of the Prospectus was amended by the respondent No.1/University in its prospectus issued for the academic year 2011-12 wherein sub-rule (9) of Rule 5 reads as below:-

"5. Rules Relating to Admission:-

1 to 8. xxx

9. A student of any course who could not appear in the examination due to shortage of attendance or any other reasons or who fails in the examinations may be given re-admission in the same class of that Course in the next academic session."

5. It is submitted by the counsels for the petitioners that as per the sub-rule (10) of Rule 5 of the prospectus of the year 2010-2011, a student of first year, who is detained due to shortage of attendance, does not remain a student of the University and would have to seek fresh admission for which he/she shall be required to undergo the entire process of admission. In other words, the case of such a student would be treated as a case of re-admission in the respondent No.1/University.

6. Counsels for the petitioners state that the aforesaid Rule has caused immense hardship to the petitioners for the reason that the prospectus of the academic year 2011-12 had set out the schedule of admission in the Faculty of BDS (Dentistry) wherein for the BDS (Dentistry) course (subject matter of the present petition), the last date for submission of the application forms was fixed as 02.05.2011, the date of the entrance test was fixed as 31.05.2011, the date of display of the list of candidates called for interview was fixed as 07.06.2011, the date of interview was fixed as 20.06.2011 and the date of display of the list of selected and wait listed candidates was fixed as 28.06.2011. They point out that it was only on 14.06.2011 that the petitioners herein were served with a notice of detention, due to deficiency in attendance, and they were not permitted to appear in the annual examination for the academic year 2010-11. As a result,

they missed an opportunity to seek fresh admission in the said course as provided for under sub-rule (10) of Rule 5 for the reason that the last date fixed for submission of application forms for the academic year 2011-12 was 02.05.2011. It is further pointed out that the respondent No.1/University is also aware of the fact that sub rule (9) and sub rule (10) of Rule 5 of the Prospectus, 2010-11 was causing immense hardship to the students of the first year due to which the University thought it fit to amend Rule 5 for the academic year 2011-12, by stipulating that a student of any course who could not appear in the examination due to shortage of attendance or for any other reason, may be given re-admission in the same class of that course in the next academic session.

7. In other words, when faced with a similar situation like the one that the petitioners herein are facing, students in the academic year 2011-12 would not have to apply for fresh admission to the respondent No.1/University, but, they would be granted re-admission in the same class of the relevant course in the next academic session. It is submitted by the counsels for the petitioners that sub rule (9) of Rule 5 is a beneficial legislation and ought to be extended to the petitioners herein as well. It is thus urged that respondents ought to be directed to permit re-admission of the petitioners herein into the first year in the same course and they should not be discriminated as

against similarly placed students in the academic year 2011-12, who have been given the benefit of the amended sub rule (9) of Rule 5 of the prospectus.

8. Counsel for the respondents opposes the relief sought in the writ petitions on the ground that the attendance of both the petitioners was far below the minimum required attendance of 75% in exam-going subjects and 70% in non-exam subjects. She relies on Annexure R-1 enclosed with the counter affidavit to substantiate her claim that the attendance of both the petitioners was not up to the mark. She further states that the attendance record of both the petitioners was duly communicated to them from time to time and further, that the parents of the petitioners were also counseled on the said aspect on different dates. She refers to the reminders pertaining to the attendance record of the petitioners as issued by the respondents to their parents from time to time and enclosed with the counter affidavit as Annexure R-2 (Colly.), to state that in each of the reminders, the petitioners and their parents had been duly warned that if their attendance was found to be below the minimum prescribed benchmark, they would not be eligible to appear in the annual examination for the academic year 2010-11.

9. Pertinently, neither of the petitioners have questioned their attendance record as maintained by the respondents. Their only

grievance is that having been detained in the academic year 2010-11 for not meeting the minimum prescribed requirement of attendance and being prohibited from appearing in the annual examinations in their respective years, they had been adequately penalized. But the manner in which respondent No.1/University had fixed the admission schedule for the same course for the next academic year 2011-12, has resulted in depriving them of an opportunity to apply for fresh admission for the next academic year as well, thus causing them a loss of two academic years. It is canvassed that resultantly, the petitioners have been made to suffer a double jeopardy inasmuch as the cut off date of submission of the application forms for the academic year 2011-12 for the BDS (Dentistry) course was fixed by the respondent/University as 02.05.2011 whereas the petitioners herein were issued the notice of detention by the respondents only on 14.06.2011, which was after a period of one and a half month from 02.05.2011, thus foreclosing their right to seek fresh admission in the same course in respondent No.1/University for the academic year 2011-12, in terms of the said sub rule (10) of Rule 5, as existing in the prospectus for the academic year 2010-11.

10. This Court finds force in the aforesaid submission made by the counsels for the petitioners. Had it been a case where the operation of the unamended sub-rule (9) of Rule 5 of the prospectus relating to the

academic year 2010-11 would have resulted in affording an opportunity to the petitioners, who had been detained for want of the minimum prescribed attendance to apply for fresh admission in the same course in the very next academic year, the Court would not have found any illegality in the action of the respondents. However, the respondents apparently did not realize that if it proposed to detain students with shortage of attendance in one academic year and gave them an option to apply afresh for admission only in the next academic year, then the cut off date for the next academic year ought to have been fixed in such a manner that those students, who had been detained in the previous academic year could have availed of the opportunity of applying afresh for admission in the next academic year. Undoubtedly, the petitioners could not have been penalized by the respondents twice over for the same breach thereby subjecting them to a break of two running academic years.

11. The fact of the matter is that the respondents have themselves realized the immense hardship caused to students in the manner of implementation of sub-Rule (9) of Rule 5 prescribed in the prospectus for the academic year 2010-11. This realization has dawned on them later on which is the reason why the said Rule 5 relating to admissions in the academic year 2011-12 has been amended by the respondent No.1/University by stipulating that a student of any course who could

not appear in the examination due to shortage of attendance or for any other reason or a student who fails in the examination would be given admission in the same class in the said course in the next academic session. By amending Rule 5 in the aforesaid manner, the respondents have ensured that w.e.f. the academic year 2011-12, students similarly placed as the petitioners would not have to undergo the ordeal of seeking re-admission in the same course in the next academic session.

12. In the present case, had the respondent No.1/University ensured that the last date for submission of application forms fixed in the prospectus of the academic year 2011-12 for the course in which the petitioners were studying fell after 14.06.2011, the date on which they were issued notices of detention, the Court would have been inclined to accept the submission made by learned counsel for the respondents that the petitioners had not been completely left out in the cold and they still had an opportunity of seeking fresh admission in the next academic year. But by fixing the last date of submission of application forms for admission in the said course for the academic year 2011-12, as 02.05.2011 and thereafter proceeding to issue them notices dated 14.06.2011 detaining them from appearing in the annual examination for the academic year 2010-11 due to shortage of attendance, the respondents have closed the doors in the face of the petitioners and

have deprived them of a valuable right to even apply for fresh admission in the same course in the next academic year, which is patently illegal and unjustifiable and amounts to imposing a dual punishment on the petitioners for the very same breach/default.

13. For the aforesaid reasons, this Court is inclined to accept the submission of the counsels for the petitioners that the petitioners can not be made to suffer a double jeopardy at the hands of the respondent No.1/University and that in the given facts and circumstances of the cases, they are entitled to being granted re-admission in the same course in the next academic session, i.e., the year 2011-12, without applying afresh to the respondents for admission.

14. The next issue that arises for consideration is the manner in which the relief has to be moulded in respect of both the petitioners. As regards W.P.(C) No.6499/2011, an interim order was passed on 23.09.2011 whereunder, the petitioner was allowed to attend classes of the first year BDS (Dentistry) course for the current academic year subject to the final outcome of the writ petition while clarifying that the interim direction would not create any special equity in her favour. It has been submitted by learned counsel for the petitioner in W.P.(C) No.6499/2011 that she has been continuing her studies in the current academic year on the strength of the aforesaid interim order, which

statement is confirmed by learned counsel for the respondents. It is, therefore, directed that the petitioner in W.P.(C) No.6499/2011 shall continue to attend classes of the first year BDS (Dentistry) Course and if found eligible as per the Rules and Regulations applicable in that regard, she shall be permitted to sit for the annual examinations at the end of the academic year 2011-12.

15. However, the petitioner in W.P.(C) No.7692/2011 had approached this Court belatedly by filing the writ petition only on 20.10.2011. Consequently, he was not granted any interim order and he has not been attending classes for the first year BDS (Dentistry) course in the current academic year. As a result, while allowing W.P.(C) No.7692/2011, it is deemed appropriate to direct the respondents to grant re-admission to the said petitioner in the same course for the relevant session, on completion of requisite formalities for the next academic session, i.e., for the academic year 2012-13, which shall commence in the month of August, 2012.

16. Both the petitions are disposed of and parties are left to bear their own costs.

HIMA KOHLI, J

JANUARY 18, 2012
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