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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1810/2013

% ***Judgment dated 10.05.2013***

RITHAMBHRA GARG Petitioner

Through : Mr.Roshan Saini, Adv.

versus

UNIVERSITY OF DELHI AND ANR Respondents

Through : Mr.M.J.S. Rupal, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a direction to the respondents to conduct the supplementary examination for the fifth semester at an early date and allow the petitioner to appear in the examination.
2. As per the petition, the petitioner was granted admission in B.Sc (Hons.), Biomedical Science course in Shaheed Rajguru College of Applied Sciences for Women in the year 2010. The said course is divided into six semesters – two semesters in each year. The Course is to be completed in the year 2013. The petitioner passed all her examinations till the fourth semesters. In the fifth semester she cleared all her papers except Pharmacology (Code 258501), which she could not clear. According to the petition, the petitioner could not clear this paper as she was preparing for other entrance examinations. The petitioner appeared in the CAT

examination on 29.10.2012, which coincided with the fifth semester examination. The petitioner secured a good rank in the CAT examination i.e. 90.42% and she was hopeful to get admission in a Government run management institute.

3. Learned counsel for the petitioner submits that the University has fixed arbitrary rules of admission/examination of this particular course according to which a student having essential reappear in the first, third and fifth semesters has to appear in October/November. Counsel further submits that while no prejudice would be caused to a student of the first and third semesters but it would cause serious prejudice to the rights of a student of the fifth and sixth semesters as considerable time is lost in waiting to appear for the examination in the month of October/November. It is further submitted that the petitioner vide communication dated 29.12.2010 approached the Vice-Chancellor requesting him for considering her case and for conducting examination early instead of October/November. In the communication dated 29.12.2012 the petitioner also requested the Vice-Chancellor to arrange for a re-test in the month of June or even earlier instead of the scheduled dates in the month of November/December. She also explained that she would lose her college placement on account of the delay. It is also contended that the Rule which has put the future of the petitioner into jeopardy is arbitrary.
4. Learned counsel for the respondents has opposed this petition on the ground that the examinations are conducted as per the guidelines which have been laid down. Counsel further submits that at the time when the petitioner took admission she was well aware of the guidelines and at this stage she is estopped from raising any objection. Reliance is placed by learned counsel for the respondents on the guidelines, relevant portion of which read as under:

“PASS PERCENTAGE & PROMOTION CRITERIA

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5. A student who has to reappear in a paper prescribed for Semester I / III / V may do so only in the Semester examinations to be held in November / December. A student who has to reappear in a paper prescribed for Semester II / IV / VI may do so only in the examination to be held in April / May.”

5. Heard counsel for the parties. The Supreme Court of India in catena of judgments has held that the Courts should be slow to interfere in the academic matters. Date sheet and schedule for holding examinations are prepared and finalized by the University taking into consideration various factors. The request of the petitioner that a direction be issued to fix an early date for conducting her re-test is unreasonable and unacceptable. The Court cannot lose track of the fact that preparing a schedule, conducting examination, retests, repeat exams, etc. falls strictly in the domain of the respondents. Moreover considerable time is required by the respondents to prepare the question paper and other modalities are to be worked out. The scheme of examination to pass and promotion criteria which has been reproduced above is binding on the students and is to be respected.

6. In the case of **Varun Kumar Agarwal v. Union of India & ors.**, reported at 179 (2011) DLT 24, it has been held as under:

“14. Presently we shall refer to certain authorities in the field that have dealt with sanctity of a prospectus or brochure and the legal impact when it is changed in the midstream. In Dr.M. Vannila v. Tamil Nadu Public Services Commission, 2008 (3) CTC 69, a Division Bench of the High Court of Madras has opined thus:

19.The principle that the prospectus is binding on all persons

concerned has been laid by the Supreme Court in *Punjab Engineering College, Chandigarh v. Sanjay Gulati*, AIR 1983 SC 580. Following the same, a Division Bench of this Court has also observed in *Rathnaswamy, Dr. A. v. Director of Medical Education* (1986 WLR 207) that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view is also taken by another Division Bench of this Court in *Nithiyan P. and S.P. Prasanna v. State of Tamil Nadu* (1994 WLR 624). The same principle is reiterated in the case of *Dr.M. Ashiq Nihmathullah v. The Government of Tamil Nadu and Ors.* reported in 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission.”

7. In the case of *National Board of Examinations v. G. Anand Ramamurthy and Others*, reported at (2006) 5 Supreme Court Cases 515, more particularly paras 5 to 7, which read as under, it was held as under:-

“5. According to Mr. Gopal Subramaniam, the respondents herein are not eligible to sit for examination and, therefore, the permission granted by the High Court permitting to sit for the examination is not proper and not called for. Clause 7.12 specifically provides that the candidates should be in possession of the recognised postgraduate degree qualification as specified under each speciality given in the syllabus for Medical and Surgical super specialities respectively. Clause 7.12, sub-clause (ii), stipulates that candidates should have completed the prescribed three years’ training in the speciality after postgraduate degree, from an institution recognised by the MCI/NBE/University as specified under each speciality. According to Mr. Gopal Subramaniam, the respondents will be completing three years training only by 30th June, 2006. They are not qualified and eligible to appear for June 2006 examination.

6. Mr. S. Bala Krishnan, learned Senior Counsel for the respondents, per contra submitted that the stand of the petitioner herein was totally inconsistent not only in terms of the eligibility criteria but also as per past practice. According to him, the petitioner Institution has been allowing the candidates for taking the

super speciality examinations, which were conducted in the month of June. But the facts remain that such a past practice as argued before the High Court has not been pleaded at all. This apart, the alleged past practice cannot override the statutory rules and regulations since the respondents are not qualified as per Clause 7.12. We are, therefore, not permitting them to sit for the Examinations in June, 2006 as directed by the High Court.

7. We have carefully considered the submissions made by both the learned Senior Counsel. In our opinion, the High Court was not justified in directing the petitioner to hold examinations against its policy in complete disregard to the mandate of this Court for not interfering in the academic matters particularly when the interference in the facts of the instant matter lead to perversity and promotion of illegality. The High Court was also not justified in exercising its power under Article 226 of the Constitution of India to merge a past practice with decision of the petitioner impugned before it to give relief to the respondents herein. Likewise the High Court was not correct in applying the doctrine of legitimate expectation even when the respondents herein cannot be said to be aggrieved by the decision of the petitioner herein. The High Court was also not justified in granting a relief not sought for by the respondents in the writ petition. The prayer of the respondents in the writ petition was to seek a direction to the petitioner herein to hold the examinations as per the schedule mentioned in the Bulletin of 2003. However, the High Court passed an order directing the petitioner herein to hold the examinations for the respondents according to the schedule mentioned in the Bulletin of 2003. The effect of this order is that the petitioner would have to permit the respondents to take the exam even if they do not meet the eligibility criteria fixed by the petitioner in its policy of 2003. Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates are requested to refer to the latest bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as

aforesaid which would encompass and include all instructions relating to schedule of examinations. It is also mentioned in the Bulletin in no uncertain terms that the instructions contained in the Bulletin including the schedule of examinations were liable to changes based on the decisions taken by the Governing Body of the petitioner from time to time. Hitherto Examinations were being conducted twice a year i.e. in the months of June and December, 2006. There could be no embargo in the way of the petitioner bona fide changing the Examination Schedule, more so when it had admittedly and categorically reserved its rights to do so to the notice and information of the respondent nos.1 and 2. In any event, the completion of three years' training is a necessary concomitant for appearing in the DNB final examination.

8. Having regard to the fact that guidelines for the undergraduate courses has set out a schedule for conducting the examinations the request of the petitioner to hold an examination for her in the month of April/May, 2013, is unreasonable and in case such a request is allowed, it would lead to utter chaos and there would be no sanctity to the criteria laid down by the University. Court cannot ignore the fact that the petitioner was well aware of the guidelines and taking into consideration the settled law laid down by the Supreme Court of India in the case of *National Board of Examinations* (supra), there are no grounds to entertain the present writ petition and the same is accordingly dismissed.

(G.S.SISTANI)
JUDGE

MAY 10, 2013
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