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

% *Date of Decision: 22nd May, 2013*

+ **W.P.(C) 2023/2012**

PARVESH KUMAR Petitioner
Through: Mr.Rajat Aneja and Mr.Ishaan Chhaya, Advs.

versus

UNIVERSITY OF DELHI Respondent
Through: Mr.M.J.S.Rupal and Ms.Priti Dhiman, Advs.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (Oral)

Rule.

With the consent of the parties the present petition is set down for final hearing and disposal.

The petitioner cleared his class-XII examination in the year 2003 and thereafter got himself enrolled in the BA(Pass) course with Swami Shradhanand College, Alipore which is affiliated with the Delhi University. Although the petitioner cleared his first year examination of BA(Pass) course he was not able to clear one subject (Economics) in the second year examination. The petitioner appeared in the supplementary examination which was held in the year 2010; an admission ticket was also issued in favour of the petitioner. Mr.Aneja submits that the result for the supplementary examination in which he appeared in the year 2010 was not declared by the University. Petitioner wrote a letter on 28.07.2011 to the Dean of Examination, University of Delhi requesting him to declare the result of the supplementary examination. Petitioner received no reply to the aforesaid communication. He made repeated requests and inquiries but to no avail. Subsequently the petitioner made an application under the Right to Information Act on 14.10.2011 seeking information from the respondent. According to the petitioner a cryptic and

unsatisfactory reply was provided by the Examination Department (Result Branch) of the respondent. In the reply it was stated that since no marks have been awarded the result of the petitioner has not been declared and the petitioner was shown as absent. It was also stated that the respondent tried to trace out the answer sheet of the petitioner as lakhs of students appeared in the examination but in some cases certain students fail to write their roll numbers on the answer sheets. Aggrieved by the unsatisfactory reply received from the respondent the petitioner preferred an appeal provided under the Right to Information Act. However, a similar reply was received. Petitioner issued a legal notice to the respondent on 28.01.2012. In response to the legal notice the petitioner received a notification dated 1st March 2012 whereby the respondent declared the petitioner successful in the supplementary examination for BA(Pass) Part-III exam. It was shown that the petitioner has secured 506 out of 1200 marks. Petitioner was declared successful in IIIrd Division. The petitioner however was shocked to receive another notification dated 23.03.2012 which was issued in partial modification of the earlier notification and by the subsequent notification the petitioner was declared unsuccessful as he had not cleared the Economics supplementary examination. The subsequent notification is the subject matter of the present writ petition.

Mr.Aneja submits that although the petitioner had appeared in the re-examination in the year 2010 but for the reasons best known to the respondents his result was not declared and at this stage to state that the petitioner had secured 2 marks out of 75 is doubtful as admittedly his answer sheet was not available with the respondents. It is further submitted that since the petitioner was a student of BA(Pass) even in case the petitioner had not cleared his Economics subject as per the first notification he was declared successful. It is also contended that petitioner was reasonably certain to have cleared the examination for which he appeared in the year 2010.

Mr.Rupal, learned counsel for the respondent has opposed this petition on the ground that an incorrect notification was issued

inadvertently by which the petitioner was declared successful on the premise that the petitioner was a student of BA(Pass) course whereas during the academic session 2004 BA(Pass) course was discontinued and was replaced by BA(Programme). He submits that one of the distinction between the two courses is that in case of BA(Programme) a degree is granted unless a student clears all the papers in comparison to a BA(Pass) course where a truncated degree is granted even if a student fails in two subjects provided he obtains 36% overall. He submits that the petitioner has incorrectly stated that he would be governed by the BA(Pass) course as admittedly he had appeared as a student of BA(Programme) which is evident from a copy of the admit card which has been placed on record by the petitioner. Reliance is placed on the award sheet of students who appeared in the Economics paper to show that the petitioner had secured only 2 marks and thus it is submitted that petitioner cannot be granted a degree.

Mr.Rupal further submits that the petitioner has also lost the opportunity of re-appearing as the extension of span period has been discontinued.

At this stage learned counsel for the petitioner on instructions submits that the petitioner would be satisfied if a direction is issued to the respondents to grant the petitioner one last opportunity to re-appear in the Economics subject examination.

Mr.Rupal submits that the respondents have granted one time opportunity to similarly situated students and the last date to avail the same has since expired.

I have heard counsel for the parties. While the University cannot be faulted for issuing a second notification by which the petitioner was declared as failed for the reason he had secured only 2 marks out of 75 and the earlier notification was issued inadvertently. There is also force in the submission made by Mr.Rupal, counsel for the University that admittedly the BA(Pass) course was discontinued in the year 2004 and the petitioner had appeared in the re-exam as a candidate of BA(Program)

which is evident from the admit card placed on record by the petitioner. Having appeared as a BA(Program) candidate the petitioner cannot claim benefit of being declared successful even without clearing all the papers.

I am however of the view that the University was certainly at fault for not declaring the result of the petitioner in the year 2010 when he appeared for the re-test, the petitioner has been running from pillar to post after he had appeared in re-examination as far back in the year 2010 for which his result was not declared. Petitioner made repeated requests to the University and he was forced to make an application under the Right to Information Act and moreover the original answer-sheet of the petitioner has not been found till date and is alleged to be initially untraceable and later on alleged to be destroyed/weeded out by the respondents. Thereafter petitioner filed an appeal as no satisfactory response was received from the respondents. Thereafter he received a notification informing him that he has passed the BA(Pass) examination but this notification was recalled and a fresh notification was issued and also taking into consideration that the petitioner has been in Court since April 2012 to meet the ends of justice the petitioner shall be granted one last opportunity to appear in the next examination.

Writ petition stands disposed of in above terms subject to petitioner making appropriate application to the University within two weeks from receipt of this order.

DASTI.

(G.S.SISTANI)
JUDGE

MAY 22, 2013
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