

\$~

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

+ W.P.(C) 5882/2014 & CM APPL. 14420/2014

TAKHENG LAMNIO Petitioner
Through: Mr. R.K. Saini, Advocate.

versus

UNIVERSITY OF DELHI & ANR Respondents
Through: Mr. Mohinder Jit Singh Rupal, Advocate
with Ms. Yanmi Phazang, Advocate for
University of Delhi.

% Reserved on : 12th September, 2014
Date of Decision : 29th September, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the legality and validity of Clause 11(i) of Promotion Rules of Bachelor of Laws (LL.B.) Degree examination contained in the Bulletin of Information 2013-2014 issued by Faculty of Law, University of Delhi.
2. The facts of the present case are that the petitioner, who hails from Arunachal Pradesh and belongs to a Scheduled Tribe, took admission in LL.B. Course in the academic session 2013-2014. In November-December, 2013, petitioner appeared in first semester exam and passed all five papers. However, in second semester, petitioner fell short of required attendance

and, therefore, his name was shown in the list of detainees.

3. Though petitioner was initially granted admission in second year of LL.B, yet it was later cancelled in view of Rule 11(i) of the Prospectus which states that no student shall be promoted to the next semester, if he/she has been detained in the examination for shortage of attendance.

4. Rules 10 and 11 of the Bulletin of Information 2013-2014 issued by Faculty of Law are reproduced hereinbelow:-

"10. Attendance Rules

All the students of LL.B. shall have to put in minimum attendance of 66% of the lectures in each of the subjects as also at the moot courts and practical training course.

.....for reasons to be recorded and communicated to the Bar Council of India, the Dean, Faculty of Law/Professor-in-Charge of the Law Centre concerned may condone attendance short of those required by this Rule, if the student had attended 66% of the lectures in the aggregate for the semester examinations.

The Professor-in-Charge of the Law Centre shall have power to strike off the name of a student who is grossly irregular in attendance in spite of warning, or, when the absence of student is for such a long period that he cannot put in requisite percentage of attendance.

11. Promotion Rules

(i) No student shall be promoted to the next Term, if he/she has been detained in the examination for shortage of attendance.

(ii) Subject to sub-rule (i) above, a student of LL.B. First, Third or Fifth Term shall be eligible for promotion to Second, Fourth or Sixth Term, respectively irrespective of the number of courses in which he/she has failed to pass or failed to appear in

the First, Third or Fifth Term examinations.

(iii) Subject to sub-rules (i) and (ii) above, a student of LL.B. Second Term shall be eligible for promotion to Third Term if he/she has passed in at least five papers of First and Second Term examinations taken together and a student of Fourth Term shall be eligible for promotion to Fifth Term if he/she has passed in at least fifteen papers of First, Second, Third and Fourth Term examinations taken together."

5. Mr. R.K. Saini, learned counsel for petitioner submitted that Rule 11(i) is null and void as well as violative of Articles 14, 20 and 21 of the Constitution of India. He further submitted that the Faculty of Law had no jurisdiction to incorporate the impugned Rule in its Prospectus/Bulletin of Information as the field of attendance was occupied by Clause 2(8)(a) of Ordinance VII. According to him, only the Executive Council of the University could amend the statute and ordinances and not the Faculty. In support of his contention, he drew this Court's attention to Clause 2(8)(a) of Ordinance VII, which reads as under:-

"2(8)(a) The students shall be required to put in minimum attendance of 66% of the lectures on each of the subjects as also at the moot courts and practical training course.

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law/Professor-in-Charge of the Law Centre may condone attendance short of those required by this Rule, if the student had attended 66% of the lectures in the aggregate for the examinations.

Provided further that no person shall be deemed to have satisfied the required conditions in respect of his instructions unless, in addition to the requirement regarding attendance and other conditions, he has appeared and satisfied by his

performance the Professor-in-Charge of the Law Centre in such test, written and/or oral, as may be held by him in his discretion. The Professor-in-Charge shall have and shall be deemed always to have had, the power to detain a student in the same class in which he has been studying or not to send him up for the University Examination, in case he did not appear at the tests aforesaid or his performance was not satisfactory."

6. Mr. Saini contended that a student of first year LL.B. could not be detained in first year or denied promotion to second year if he/she had passed five out of ten papers in the first and second semesters taken together.

7. On the other hand, Mr. Mohinder Jit Singh Rupal, learned counsel for respondent-University stated that the issue raised in the present writ petition was no longer *res integra*. He submitted that the ordinances and Promotion Rules framed by the University as well as the Faculty stipulated twin conditions for promotion to the third and fifth term, namely, minimum attendance of 66% and clearance of five papers for promotion to the third semester. In support of his submission, Mr. Rupal relied upon the observations of the Division Bench of this Court in ***S.N. Singh vs. Union of India & Ors., 106 (2003) DLT 329 (DB)***.

8. Having heard learned counsel for parties, this Court is of the view that the Executive Council is not the only authority that can frame regulations and/or rules. Section 17 of the Delhi University Act, 1922 (for short "Act, 1922") stipulates that following shall be the authorities of the University :-

- (i) *The Court*
- (ii) *The Executive Council*
- (iii) *The Academic Council*
- (iv) *The Finance Committee*
- (v) *The Faculties and*

(vi) *such other authorities as may be declared by the Statutes to be authorities of the University.*

9. The Court is the supreme authority of the University and has the power to review the acts of the Academic Council and the Executive Council. The Academic Council is responsible for the maintenance of standards of instruction, education and examination and has the right to advice the Executive Council on all academic matters.

10. The Executive Council has power to amend or repeal or make new statutes or ordinances.

11. Section 32 of the Act, 1922 confers power upon all the authorities of the University to make regulations consistent with the Act, statutes and ordinances.

12. Consequently, Faculty of Law can make regulations, promotion rules consistent with the statutes and ordinances.

13. In fact, this Court finds that the impugned Rule was brought into force by the Faculty to correct the anomaly pointed out by a Coordinate Bench of this Court in ***Smt. Deepti vs. Vice Chancellor, University of Delhi & Ors., W.P.(C) 18051/2006***. The relevant portion of the judgment in ***Smt. Deepti*** (supra) is reproduced hereinbelow:-

“13. To make matters more complicated, there is an apparent conflict between Clause 2(8)(a) of Ordinance VII and the provisions governing the promotion of students. The Promotion Rules as mentioned in the Bulletin of Information (2006-2007) issued by the Faculty of Law, University of Delhi reads as under:-

"Promotion Rules

A student of the First Term LL.B. Programme will be promoted to the Second Term, irrespective of the number of courses in which he/she has failed to pass or failed to appear in the First Term Examinations, provided that he or she has not been detained on account of shortage of attendance in First Term Examinations. A student will be promoted to Third Term LL.B. Programme only in those cases where he/she has passed at least five courses offered by him/her at the LL.B. First and Second Term Examinations taken together."

14. The Promotion Rules stipulate that a student would be promoted to the following year of the LL.B. Programme so long as the student has passed at least five courses out of the ten to be taken by the student in the first and second semesters combined, irrespective of the attendance in the second semester. A plain reading of the said Promotion Rules in conjunction with the provisions of Clause 2(8)(a) would indicate that a student having less than 66% attendance in each of the subjects in the first term would not be permitted to take the examination of the 1st semester. Consequently, the student would not proceed to the second semester. Resultantly, he/she would not be taking the 2nd Semester examination also. Thereby, the student would be out of the LL.B. Course and would have to seek admission the next year as a fresh entrant after qualified in the entrance examination because, according to the University, re-admission to the first year of the LL.B. Programme is not permissible. On the other hand, if a student has over 66% attendance in the 1st Semester, he/she would be in a position to take the 1st Semester examination and, if he/she passes all the five papers, he/she would be promoted to the 2nd year without him/her amending a single lecture in the 2nd Semester or appearing in any paper in the 2nd Semester examination. This does creates an anomalous situation, being heavily loaded against students who miss out in the first Semester.

15. It must be remembered that the requirement of the Bar Council of India Rules, as indicated in **S.N. Singh I** (supra) is that student must follow a "regular course of study". It is a consequence of this requirement that there is a stipulation for attending a certain prescribed minimum number of lectures. But, the amended clause 2(8)(a) of Ordinance VII read in conjunction with the other provisions of the Ordinance and the Promotion Rules is capable of setting this objective at naught. As an illustration take the case of a student (say, A) who has 75% attendance in the 1st Semester, appears in all the five papers of that Semester. Let us now suppose that student "A" does not attend a single lecture in the 2nd Semester and does not appear in the examination for that semester. Because of the promotion rules as they stand, student "A" having cleared five papers in the 1st and 2nd Semester combined, moves on to the 3rd Semester (i.e. the next year). Continuing with this example, let us assume further that student "A" diligently attends classes in the 3rd Semester, has the requisite minimum and clears all the five papers of that semester. Consequently, student "A" moves on the 4th Semester. But, instead of attending classes of this semester, student "A" decides to sit for the five papers which he/she missed out on the 2nd Semester and, appears in the supplementary examination for the 2nd Semester and passes in them. The position then would be that student "A" would be eligible for promotion to the next year (and the Fifth Semester) without having attended a single lecture in the 2nd or the 4th Semester!! Clearly, this is contrary to the object of "a regular course of study." In fact, the rules as they are at present are prone to create confusion and are heavily biased against the 1st, 3rd and 5th Semesters in contradistinction to the 2nd, 4th and 6th Semesters.

xxxx

xxxx

xxxx

xxxx

17. As noted above, in respect of a first year student, the University contended that if the attendance required is not met in the 1st Semester then the student would have to seek admission afresh in the next year. On the other hand, the

*position with regard to the second year and third year student is entirely different. The second year or third year student who misses classes and, is therefore, not permitted to take the semester examination does not require to apply as a fresh entrant and retake the Entrance Examination. Therefore, the attendance rules are not applied even-handedly to all students, and unfairly prejudice first-year students. It appears that while amending the Ordinance in an attempt to conform with the Bar Council of India Rules, as per the directions given in **S.N. Singh-I** (supra), the University amended Clause 2(8)(a) of Ordinance VII but overlooked the effect of its interplay with Clause 2(9) of Ordinance VII and other provisions, such as Promotion Rules and Re-admission Rules in respect of the LL.B. First Year. This has indeed created a significant amount of confusion amongst the staff, professors and students as to the intended meaning and interpretation. It is beyond the scope of these petitions to remedy the numerous drafting errors and inconsistencies in the University Ordinances/Rules and that is best left to the University to iron out in the light of the observations made herein."*

(emphasis supplied)

14. In the opinion of this Court, the impugned Rule removes the ambiguity/contradiction pointed out by this Court in **Smt. Deepti** (supra). The impugned Rule is not only in consonance with Clause 2(8)(a) of Ordinance VII but it also carries it to its logical conclusion.

15. It is also not understood as to how a student without attendance can be promoted to the next semester. After all a student may be entitled to appear in a supplementary examination in the subsequent year, but he/she can do so only if it has minimum attendance. Consequently, minimum attendance of 66% is *sine qua non* for promotion to the next year. If petitioner's argument is accepted, it would amount to putting the cart before the horse!

16. Also petitioner cannot rely on Rule 11(iii) to seek promotion and yet contend that Rule 11(i) is without jurisdiction! Moreover, as rightly pointed out by Mr. Rupal, twin conditions have to be satisfied for promotion to third and fifth term. The Division Bench of this Court in ***S.N. Singh vs. Union of India & Ors.*** (supra) has held as under:-

“13. The ordinances and promotion rules framed by the University, pertaining to LL.B. Course thus stipulate twin conditions for promotion to the Third and the Fifth Term. There is first a condition of minimum attendance of 66% (relaxable under the Rules by the Dean as noted above), and the Second condition of clearance on 5 or 15 papers for promotion to the Third and Fifth respectively.”

17. Consequently, this Court is of the view that the impugned Rule is constitutionally valid, legal, fair and reasonable.

18. Accordingly, present writ petition and application are dismissed but with no order as to costs.

MANMOHAN, J

SEPTEMBER 29, 2014

js/rn