

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

% **Date of decision: 4th August, 2015.**

+ **W.P.(C) 9320/2014 & CMs No.21112/2014 (for directions) & 4122/2015 (of respondent DU for condonation of 6 days delay in filing counter affidavit)**

MAJOR AMANDEEP SINGH

..... Petitioner

Through: Mr. Baldev Raj and Ms. Shikha Tyagi,
Adv.

Versus

UNIVERSITY OF DELHI & ANR

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. for DU

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the refusal of the respondents No.1&2 University of Delhi of permission to the petitioner to take supplementary examination in the subject of Jurisprudence-II of VIth term Bachelor of Law (LLB) Programme and seeks a mandamus to the respondents University of Delhi and its Examination Branch to allow the petitioner to take the said examination.

2. Notice of the petition was issued and the respondents University has filed a counter affidavit. The counsels were heard on 28th July, 2015 and judgment reserved.

3. It is the case of the petitioner:

(i) that he joined LLB course of the respondents University in the year 2002 and completed the First and Second Year thereof and appeared in the Vth term examination in December, 2004;

(ii) that he joined the Indian Military Academy, Dehradun, Uttarakhand in January, 2005 and thus could not attend the classes of VIth and last term of the LLB course;

(iii) that in January, 2013, he sought posting to Delhi in order to complete his LLB degree and was posted to Delhi with effect from 27th February, 2013;

(iv) that he thereafter sought permission from the respondents University to, notwithstanding the time gap aforesaid, allow him to take the supplementary examination in one of the subjects of Vth term which he, in the examination of December, 2004 had failed to pass and to re-admit him in VIth term to enable him to complete the LLB degree.

4. I may at this stage state that though the Delhi University Act, 1922, the Statutes and the Ordinances issued thereunder prescribe a “span period” i.e. the maximum period in which the various courses / programmes offered

by the respondents University are to be completed and the span period provided for completing the three years LLB course is of six years but the respondents University since 1975 had been following the practise of, on case to case basis, allowing a “special chance” to the students who were unable to complete the course / programme undertaken by him / her within the span period provided therefor, to appear in the examination thereafter also. However, the respondents University vide Notification dated 10th October, 2012 notified that no applications for grant of special chance beyond the stipulated span period would be entertained thereafter and that the students will have to complete their course of study within the span periods prescribed for the courses concerned.

5. The span period of six years in which the petitioner was to complete his three years LLB course had lapsed in 2008 and in accordance with the Notification dated 10th October, 2012 supra, the petitioner was not entitled to any special chance.

6. The respondents University however vide another Notification dated 14th March, 2013 i.e. in or about the time the petitioner had applied as aforesaid for waiver of time gap, purely as a one time measure, allowed the students to submit their applications for grant of special chance to enable

them to appear in their backlog papers.

7. The request aforesaid of the petitioner was also considered under Notification dated 14th March, 2013 supra and the petitioner was, vide letter dated 25th April, 2013, accorded permission to appear in the examination of the remaining paper of the Vth term and as well as the examination in the five papers of the VIth term.

8. In accordance with the permission aforesaid, the petitioner appeared in the Vth term supplementary examination and cleared the Vth term.

9. The petitioner in January, 2014 approached the respondents University and was granted re-admission in the VIth term of the LLB course, as a regular student and attended the classes thereof from January, 2014 to May, 2014 and appeared in the VIth term examination conducted in May, 2014. However, in the result declared of the said examination, the petitioner was able to pass the examination in only four out of five papers of the VIth term. The petitioner thereafter sought permission to appear in the supplementary examination of the remaining paper of the VIth term i.e. Jurisprudence-II scheduled on 20th August, 2014. Upon being denied permission therefor and upon his representations not meeting with any success, the petitioner in or about November / December, 2014 instituted this petition.

10. The respondents University has opposed the petition contending that under the Notification dated 14th March, 2013 and the permission thereunder granted to the petitioner vide letter dated 25th April, 2013, the petitioner was, by way of a special chance, entitled to only one opportunity to pass the examination and having been unable to pass the examination in one of the papers of the VIth term, is not entitled to any further chance.

11. I may in this regard reproduce herein below the letter dated 25th April, 2013, vide which the petitioner was granted the special chance and in pursuance to which he appeared in the examination of the remaining paper of the Vth term and in the examination of the five papers of the VIth term; the same is as under:

“Dear Student,

This is further to your application seeking Special Chance beyond span period. You are advised to contact the Examination Branch North Campus immediately for further action. Please note this is the last Special Chance. In case you do not appear or fail in any paper (Theory, Practical, Subsidiary, Qualifying etc.), you will not be granted any further opportunity in future.”

12. The Notifications dated 10th October, 2012 and 14th March, 2013 supra of the respondents University were the subject matter of the judgment dated 27th November, 2014 of a Division Bench of this Court, of which the

undersigned was a member, in LPA No.956/2013 titled *Amit Kumar Vs. Delhi University* and other connected petitions. It was *inter alia* held therein, (a) that the students cannot be said to be having any right to complete the course / programme to which they have sought permission, in whatever time they may deem proper, particularly when the rules of the University provided otherwise; (b) the Universities are fully empowered to lay down the maximum period for completing the educational course / programme and to determine whether any relaxation with respect thereto is to be given or not; (c) that the span period is the outer limit for completing the educational course / programme and is generally found to be double the duration, otherwise prescribed for completing the educational course / programme—thus, a relaxation / exemption is inbuilt in the span period; (d) however, the question still remains, whether there should be a span period; (e) the educational courses / programmes concerned are long term courses / programmes, spanning over several years and in which time uncertainties of life can have a play; (f) the question thus arises, whether the expiry of such span period should be allowed to come in the way of desire for education or completing education; (g) that the rules of the respondents University prescribing the span period were formulated decades back and did not appear

to have been relooked in today's context and life. Accordingly, a direction was issued to the respondents University to consider the matter, in the light of the observations made in the judgment.

13. Though the time period in which the respondents University was, in *Amit Kumar* supra, directed to take decision has expired but on enquiry it was informed that the matter is still pending consideration.

14. In accordance with the judgment in *Amit Kumar* supra, the petitioner having exhausted the span period as well as the special chance given vide Notification dated 14th March, 2013 and letter dated 25th April, 2013, is not entitled to any relief.

15. The counsel for the petitioner however sought to distinguish the judgment in *Amit Kumar* supra by contending that while the petitioners therein were seeking a special chance to appear in the examination, the petitioner in January, 2014 having been "re-admitted" in the VIth term of the LLB course, is not bound by the rule of span period. It is contended that the petitioner herein is entitled to appear in the supplementary examination of the VIth term just like any other regular student of VIth term would be entitled to.

16. Per contra, the counsel for the respondents University has contended that readmission of the petitioner was also in accordance with the grant of special chance only. It is explained that without the petitioner attending the requisite number of classes of the VIth term and which he had not attended when he had discontinued his studies after the Vth term, he could not have been permitted to take the examination in the subjects of the VIth term.

17. There can be no doubt as to the explanation aforesaid by the respondents University. The rules of legal education formulated by the Bar Council of India do not permit an LLB degree to be granted without the student attending the classes for the said course, as a regular student thereof.

18. Thus, the mere fact that the respondents University readmitted the petitioner to the LLB course would not make the other rule of the respondents University pertaining to span period inapplicable to the petitioner. Grant of a special chance to the petitioner, to take only the examination in the remaining paper of the Vth term and in the five papers of the VIth term, without so readmitting the petitioner, would have been futile for the petitioner. On the reasoning in *Amit Kumar* supra, the petitioner is not entitled to any relief at this stage and has to await the outcome of the decision which the respondents University in *Amit Kumar* supra has been

directed to take.

19. However in the exercise of jurisdiction under Article 226 of the Constitution of India, the rule is that the High Court is empowered to grant relief, even if does not find any right in the petitioner thereto but finds the grant of the relief to be necessary to serve the ends of justice and in the particular facts and circumstances. A discussion, supported with precedents, in this regard is to be found in *Bessy Edison Vs. Indira Gandhi National Open University* 176(2011) DLT 335 and in *Gurmeet Singh Vs. DDA* MANU/DE/2951/2011. The Supreme Court in *Shangrila Food Products Ltd. Vs. LIC* (1996) 5 SCC 54, *Dwarka Nath Vs. ITO* AIR 1966 SC 81, *LIC Vs. Asha Goel* (2001) 2 SCC 160 and *UOI Vs. R. Reddappa* 1993 (4) SCC 269 has held that Article 226 is couched in comprehensive phraseology and it *ex-facie* confers a wide power on the High Court to reach injustice wherever it is found. The High Court is empowered to mould the relief to meet the peculiar and complicated requirements of this country. The Constitution does not place any fetters on the exercise of the extraordinary jurisdiction of the High Courts under Article 226. It is left to the discretion of the High Court. This Court can, in exercise of such jurisdiction, take cognizance of the entire facts and circumstances of the case and pass

appropriate orders to give the parties complete and substantial justice. Once this Court is satisfied of injustice or arbitrariness, then the restrictions on the exercise of power, self imposed or statutory, stand removed and no rule or technicality, on exercise of power, can stand in the way of rendering justice.

20. I find the petitioner entitled to the relief claimed of issuance of mandamus to the respondents University to allow the petitioner to take the examination in the remaining paper i.e. Jurisprudence-II of the VIth term of the LLB course, for the reasons recorded hereinafter:

(I) The interruption in the education of the petitioner was on account of the petitioner opting to join the Army. Though the petitioner had time, as aforesaid till 2008, to complete his education in LLB course but left the same in 2005 to serve the country.

(II) The petitioner has pleaded and which I have no reason to disbelieve, that after completing his military training from Indian Military Academy, Dehradun, he was posted, from June, 2006 to June, 2009 in Jammu & Kashmir; from July, 2009 to January, 2011 at Thiruvananthapuram in Kerala, and from February, 2011 to February, 2013 was again posted in Jammu & Kashmir. The petitioner has further pleaded that during his first posting in Jammu & Kashmir, he

was awarded with the Siachen Glacier Medal, Operation Rakshak Medal, High Altitude Medal and Sainya Sewa Medal and during his second posting in Jammu & Kashmir, he was awarded with the Special Service Medal for Field Posting in Counter Insurgency Operation Area for a period of two years.

(III) Our country and its various institutions and authorities, in recognition of the service so rendered by the Defence Personnel to the nation, have devised several schemes conferring certain special benefits, advantages and reservations to them and to their family members. The Supreme Court, as far back as in *D.N. Chanchala Vs. The State of Mysore* (1971) 2 SCC 293 held that reciprocal obligations towards those who serve the interest of the country's security justified setting apart of certain seats in educational institutions for defence personnel. Such preferential treatment was held permissible under Article 15(4) of the Constitution of India. It was held that Defence personnel are at a disadvantage in the matter of education. However it appears that the respondents University, while stipulating the span period, has not considered the said factor and not provided a longer span period for Defence Personnel, considering the

exigency of their services and duties. The Supreme Court in *State of Orissa Vs. Mohd. Yunus* 1994 Supp. (2) SCC 55 held that ex-servicemen, after putting in several years of service in Defence, cannot be considered at par with others, making the benefits, concessions, reservations provided for them illusory. The State Governments and the Public Service Commission was accordingly directed to consider desirability for fixing lower standards for ex-servicemen. Similarly in *Sansar Atri Chand Vs. State of Punjab* (2002) 4 SCC 154 it was held that the provision for reservation in the service Rules is meant for the benefit of ex-servicemen- in the context of the scheme of the provision. The said provisions should be interpreted in a purposive and reasonable manner so the intent and the purpose of the provision served.

(IV) The Supreme Court, in *Capt. Virendra Kumar Vs. Union of India* (1981) 1 SCC 485 observed that Defence personnel fight on the war front and expose their lives to extinguishment, so that the security of the nation might be defended. In the facts of that case, the unwillingness of the Government to value such patriotism was adversely commented upon and it was felt that the same may

adversely affect the morale of the Defence Forces. The Supreme Court deprecated the unimaginative attitude of the authorities and held that the Defence Personnel deserve special solicitude having regard to the supreme sacrifice sometimes they are called upon to make. It was held that Defence Personnel are dear to the country and a considerate disposition in dealing with them needs to be shown.

(V) However, it appears that notwithstanding the efforts made in the aforesaid direction, the Defence Personnel are not receiving their due. The Supreme Court in *Union of India Vs. C.S. Sidhu* (2010) 4 SCC 563 has commented with regret on the shabby manner in which the army men in our country are being treated. It was observed that they bravely defend our country, even at the cost of their lives and deserve a better and humane treatment.

(VI) This Court in *Amit Kumar* supra has already discussed the importance and relevance of education. Reliance was placed on *Professor Yashpal Vs. State of Chhattisgarh* (2005) 5 SCC 420 where the Supreme Court observed that academic degree is of great significance and value and goes a long way in shaping the future of the holder thereof. Education was held to be an important element of

dignity of the individual which is secured to all citizens of the country in the Preamble itself of the Constitution of India. Education is also a Fundamental Right, inasmuch as there can be no right to practise profession without education. Without education, no citizen can be expected to perform his Fundamental Duties enshrined in Article 51A of the Constitution also;

(VII) The Courts also have leaned in favour of a citizen educating himself/herself by declaring illegal the age limits prescribed for joining an educational programme or profession or vocation. Recently, vide order dated 11th November, 2014 in Transferred Case (Civil) No. 47/2014 titled *H.D. Sailor Vs. Bar Council of Gujarat* and other connected cases, the Supreme Court upheld the judgments of the High Courts of Madras, Punjab & Haryana and Rajasthan quashing the rules preventing the persons who had crossed the age limit of 45 years from enrolling with the Bar Council on the ground of the same being violative of Article 19(1)(g) of the Constitution and in accordance with the earlier judgment of the Supreme Court in *Indian Council of Legal Aid & Advice Vs. Bar Council of India* (1995) 1 SCC 732.

(VIII) The Supreme Court in *Maharshi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of M.P.* (2013) 8 SCALE 541 gave the status of national wealth to education. Similarly, in *Institute of Chartered Financial Analysts of India Vs. Council of the Institute of Chartered Accounts of India* (2007) 12 SCC 210 it was held that the right to acquire a qualification being an inherent and human right, cannot ordinarily be curtailed.

In the aforesaid spirit, I am of the opinion that this Court will be failing in its duty if it denies relief to the petitioner.

21. Accordingly, the petition is allowed; the respondents University of Delhi is directed to allow the petitioner to complete the LLB course / degree by appearing in the examination of the remaining paper (Jurisprudence-II) of the VIth term of the LLB programme, subject of course to the petitioner complying with the requisite formalities.

22. A direction is also issued to the respondents University of Delhi to, while taking the decision in compliance of *Amit Kumar* supra, also take what has been observed in para 20 hereinabove into consideration i.e. whether while stipulating the span period if any, an exception needs to be carved out qua defence personnel and if so on, what terms. Attention of the

respondents University in this regard is also invited to *Dhan Singh Vs. State of Haryana* 1991 Supp (2) SCC 190 where the Supreme Court carved out a yet further distinction between those already in the service of the defence of the country and those who volunteered to join the military service during national emergency. It was held that those who forego other benefits and avenues and join the army keeping in view the needs of the country ought to be shown a special regard

No costs.

、 **RAJIV SAHAI ENDLAW, J.**

AUGUST 04, 2015

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