

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.377 of 2016 (O&M)

Date of decision: 21.4.2016

Panjab University and others

.... Appellants

Versus

Anubhav Bansal and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE GURMIT RAM.

Present: Mr. Subhash Ahuja, Advocate for the appellants.
Mr. Arun Bansal, Advocate for respondent No.1.

S. S. Saron, J.

This appeal has been filed by the Panjab University, Chandigarh and others (appellants) against the judgment and order dated 18.2.2016 passed by the learned Single Judge in CWP No.26433 of 2015 whereby migration has been granted to the respondent from the Panjab University Regional Centre at Ludhiana to the Integrated Course being conducted by the University Institute of Legal Studies, Panjab University at Chandigarh in the 7th Semester of BA.LLB. (Hons.) 5 years Course in the Session 2015.

The respondent is pursuing his BA.LLB. (Hons.) 5 years Integrated Course at the Panjab University Regional Centre, Civil Lines, Ludhiana. He was admitted in the first Semester of the said Course in the Session 2012-13. The 7th Semester of the said B.A. LLB. (Hons.) 5 years Integrated Course commenced from 8.7.2015 and continued till 21.12.2015. During the Session 2015, the appellant – Panjab University issued notice dated 4.12.2015

(Annexure P2) for candidates seeking migration. It is to be noticed that migration in the 5 years Integrated Course being conducted by the University Institute of Legal Studies, Panjab University, Chandigarh is permissible in the 3rd, 5th and 7th Semesters only; besides, migration cannot be claimed as a matter of right. The Rules relating to Migration reads as under:-

"10. RULES FOR MIGRATION TO B.A./B.Com. LLB (HONS.) 5 YEARS INTEGRATED COURSE.

- (a) Migration cannot be claimed as a matter of right.
- (b) No migration will be allowed in 1st, 2nd, 4th, 6th, 8th, 9th and 10th semesters.
- (c) Migration can be allowed only in 3rd, 5th and 7th semester of B.A./B. Com. LL.B (Hons.) 5 years integrated course.
- (d) Migration can be allowed to a student studying in B.A./B.Com. LL.B (Hons.) 5 years Integrated Course of any other Institution which is recognized as equivalent to the B.A./B.Com. LL.B. (Hons.) 5 years Integrated Course of Panjab University.
- (e) A student migrating from another University/Institute must have secured at least 45% marks in the aggregate in the preceding year(s).
- (f) Only those students may be considered eligible to seek migration, who have cleared all the papers of the examinations in which they had appeared from the Institution from which migration is to be sought.
- (g) (i) Migration will be done according to inter se merit.

- (ii) For students of any other University seeking migration to UILS, the maximum marks obtained by the top student of that University will be normalized against the maximum marks obtained by the top student of Panjab University in order to prepare the merit list.
- (h) No migration shall be allowed if there is difference of more than 2 papers (not subjects) of the course content taught in the Panjab University and in the Institution from which the student is seeking migration, in the examinations of the semesters passed by the students. The deficient papers have to be cleared within 2 consecutive attempts, failing which the student will not be promoted to the next semester.
- (i) Migrated student shall pay the amount of fee which he/she was required to pay in the University/College/Centre from which he/she is migrating i.e. the sum of rupees equivalent to the annual dues, tuition fee, admission fee, NRI fee etc. or the fee applicable at the University Institute of Legal Studies, whichever is higher, for the remaining period of the study at the University Institute of Legal Studies, Panjab University, Chandigarh.
- (j) A student seeking migration shall have to apply on the prescribed proforma by 31st July to the Director, UILS. Migration will be allowed only on the basis of merit as defined in Clause (g) above.

(k) Migration shall not be allowed unless a student produces the following documents certificates issued by the University/College/Centre from which he/she intends to migrate:

- (a) 'No Dues Certificate' along with the amount of fee being paid by her/him to the said University/College/Centre;
- (b) The lower examinations pass certificates;
- (c) The 'Lecture Statement' and 'Character Certificate' from the University/College/Centre from where he/she intends to migrate; and."

In the notice dated 4.12.2015 (Annexure P-2), the vacant seats of 3rd Semester for BA.LLB. (Hons.) had been mentioned as seven. However, for the 5th and 7th Semesters, these were mentioned as 'Nil.' This would mean that there were no seats available for migration of students to the 7th Semester during the Session 2015.

The learned Single Judge in his impugned order has mentioned that in the 7th Semester, 124 students were studying and had taken the examinations; however, two students had been detained and had not been granted admission in 8th Semester. Therefore, it was observed that the number of students studying in the 8th Semester was 122 as against the sanctioned strength of 124. It was further observed that no doubt, as per the Migration Rules, migration can be granted in the 7th Semester and in the present case, the petitioner (now respondent) had approached this Court seeking migration in the 7th Semester which he had now passed. It was further observed that once a seat was available, in

the next Semester for which the respondent deserved to be granted migration from Regional Centre Ludhiana to University Institute of Legal Studies, Panjab University, Chandigarh in case he fulfilled all other conditions required for migration. The needful was ordered to be done within ten days and the petition was disposed of.

It is to be noticed that the respondent on 14.7.2015 made an application (Annexure P-1) seeking migration in the 7th Semester from Regional Centre Ludhiana to University Institute of Legal Studies, Panjab University, Chandigarh in the 5 years B.A. LLB (Hons.) Course. At that time, no seat had been declared vacant in the 7th Semester nor was any notice issued. The notice that was issued was on 4.12.2015 (Annexure P-2), which also did not mention any seat to be vacant in the 7th Semester of B.A.LLB (Hons.) 5 years Course.

Learned Counsel appearing for the appellants has submitted in Court today a list of the students admitted in the 7th Semester in the Session 2015, which is the relevant session for which the respondent prays for migration. There are 124 students who are undergoing the 7th Semester of the B.A.LLB (Hons.) 5 years Course at the University Institute of Legal Studies, Panjab University, Chandigarh. There is no dispute with regard to the students upto serial No.112. Thereafter, from serial No.113 to 124 the list shows that these students except for one namely Himanshi are not of the initial 2012 Session but are of the previous initial Sessions of 2011 and 2010.

According to learned Counsel for the respondent, these seats could not be filled from the previous Sessions students

without the seats being made available for the candidates seeking migration.

In this regard, it may be noticed that these students from serial Nos.113 to 124 in fact are those students who were detained in the Semester because of shortage of lectures or other such circumstances like being unable to take the examinations due to illness etc or unable to secure the required percentage of marks or due to failure in the examinations. Therefore, such students who were unable to complete their respective Semester were permitted to continue their Course in the same Semester by detaining them and allowing them to join the 2012 initial Session students. In other words, students who lost their year by their inability to complete the Semester for any reason may be by way of shortage of lectures or not completing the requisite number of papers or due to illness or other such circumstances, have been permitted to continue their Course and repeat the Semester by detaining them.

Learned Counsel for the respondent, however, submits that there is no statutory force to this practice.

This practice it appears and is not in dispute has been continuing for a number of years. The practice in fact is well founded for the reason that the students who are studying in the same Institute and were unable to complete the Semester should be allowed to continue with their Course in the same Institute by detaining them in the same Semester which they were unable to complete rather than allowing students of the other Centres to come to the Panjab University Centre at Chandigarh by way of migration. This would also be proper for the reason that the students unable to complete their Semester for any reason would

be able to complete their incomplete Semester within the eight years duration of their B.A. LLB (Hons.) 5 years Course. This would be in accord with the norms prescribed by the Bar Council of India. On passing the Semester examination, the promotion to the next Semester is not to be taken as a fresh admission or a readmission in the Institute where the student is undergoing his Course. It would in fact be quite unreasonable and unjust to ask a student to leave the Institution on his failure to complete the Semester may be due to not securing the requisite marks, shortage of lectures, illness, bereavement in the family or other social obligations etc. Therefore, the Panjab University is quite justified in adjusting its own students of the same Institute to continue their Course by detaining them in the next session for the same Semester.

The number of seats for students in a particular Semester of the B.A.LLB (Hons.) 5 years Course is 120. The number of students may exceed the prescribed number when students of a previous Session are detained in the same Semester. It is only if no students are detained and yet seats below the prescribed number of 120 students are there that migration is normally offered to other students in accordance with Rule 10 of the Migration Rules, which is not a right. As already noticed 124 students are studying in the 7th Semester of the 2015 Session and no student is shown to have failed, unable to take the examination or left so as to vacate the seat. Therefore, the learned Single Judge erred in holding that the number of students in the 8th Semester is 122 as against the sanctioned strength of 124. In fact, 120 students is the sanctioned strength in a Semester of the B.A.LLB. (Hons.) 5 years Course. Therefore, even if 122 students were

studying, the same would be in excess of the sanctioned strength by two students.

It may also be noticed that in the 7th Semester of the 2015 Session, there were 30 candidates who had applied for migration to the University Institute of Legal Studies, Panjab University, Chandigarh. The respondent in order of merit figured at serial No.12. One seat was declared vacant for migration on 1.10.2015; however, the same was filled up on 28.10.2015 by a detained student of the previous batch namely Nikhil Kumar who figures at serial No.124 of the list submitted by learned counsel for the appellants. It may be noticed that no seat was declared vacant for migration vide notice dated 4.12.2015 (Annexure P-2) for the 7th Semester of the 2015 Session of the B.A.LLB. (Hons.) 5 years Course. Out of the 30 candidates who had applied for migration for the 7th Semester 2015 Session, the respondent was at serial No.12 in order of merit and there were 11 students above him. Besides, even after adjustments of the detained students, the number of students in the 7th Semester exceeds the sanctioned strength by four.

The conditions for grant of migration are mandatory in nature and cannot be applied in favour of a person by waiving the mandatory conditions. In K.S. Bhoir v. State of Maharashtra and others, 2002 (1) Recent Services Judgments 719 (SC) it was observed by the Supreme Court that the Court cannot direct to waive the mandatory requirement of law in exercise of its extraordinary power under Article 226 of the Constitution. It was held that it is not permissible for the High Court to direct an authority under the Act to act contrary to the statutory provisions.

In Dr. (Mrs.) Santosh Kumari v. Union of India, 1995 (1) Service Cases Today 527 (SC) it was held by the Supreme Court that the allotment of seats should go according to merit and it does not depend upon who comes to Court and who does not. In the said case, there were not only six candidates above the third respondent in the merit list but two of them had indicated their willingness to be admitted against the said vacancy. It was held that the third respondent could not lay claim to the vacancy in M.S. Degree Course.

In, Home Secretary, UT of Chandigarh and another v. Darshjit Singh Grewal and others, 1993 (4) Recent Services Judgments 162 (SC) it was held that it is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done; it is bound to adhere to it.

Learned Counsel for the respondent has placed strong reliance on the fact that the other students seeking migration had not come to the Court and where they were fence-sitters, they could not claim a right for migration to the University Institute of Legal Studies, Panjab University, Chandigarh. He has placed strong reliance on State of Uttar Pradesh and others . v. Arvind Kumar Srivastava and others, 2015 (1) Recent Services Judgments 704 (SC). In the said case it was held when a person who is not vigilant of his rights and acquiesces into the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and

challenged their retirement. There is no dispute to the said proposition. However, the same is inapplicable in the present case as no cause of action had accrued to the 30 other students who had applied for migration to the University Institute of Legal Studies, Chandigarh as no seats had been notified by the appellants to be filled up by migration. Therefore, a relief cannot be claimed by the respondent in preference to others merely because he had come to the Court and others who had no cause of action did not do so.

In the circumstances, for the foregoing reasons, the appeal is allowed and the judgment and order dated 18.2.2016 passed in CWP No.26433 of 2015 by the learned Single is set aside and the writ petition filed by respondent is dismissed. There shall, however, be no order as to costs.

(S.S. Saron)
Judge

(Gurmit Ram)
Judge

21.04.2016
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Note: Whether to be referred to the Reporter: Yes