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

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Judgment delivered on: 25.10.2016

+ W.P.(C) 9696/2016 & CM No.38822/2016

SAOMYA SAXENA

..... Petitioner

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

:

Mr. Lokesh Kumar, Advocate.

For the Respondents

:

Mr. M.J.S. Rupal with Ms. Simran Jeet and Mr. Kirat Singh, Advocates for respondent No.1

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

25.10.2016

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner has filed the present petition for directing the respondents to give relaxation to the petitioner and to promote her to 5th term (3rd year LLB) three year course in the Campus Law Centre and, further, to direct the respondents to allow the petitioner to fill up the examination form for 5th term examination to be held in December 2016.

2. The petitioner took admission in LLB three year course

commencing from the Academic Session 2014-15. The course is divided in six semesters with each semester having five papers. The petitioner has been able to clear 14 papers out of 20 in four semesters.

3. As per Promotion Rules applicable to LLB Course, for being promoted to Fifth Semester, a student has to clear at least 15 papers of the first, second, third and fourth term examinations taken together.

4. It is contended that the petitioner, on account of serious illness, either could not take some of the examinations or could not clear the same. It is contended that the petitioner, on account of ill health, could not clear 15 papers but has cleared 14 papers.

5. It is contended that, in similar circumstances, relaxation was granted by the respondents and students, who had not cleared 15 papers, were promoted to 3rd year. Reference is drawn to the letter dated 19.10.2015, issued by the Deputy Registrar, (Academic).

6. Learned counsel for the respondents has filed the counter affidavit in Court. The same is taken on record.

7. Learned counsel for the respondents submits that the Promotion Rules are mandatory and cannot be deviated from and, as per the Promotion Rules, a student has to clear at least 15 papers in four semesters cumulatively to be eligible for promotion to the fifth Semester. It is contended that since the petitioner has not qualified the mandatory 15 papers, the petitioner is not eligible for promotion to

third year.

8. Reliance is placed by the learned counsel for the respondents on the decision of a Division Bench of this Court in **S.N. Singh vs. Union of India** : 2003 (69) DRJ 502 (DB), wherein, the Division Bench quashed the promotion of all students, who had cleared 14 or less papers upto the fifth term but had been promoted by the Respondent University. It is contended that the Division Bench has held that the said Promotion Rules are mandatory and no relaxation can be given under the Promotion Rules.

9. With regard to the reliance placed by the learned counsel for the petitioner on letter dated 19.10.2016, it is contended that the said relaxation was granted in exceptional circumstances and that also in view of the fact that the course, in which the students concerned were studying, was being discontinued and there was going to be introduction of a new scheme of course for LLB and there would have been no faculty available for teaching the old course. It is contended that, in these exceptional circumstances, the relaxation was granted and, in any event, the resolution itself records that it would not be treated as a precedent.

10. It is further contended that even if an incorrect relaxation was granted, the petitioner cannot claim negative equality as equality is a concept of positivity and if an illegality has been committed, the same cannot be perpetuated or permitted to be repeated on the touchstone of

Article 14 of the Constitution of India.

11. The relevant Promotion Rules read as under:-

"Promotion Rules applicable to the LL.B. course in the Faculty of Law. ·

- (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 Terms shall be eligible for promotion to third Term if he/she has passed in at least five papers of the First and Second Term examinations taken together and a student of Fourth Term shall be eligible for promotion to Fifth Term if /she has passed in at least fifteen papers of First, second Third and Fourth Term examinations taken together. "*

12. Perusal of the Promotion Rules shows that a student of LLB Second Term is eligible for promotion to Third Term if the student has cleared at least five papers of the first and second terms taken together and a student of fourth term is eligible for promotion to fifth term, if the student has cleared at least 15 papers in first, second, third

and fourth term cumulatively. Admittedly, in the case of the petitioner, the petitioner has only cleared 14 papers and is short by one paper.

13. The Division Bench of this Court in **S.N. Singh** (*supra*) has held as under:-

“13. A perusal of the Promotion Rules bring out that to be admitted to the Third Term, a student must have passed at least 5 courses offered by him in the First and Second Term Examination taken together, and in the matter of promotion to the 5th Term, the student must have passed at least 15 courses taken by him for the First, Second, Third and Fourth Term taken together. Further, the eligible student must take admission in the Third or the Fifth Term not later than two weeks from the date of announcement of the Second and Fourth Term results, failing which the right to be admitted to the Third or Fifth Term would be forfeited.

14. 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.

19. The University of Delhi appears to be conscious of the fact that for promotion to the third and fifth semester as such enough relaxation is already provided under the Promotion Rules qua the clearance of papers opted by the students in the first four semesters. This issue whether relaxation should be granted, was referred to a

Committee headed by Mr. Justice V.S. Deshpande (as his Lordship then was). This Committee was constituted on 22.12.1986. It submitted its report. In the meeting of the Academic Committee held on 7.1.1989 this report was considered. The unanimous recommendation of Justice V.S. Deshpande Committee was that no student should be allowed to carry over the load more than one semester to the next semester. It was further unanimously recommended by the Committee that under the promotion rules, under no circumstances relaxation should be given in this respect.

20. The Academic Council accepted the report and thereby decided that as far as the LL.B. Degree Course was concerned, no relaxation would be given in the Promotion Rules i.e. clearance of 5 and 15 papers respectively for students to be admitted to the third and Fifth Term respectively, was not to be relaxed.

25. In view of the acceptance of the Justice V.S. Deshpande Committee's recommendation that norms of clearing 5 and 15 papers up to the 2nd and 4th semester should not be waived, a direction is liable to be issued to the respondent No. 1 to comply with the Resolution dated 7.1.1989 passed by the Academic Council not to waive the said norm.

26. The issue arises as to what should be done for the present academic year. A dismal picture has been reflected before us. All students who have cleared only 4 out of 10 papers in the first and second semester have been recommended for promotion to third semester and all students who have cleared only 14 out of 20 papers in the first four semesters have been recommended for promotion to the fifth semester. Further, attendance rules have been relaxed without any limit. Students with as low

attendance as 23% have been allowed to take the examination and these students who have cleared only four out of ten papers in the first two semester have been recommended for promotion. Students with as low as 32% attendance and having cleared only 14 out of 20 papers in the first four semesters have been recommended for promotion to the 5th semester. The reasons for relaxation of both the norms i.e. papers passed and attendance in the majority of cases is listed as "due to illness". In a few cases the reason is "due to some domestic family problem", "death in family", "due to some official burden", "due to marriage", "due to depression" and "due to weak financial problem". What is shocking is that in some cases in the column of listed reason it is stated "reason not given". The petitioner had listed about 100 such cases, to which there is no denial. Records of the University shows that all those students who had cleared only 4 papers out of 10 in the first two semesters irrespective of what their attendance was, were recommended for admission to the third semester and similarly all students, who had passed 14 papers out of 20 up to the 4 semester, were recommended for admission to the 5th semester irrespective of the classes attended. We may note that in some of the cases the concerned students have more than 66% attendance.

32. In matters pertaining to education no court can permit total violation of the norms. LL.B. Degree Course is expected to produce trained legal minds, ready to take on the challenges of the 21st Century. Decline in education norms in professional law courses was noted by the Supreme court as far back as 1989. In the judgment reported as **AIR 1989 SC 1541 titled Baldev Raj Sharma Vs. Bar Council of India**, it was observed that there is a substantial difference between a course of

study pursued as a regular student and a course of study pursued as a private candidate. It was observed that regular attendance for the requisite number of lectures, tutorials etc. has a purpose. Rules framed by the Bar Council of India were upheld. Whatever be the equities, we cannot permit a total violation of the norms. Promotion of all students who have cleared only 4 or 14 papers respectively to the third term and fifth term are thus quashed.

33. For future, directions contained above, namely, no relaxation would be given from the requirement of clearance of 5 or 15 papers as the case may be for promotion to the third and fifth term shall be adhered to by the University. Further, the attendance rules shall be amended by the University of Delhi and shall be brought in conformity with the attendance rules framed by the Bar Council of India. The permissible relaxation would be as per the rules framed by the Bar Council of India and manner of exercise shall be as so framed there under.

14. The Division Bench has held that the Promotion Rules of the University, which mandate that a student has to clear 5 or 15 papers, for being admitted to third and fifth term respectively, are mandatory. No relaxation can be granted in respect of the said Rules.

15. It is mandatory for all students to qualify 5 or 15 papers respectively for being promoted to third and fifth Semester respectively. No relaxation can be granted to the students who fall short of the mandatory number. Even the University does not have any right to grant any relaxation in respect thereof.

16. It may be noted that the Division Bench in **S.N. Singh** (*supra*) was also conscious of the power of relaxation provided under Ordinance X-C and noted that the Academic Council's decision to accept the Justice V.S. Deshpande Committee's recommendations was a resolution limiting the exercise of power of relaxation under Ordinance X-C. The Division Bench noted that it was disturbed by the said arguments raised by the petitioner therein because of the past conduct of the University in granting relaxation in exercise of power under Ordinance X-C had led to chaos and academic discipline had been ignored. Being conscious of the powers under Ordinance X-C and the manner in which the University had exercised the same, the Division Bench pronounced the said judgment and mandated it that no such relaxation could be granted by the University in respect of the Promotion Rules.

17. In view of the decision of the Division Bench, the contention of the petitioner seeking a consideration for grant of relaxation under Ordinance X-C cannot be accepted and the University cannot be directed to even consider grant of such relaxation.

18. Furthermore, it is a settled proposition of law that there can be no claim to negative equality. A party cannot claim that something which has been done incorrectly in the past should be repeated. A direction cannot be given for doing another wrong. A direction to repeat a wrong would not be setting the wrong right but would be perpetuating another wrong. Concept of equality under Article 14 of

the Constitution cannot be pressed into service for claiming an illegality to be repeated. There can be no concept of negative equality.

19. A party which approaches the Court has to first establish a right entitling him to the relief sought on the basis of the facts and circumstances of the case. Merely because in an earlier action the respondent has illegally done an act, would not entitle the petitioner to seek repetition of the illegality.

20. Further contention of the learned counsel for the petitioner that since the power exists under Ordinance X-C for grant of relaxation, such power cannot be taken away unless the same is struck down, is, in my view, untenable. The Division Bench in **S.N. Singh** (supra) has already considered the said power and held that the Academic Council has placed fetters on its own exercise of power by accepting Justice V.S. Deshpande Committee's recommendations and, furthermore, the Division Bench has also noted that exercise of power by the University had led to chaos and deterioration of the academic standards and, in those circumstances, the Division Bench had restrained the University from exercising such power in respect of granting relaxation insofar as attendance and the Promotion Rules were concerned.

21. This, the Division Bench had held, in view of the fact that a law course cannot be equated with a normal academic course and, since,

the law course is a professional course, special consideration and treatment has to be given to the legal education in contradiction to the normal academic courses. In these circumstances, the Division Bench has restricted the exercise of power by the University under Ordinance X-C.

22. In view of the above, I find no merit in the petition. The same is, accordingly, dismissed.

OCTOBER 25, 2016
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SANJEEV SACHDEVA, J

