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

Date of Decision: 03.05.2018

+ **W.P.(C) No.4618/2018 & C.M. Nos.17831-17833/2018**

RAJAT GOYAL

..... Petitioner

Through: Mr.Nikhil Barwankar,
Mr.Roopenshu Pratap Singh,
Mr.Vikram Singh Kushwaha,
Mr.David Vijay Thomas &
Mr.Kaushik Barua, Advs.

versus

UNIVERSITY OF DELHI

..... Respondent

Through: Mr.Mohinder J.S. Rupal with
Mr.Prang Newmai &
Ms.Slomita Rai, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. On 02.05.2018, when the matter was listed for preliminary hearing, Mr.Rupal who appeared on advance notice on behalf of the respondent, had sought time to get instructions and to produce the relevant record. Today, Mr.Rupal, learned counsel for the respondent submits that the petition may be decided on the basis of pleadings and the relevant records produced by him. Accordingly, with the consent of the parties, the petition is taken up for hearing.

2. Vide the present petition, the petitioner, a student of the three-year L.L.B. degree course of Law Centre-II, Faculty of Law, respondent/University, *inter alia* seeks withdrawal of memorandum dated 23.04.2018 (hereinafter referred to as the 'impugned memorandum') whereby the L.L.B.-III Term examination taken by him for 5th semester in December, 2017, has been cancelled and he has been further debarred from appearing in any examination of the University within a span period of one year. The petitioner has also sought a direction to the respondent to permit him to appear in the final semester examination of the three-year L.L.B. degree course, which is scheduled to be held from 11.05.2018, after reconsidering his case by affording him with an opportunity of personal hearing.

3. Learned counsel for the petitioner submits that the petitioner was admitted in the three-year L.L.B. degree course in August, 2015 in the respondent/University and had appeared in the 5th semester examination which had started from 11.12.2017. Learned counsel for the petitioner submits that on 11.12.2017, just before the start of the examination, the petitioner had some arguments with, the Invigilator Mr. Izikhail, but the same was sorted out due to intervention of another Invigilator. He submits that due to this incident, the Invigilator became vindictive towards the petitioner and just before the exam was about to end, the Invigilator forcibly took away the petitioner's answer-sheet and pasted a chit on the answer-sheet and alleged that the petitioner was cheating in the exam. He

submits that since the petitioner was asked to give an explanation on the spot, he wrote an application wherein he clearly stated that he had not indulged in cheating and it was only due to a mistake that the Invigilator thought that the chit belonged to him and that he was cheating. Learned counsel for the petitioner submits that after the said incident, the petitioner appeared in all the remaining exams of the 5th semester which were held from 14.12.2017 to 26.12.2017, without any interference by the college and the University. He further submits that the petitioner was regularly attending his 6th semester classes from January, 2018 and he had not only paid the fees for the 6th semester, but had also appeared for the practical examination in the subject of '*Alternative Dispute Redressal*', held between 20.03.2018 to 22.04.2018.

4. Learned counsel for the petitioner submits that when the result of the 5th semester examination was declared on 13.04.2018, that the petitioner learnt that his result has been withheld with a note '*result later, if necessary*' and in these circumstances, he approached the examination block of the respondent to get information about the reasons for withholding of his result, but received no satisfactory answer. He contends that it is only on 23.04.2018, that the petitioner was served with the impugned memorandum whereby not only his examination in respect of the 5th semester had been cancelled, but he was also debarred in the forthcoming 6th semester exams, which are slated to commence on 11.05.2018.

5. Learned counsel for the petitioner submits that before passing of the impugned order, the petitioner had neither received any show-cause notice nor given any opportunity by the Examination Disciplinary Committee of the Respondent to even explain his stand. He therefore, contends that the impugned memorandum has been passed in blatant violation of principles of natural justice and is liable to be set aside. He further submits that the petitioner had been regularly attending classes of the 6th semester for the last 4 months and in case, the respondent had any reason to believe that the petitioner was guilty of using ‘unfair means’, they ought to have taken action within a reasonable time, so as to enable him to avail the remedy of preferring an appeal before the Vice Chancellor under Para 11 of the University Ordinance X A.

6. On the other hand, Mr. Rupal, who appears for the respondent, while not denying that the principles of natural justice were required to be followed before passing the impugned order, submits that the respondent had duly issued a show-cause notice dated 10.01.2018 to the petitioner to explain his stand, but the same was returned as ‘unserved’ on the ground ‘*addressee left*’ and, therefore, contends that the respondent was fully justified in passing the impugned memorandum on the basis of the report given by the Invigilator and the material confiscated by the Invigilator from the petitioner on the spot. With reference to the record, he submits that the petitioner is not entitled to any relief as it is a clear case

of use of 'unfair means'. Mr.Rupal further submits that in view of the alternate remedy available to the petitioner to file an appeal with the Vice Chancellor in terms of Para 11 of Ordinance X A, the present petition is not maintainable as the petitioner has admittedly not exercised the said remedy, except for having sent an e-mail to the Vice Chancellor with a request to permit him to appear in the 6th semester exam.

7. At this stage, learned counsel for the petitioner submits that the petitioner be granted two weeks time to prefer an appeal in accordance with the aforesaid ordinance to the Vice Chancellor and prays that the Vice Chancellor be directed to take an expeditious decision thereon, after duly following the principles of natural justice. He further prays that since the petitioner was not given an opportunity to explain his stand, the respondent may be directed to grant him a personal hearing before deciding his appeal. Mr.Rupal, learned counsel for the respondent does not oppose the aforesaid request of the petitioner.

8. Learned counsel for the petitioner however, submits that since the exams of 6th semester are beginning on 11.05.2018 and he has attended classes regularly, he may, subject to outcome of his Appeal, be permitted to appear in the aforesaid exams.

9. Having considered the submissions and the rival contentions of the parties, I find that even though the allegations against the petitioner appear to be very serious and in case, the

petitioner is actually guilty of use of 'unfair means', his conduct needs to be deprecated, but the most vital factor which I cannot lose sight of, is that the record of the respondent itself shows that no show-cause notice was ever served on the petitioner. In fact, I find it a little strange that despite the admitted position that the petitioner was regularly attending classes of 6th semester, there is no explanation as to why the said show-cause notice could not be served on him at least through the Dean of the Campus Law Centre-II of the Respondent, where he was a regular student. The other factor which I find disturbing in the present case is that the respondent has, instead of taking action against the petitioner in a reasonable time, have in a most arbitrary manner issued the impugned memorandum debarring the petitioner from appearing in the exams at such a belated stage, when it is an admitted case of the parties that the petitioner was already allowed to appear in the practical examination in the subject of Alternative Dispute Redressal of the 6th semester.

10. In my view, even though the respondent may have been justified in initiating action against the petitioner, the same could not be done by giving a total go-bye to the principles of natural justice and for this reason alone, I am inclined to permit the petitioner to appear in the ensuing examination of the 6th semester.

11. Accordingly, while allowing the petitioner to appear in the 6th semester LL.B. exams, he is granted liberty to prefer an

appeal to Vice Chancellor of the respondent within two weeks from today. The respondent is directed to decide the said appeal after giving an appropriate opportunity of personal hearing to the petitioner and pass a reasoned and speaking order thereon. The petitioner's result shall be subject to the outcome of the appeal.

12. It is, however, made clear that merely because the petitioner is being permitted to appear in the aforesaid exams, it will not create any special equities in his favour. The aforesaid directions have been passed keeping in view the peculiar facts of the case and will not be treated as a precedent.

13. The writ petition and the applications are disposed of in the above terms.

14. Needless to say that in case, the petitioner is aggrieved by the order passed in the appeal, it will be open for the petitioner to take legal recourse as permissible under law.

DASTI.

(REKHA PALLI)
JUDGE

MAY 03, 2018/gm