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

Date of Decision: 20.02.2018

+ **W.P.(C) 7470/2017**

AAKRITI TIWARI PETITIONER

Through Mr.Banamali Shukla, Adv.
versus

**THE STATE (GOVT OF NCT OF DELHI)
& ORS.**

.. RESPONDENTS

Through Mr.Ankur Chhibber, Adv. with
Mr.Nitish Negi, Adv. for R-1 &
2.
Ms.Anita Sahani, Adv. for R-3.
Mr.Kundan Kumar Mishra,
Adv. with Mr.Ajay Kumar Adv.
for R-4.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner has prayed for a direction to the respondent nos.2 to 4, to grant her another chance to appear in the Anatomy Examination and has further prayed that she may be allotted the same batch of 2014, which was her original batch, for undergoing the course of BHMS in the respondent no.2/College.

2. The case as set up by the petitioner is that the petitioner had taken admission in Bachelor of Homoeopathy Medicine & Surgery (BHMS) at respondent no.2/College, which is affiliated with respondent no.3/University, in October, 2013. The

petitioner claims that in 2015, while appearing in the Ist year BHMS exams though she had passed in other subjects, she had failed in the Anatomy paper and was thereafter granted three further chances in accordance with the University's Regulations to re-appear in the said subject but was unable to clear the same, her last chance being in the year May, 2016.

3. Learned counsel for the petitioner submits that after being unable to clear the said examination despite the four chances, the petitioner and her father had made representations to the Principal of the College as also to the Vice-Chancellor of the University, Secretary of the Central Council of Homoeopathy and Deputy Chief Minister, with a request that she may be granted a mercy chance, as she was unable to clear the said paper despite four opportunities granted to her.

4. Learned counsel for the petitioner today submits that the petitioner has not been able to clear the said examination only because of the victimization by a teacher namely Ms.Asha Chaudhary as she claims that the said teacher was responsible for evaluating the Anatomy subject answer sheet on all the four occasions and had deliberately failed the petitioner in the said exam.

5. Learned counsel for the petitioner further submits that there is a power of relaxation in the regulations of the Central Council of Homoeopathy i.e. respondent no.4 and prays that in these circumstances where the petitioner has been victimized, the respondents ought to have exercised the said power of

relaxation and granted her another opportunity to appear in the said examination.

6. Learned counsel appearing for the respondent no.4 while opposing the petitioner concedes that there is a power of relaxation in the regulations of the Central Council of Homoeopathy, but contends that the present case does not at all warrant the exercise of the said power of relaxation as the petitioner was unable to clear the said exam despite having availed four chances for the same.

7. Learned counsel for the respondent nos.1 & 2 submits that the plea of victimization raised by the petitioner was merely an afterthought as it is an admitted position that the petitioner had not complained of her alleged victimization in any of the representations made by her. He further submits that the claim of the petitioner that she was victimized and deliberately failed by the concerned teacher, namely, Ms. Asha Chaudhary, is not borne out from the records as the answer sheets of the candidates are sent to the concerned examiner without disclosing the name of any candidate and, therefore, there was no reason or occasion for the concerned teacher to know as to which answer sheet belonged to the petitioner.

8. Having heard learned counsel for the parties and examined the records, I am of the view that there is no merit in the present petition. I find that though the petitioner contends that she has been victimized, but except the bald statement of victimization made in the writ petition, there is nothing placed

on record to even *prima facie* establish the plea of victimization. On the other hand, a perusal of the various representations made by the petitioner to several authorities, shows that no such plea of victimization was ever taken by the petitioner prior to filing the present petition. I also find that though bald allegations of *mala fide* have been made in the petition against Ms.Asha Chaudhary, she has not been impleaded as a party respondent in the petition. In view of the settled legal position that the allegations of *mala fide* ought not to be entertained in the absence of the concerned person being impleaded as party respondent, it would not be appropriate to examine these bald allegations against Ms.Asha Chaudhary. In this regard, reliance can be placed on the pronouncement of the Hon'ble Supreme Court in ***State of Bihar Vs. P.P. Sharma*** reported as 1992 Supp (1) SCC 222 in which it was held as under:-

“55. It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them.”

9. I am also fortified in my aforesaid conclusion by the observations of the Hon'ble Supreme Court in the case of

J.N.Banavalikar v. Municipal Corporation of Delhi reported as 1995 Supp (4) SCC 89, where the Court held in para 21 as under:-

“21. In the facts and circumstances of this appeal, it is not possible to hold that the impugned action in removing the appellant and appointing Dr Patnaik is unfair or unjust or irrational or arbitrary or tainted with any mala fide intention. The contention of the appellant that in order to accommodate a junior doctor as Medical Superintendent in I.D. Hospital, Dr Patnaik had been moved out from the said hospital to replace the appellant as Medical Superintendent of RBTB Hospital, is not only vague but lacks in particulars forming the foundation of such contention. Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. ‘malice in fact’ should not be countenanced by the court. This appeal therefore, fails and is dismissed without any order as to costs.”

10. I also find merit in the submission of learned counsel for the respondents that the petitioner was given sufficient opportunities to re-appear in the Anatomy examination in which she had failed in the first year itself and there was no justifiable reason to grant any further opportunities to her by invoking the power of relaxation, as once it was found by the academic experts that she was unable to clear the said examination in Anatomy despite four opportunities, this Court ought not to interfere with the decision of the academic experts. Reliance may be placed in this regard on the observations of the Supreme Court in ***University Grants Commission Vs Neha Anil Bobde***

reported as (2013) 10 SCC 519, para 31 whereof reads as under:-

"31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] , Tariq Islam v. Aligarh Muslim University [(2001) 8 SCC 546 : 2002 SCC (L&S) 1] and Rajbir Singh Dalal v. Chaudhary Devi Lal University [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887] , has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India."

11. There is also merit in the contention of learned counsel for the respondents that the power of relaxation is meant to be used to deal with the special circumstances and the said power of relaxation cannot be used to give further opportunities to a candidate who has been unable to pass the subject examination despite four opportunities. Even otherwise, I find that the petitioner has not been able to make out any case for directing the respondents to exercise the extra-ordinary power of relaxation and grant her another opportunity to appear in the Anatomy examination despite having exhausted the four chances available to her as per the regulations of the University and Central Health Council of Homoeopathy. In my opinion, the power of relaxation available with the respondents cannot be exercised at the mere asking of the petitioner only because she has been unable to clear the said examination despite four opportunities granted to her.

12. For all the aforesaid reasons, the petition is dismissed being meritless, without any orders as to costs.

(REKHA PALLI)
JUDGE

FEBRUARY 20, 2018/aa