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

*Date of decision: 9<sup>th</sup> April, 2019*

+ W.P.(C) 3144/2019 & CM No. 14378/2019

ARUVITA MISHRA

..... Petitioner

Through: Mr. Apoorv Agarwal, Adv.

versus

DELHI UNIVERSITY AND ANR.

..... Respondents

Through: Mr. Mohinder J.S. Rupal and  
Mr. Hardik Rupal and  
Mr. Prang Newmai, Advs. for  
R-University of Delhi  
Mr. Aman Rewaria for Mr. Amit  
Bansal, Adv. for R-2/SRCC

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

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**J U D G M E N T ( O R A L )**

1. The petitioner, Aruvita Mishra, graduated from the St. Mary's Convent Sr. Secondary School, Ajmer in 2012, with 96% marks. She, thereafter, enrolled in the B.Com (Hons.) programme in the Shri Ram College of Commerce (Respondent No.2 herein and referred to, hereinafter, as "SRCC") in June, 2012.

2. In the same month, i.e. June, 2012, the petitioner appeared in the Common Proficiency Test conducted by the Institute of Chartered Accountants of India (ICAI). She claims to have secured 14<sup>th</sup> rank reckoned on all-India basis.

**3.** The writ petition avers that the petitioner, thereafter, simultaneously continued with her B.Com (Hons.) studies in the SRCC, and her Chartered Accountants Course, and that she cleared the first year and the second year of her B.Com (Hons.) programme in 2013 and 2014 respectively, as well as the intermediary exam of Chartered Accountancy in 2014. She, further, cleared her fifth semester of the B.Com (Hons.) programme in the SRCC in December, 2014.

**4.** It is, averred in the writ petition that, in the sixth semester exam of her B.Com (Hons.) course, which was in May 2015, the petitioner was unable to appear as, a few days prior to the said examination, the petitioner was at Lansdowne, and was unable to reach New Delhi owing to incessant rainfall. She claims to have cleared all other papers in her sixth semester, except the said paper of Business Communications.

**5.** The writ petition further avers that the petitioner's father was suffering from tuberculosis and her mother was suffering from Conn Syndrome, and that her mother had also to undergo a surgery. Owing to these circumstances, coupled with the fact that her brother was blind from birth, the petitioner submits that she was not in a position to come to New Delhi to attempt the Business Communications paper of the sixth semester examination of her B.Com (Hons.) programme.

**6.** At the same time, the writ petition candidly acknowledges the fact that the petitioner did continue to pursue her Chartered

Accountancy course while staying at Ajmer, from 2015 till 2018, and that she completed the said course in 2018. Clearly, therefore, the family and circumstances of the petitioner were not such as to disable her from pursuing her studies, even while staying at Ajmer. The question, therefore, would be whether the petitioner could be considered to be so disabled as to not be able to travel to New Delhi for one day, to attempt the Business Communications paper for four years, from 2015 till 2019.

7. Ordinance (V) of the Ordinances governing the Delhi University provides for a maximum span period of six years, from the time of joining of the course by the student, within which she/he may be allowed to complete the course. There was, earlier, a provision, enabling the Academic Council of the University to, in appropriate cases, afford a “special chance” to students to appear in any paper which, owing to unavoidable reasons they were unable to attempt during the said span period, even beyond the duration thereof. However, the writ petition candidly acknowledges the fact that the said provision was eviscerated by the University, from its Statutes and Ordinances, in 2017.

8. It was as late as, in May, 2019, i.e. more than one year after the expiry of the six years span period provided in Ordinance (V) (*supra*) that the petitioner approached the SRCC, requesting that she be permitted to attempt the Business Communications paper, which she could not attempt in May, 2015. This request not having been acceded to, the petitioner is before this Court, in the present writ proceedings,

praying for issuance of a writ of mandamus to the respondents, i.e. the University and the SRCC, to allow the petitioner to attempt the Business Communications paper.

9. Legally, the issue in question is no longer *res integra*, as it stands concluded by the judgment, dated 26<sup>th</sup> September, 2016, of a Division Bench of this Court in ***Awadesh Kumar v. Delhi University, (2016) SCC OnLine Del 1949***. The said decision was rendered by a Division Bench of this Court, in an appeal from its judgment, dated 28<sup>th</sup> March, 2016, of a learned Single Judge of this Court in ***Awadesh Kumar v. University of Delhi***. Awadesh Kumar, the petitioner in that case, had repeatedly tried to complete his LL.B. Course, being undertaken under the University, but could not do so within the prescribed span period. He, therefore, approached this Court by way of a writ petition, praying that he be permitted to attempt the papers in which he could not succeed earlier, beyond the span period. The said request was turned down by the learned Single Judge, as well as by the Division Bench, in the decisions already referred to hereinabove. Even so, Mr. Apoorv Agarwal, learned counsel for the petitioner would seek to place reliance on para 5 of the judgment of the learned Single Judge in ***Awadesh Kumar (supra)*** which reads thus:

“5. This Court is of the opinion that there is a distinction between a student whose study has been interrupted due to joining the Army or a student who wants to study later in life in comparison to those students who cannot clear their exams despite repeatedly appearing in them. Since the judgment of the Coordinate Bench in ***Major Amandeep Singh (supra)*** deals with the former set of cases, it offers no assistance to the petitioners.”

10. The submission of Mr. Agarwal is that the learned Single clearly distinguishes, in the above-extracted passage, between cases of students whose study had been interrupted owing to reasons and circumstances beyond their control, from cases of student, who had repeatedly failed the examination. The case of the petitioner, he would seek to submit, falls within the former category and deserves, therefore to be accorded a treatment different from that which was accorded by this Court to Awadesh Kumar.

11. Mr. Apoorv Agarwal also relies on para 3 of the judgment of the Division Bench in *Awadesh Kumar (supra)* which reads thus :

“3. Assailing the said order, it is contended before us that since non-completion of the Course within the stipulated period was due to the circumstances beyond the control of the appellant/writ petitioner, the respondents ought to have given a special chance to him to enable to complete his LL.B Course. In support of the said submission, the learned counsel for the appellant placed reliance upon the decision of this Court dated 04.08.2015 in W.P.(C) No.9320/2014 titled *Major Amandeep Singh v. University of Delhi*. However, a perusal of the order under appeal shows that the learned Single Judge distinguished Major Amandeep Singh's case (*supra*) on facts and opined that the same is of no assistance to the petitioner.”

12. I regret that it is not possible for me to countenance the above submission of Mr. Apoorv Agarwal, owing to para 6 of the judgment of the Division Bench, which reads thus :

“6. The ratio laid down in the above decision is squarely applicable to the case on hand. As observed by the Division Bench, the span period which is generally found to be double the duration otherwise prescribed for the course, is the outer limit for completing the educational course. *In the absence of any provision of relaxation of such span period, no right as such can be claimed by any student to allow to appear for the back papers beyond the span period.*”

(Emphasis supplied)

**13.** While examining the precedential value of decisions cited by superior courts, a cautious approach is required to be adopted. Enunciation of law, whether under the aegis of Article 141 of the Constitution of India, or by any superior court other than the Supreme Court, fall, broadly into the three categories. There are cases where the law, as enunciated, by the Superior Court, is specifically limited, either expressly or by necessary implication, to the parties, or the controversy, before the Superior Court which enunciates the law. In such cases, of course, the ratio of the decision would stand limited to the facts of that case, and may not admit of universal precedential value. The second category of cases are those in which the superior court, while enunciating the law, is silent on the question of its applicability. In such cases, it is open to a party to contend that the enunciation is of universal applicability, and it is equally open to the opposing party to plead, *per contra*, that the facts of the case before the superior court are required to be borne in mind while examining the precedential value of the ratio of the decision. It would be, thus, for the subordinate court, examining the said ratio, to decide whether it admits of universal applicability or not.

14. The third category of cases, is, however, where the superior court, while enunciating the law, expressly couches the proposition in omnibus terms. In such cases, the subordinate judicial authority is clearly proscribed from seeking to distinguish the judgment of the superior court, contrary to the omnibus manner in which the superior court has chosen to enunciate the law. The enunciation of law, in para 6 of the judgment of the Division Bench in *Awadesh Kumar (supra)*, in my view, falls into third category of cases. The Division Bench has, without a trace of ambivalence, held that, in the absence of any provision of relaxation of span period, no right as such can be claimed *by any student* to be allowed to appear for the back papers beyond the span period. In my view, the Division Bench, while wording the proposition in such an omnibus manner, clearly intended the proposition to apply *in rem* and not *in personam*. When the Division Bench has categorically held that no right could be claimed *by any student* to appear in back papers beyond the span period, it is not open to me, sitting singly, to take a view that, given the circumstances in which an individual student, or individual students, are placed, the rigor of the said enunciation could be relaxed. Any such attempt, on my part, would amount to rendering otiose. The words “*by any student*”, which have obviously been deliberately employed by the Division Bench while expressing its opinion in the judgment in *Awadesh Kumar (supra)*.

15. In view thereof, I am of the opinion that the petitioner cannot seek to capitalize on para 5 of the judgment of the learned Single

Judge in *Awadesh Kumar (supra)*, which stands merged with the judgment of the Division Bench, in appeal therefrom.

**16.** Mr. Mohinder J.S. Rupal also points out, significantly, that the SLP(C) 36334/2016, preferred against the aforesaid judgment dated 26<sup>th</sup> September, 2016 of the Division Bench in *Awadesh Kumar (supra)*, also stands dismissed by the Supreme Court, on 20<sup>th</sup> March, 2017.

**17.** Apart from the above, even on facts, I am of the opinion that the petitioner cannot be said to have a case. The impassioned plea, of Mr. Apoorv Agarwal, that the petitioner was inhibited from travelling to Delhi and appearing in the Business Communications paper, which she missed in May, 2015 does not inspire confidence. The petitioner, admittedly, continued to pursue her Chartered Accountancy course, from Ajmer, from 2015 till 2018, and also cleared the said course, in 2018. It was only about a year thereafter in May, 2019, that the petitioner suddenly woke up and decided to attempt her Business Communications paper. While this Court undoubtedly sympathizes with the familiar circumstances in which the petitioner claims to have been placed, it cannot be said that they were such as prevented her from travelling to Delhi, for three long years, and attempting the Business Communications paper.

**18.** It is also significant, in this regard, that the petitioner was residing at Ajmer, which is reasonably proximate to Delhi, and cannot

be treated as located at such a distance as could be said to prevent the petitioner from attempting her Business Communications paper.

**19.** *Prima facie*, it would seem to appear, rather, that, during the currency of her Chartered Accountancy course, the petitioner herself decided to place her B.Com (Hons.) course on the back burner, and chose to attempt one remaining Business Communications paper only after her Chartered Accountancy course was over. Perhaps, the petitioner did so because there was a provision, in the statutes governing the University, at that point of time allowing, to the Academic Council, the latitude of permitting candidates who had crossed the span period, a special chance, to appear in papers which remained to be attempted by them. The said provision, however, admittedly stood removed from the statutes governing the University in 2017. The writ petition, therefore, founds its cause of action on no right whatsoever, except sympathy. It is trite in law, that, while a Court, exercising jurisdiction under Article 226 of the Constitution of India, is required to be guided by equity and compassion, a judicial order, even under the said provision, cannot be passed solely on the sympathetic consideration, *sans* any enforceable right inhering in the litigant before the court.

**20.** Once the provision for providing for a “special chance” stood removed from the statutes governing the University in 2017, and the right of students, to attempt papers which they could not clear, beyond the span period, also stands authoritatively discountenanced by the Division Bench of this Court in *Awadesh Kumar (supra)*, I am of the

opinion that the petitioner cannot said to be entitled to any relief from this Court.

**21.** Mr. Apoorv Agarwal had also made a faint attempt to seek to distinguish the enunciation of the law, by the Division Bench in *Awadesh Kumar (supra)* on the ground that it referred to “back papers” which, according to him, would referred only to papers in which the candidate had attempted and had failed. There is no justifiable reason for this Court to accord such a restricted meaning to the words “back papers”. In any case, if one were to read the proposition of law, as enunciated in para 6 of *Awadesh Kumar (supra)* it is clear that the Division Bench has been guided by the absence of any extant provision permitting a student to attempt papers beyond the span period. This proposition cannot depend on the nature of the paper, i.e. whether the paper was a repeat of a paper in which the student had failed earlier, or was a paper which was being attempted for the first time because the student could not attempt it on the earlier occasion. In either case, this Court is of the opinion that it would amount to a “back paper”, within the meaning of the expression as used by the Division Bench in *Awadesh Kumar (supra)*.

**22.** Mr. Apoorv Agarwal had also sought to place reliance on para 27 of the judgment, dated 27<sup>th</sup> November, 2014 of the Division Bench of this Court in LPA 956/2013 (*Amit Kumar v. Delhi University*) and connected cases, subsequently reported in (2014) SCC OnLine Del 6577, which reads thus :

“27. We however nevertheless choose to record our own meanderings on the subject. The Supreme Court in *Md. Abdul Kadir Vs. Director General of Police (2009) 6 SCC 611* held that where an issue involving public interest has not engaged the attention of those concerned with policy or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interests, Courts will be failing in their duty if do not draw attention of the concerned authorities to the issue involved, though not making a policy, but acting as catalyst for change. Proceeding on the premise that a right to complete the education is certainly at a higher pedestal than the need for the Universities/educational institutions to provide for the maximum duration for completing an educational course/programme, we are of the view that ways and means to allow an educational course/programme to be completed, without at the same time jeopardizing the quality of educational qualification and affecting the rights of those becoming eligible for admission in succeeding years, can be devised. For instance, to ensure that the person so desirous of completing the educational course/programme has not rusted and/or to ensure continuity, as a precondition, he/she can be subjected to an eligibility test. Thus, the appellants/petitioners before us who have been unable to complete their respective educational courses/programmes within the span period provided therefor, can be asked to appear in a test/examination in the subjects which they have already passed/cleared, to demonstrate that the continuity if any required, exists. To get over the issue of such candidates / students blocking seats, facilities and amenities of the Universities, such facilities can be made available to only those who have the requisite attendance in all years/semesters but have been unable to pass the examinations. Yet another thought which comes to us is that instead of a span period of time, the number of attempts to pass the examination in a subject can be prescribed. Another possibility can be, to allow such students/candidates to continue the educational course/programme as permitted in an Open School/University and to issue a Degree/Certificate to

them, different from a Degree/Certificate issued to others who have completed the course/programme within the duration prescribed therefor and to let the employers/others dealing with them to judge their skill/acumen. We again clarify these are our random thoughts, not intended to bind, inasmuch as we do not have the entire perspective before us. The purport of our recording our thoughts is only that if it is found by the educationist and the universities that time should not be allowed to come in the way of completing the paper/formal education, then ways can be devised to ensure that the same fulfils the purpose rather than helping in acquiring a degree/certificate not more valuable than the piece of paper on which it is embossed.”

23. Having perused para 27 of the judgment in *Amit Kumar (supra)*, I am unable to discern how learned counsel for the petitioner seeks to draw any sustenance therefrom. The said passage, in my view, does not, in any manner, dilute from the ratio of the judgment of the Division Bench in *Amit Kumar (supra)*.

24. Mr. Apoorv Agarwal further submits that in para 35 of the judgment in *Amit Kumar (supra)*, the Division Bench had issued the following directions :

“35. We accordingly dispose of these appeals/writ petition:-

(I) by directing the respondent University of Delhi to, within three months herefrom, have the aspects of, (a) need to continue with the span period; (b) whether Ordinance X-C applies to span period also, in the meeting of its Academic Council; and to pass a Resolution on both aspects giving reasons therefor;

(II) by directing the respondent Jamia Millia Islamia University to have the matter relating to the need for having the span period and if so, the need to provide for exemption in exceptional cases therefrom, considered in its appropriate body and to pass a reasoned order thereon, within three months from today;

(III) by directing the Secretary, Ministry of Human Resource Development, New Delhi to, in consultation with the educationist, in an appropriate fora, debate and arrive at a consensus and to lay down Policy Guideline to be followed by the Universities in the matter of the need for having a span period for completing the courses/ programmes being offered by the Universities.”

**25.** The above para, too, can be of no assistance to the petitioner, as it is an undisputed factual position that there is, presently, no provision which permits the attempting of papers, by students, beyond the prescribed span period of six years.

**26.** For the above reasons, the petitioner is clearly disentitled to the relief prayed for in the writ petition, which is accordingly dismissed, without any order as to costs.

**C. HARI SHANKAR, J**

**APRIL 09, 2019/kr**