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

+ **LPA 263/2019**

ARUVITA MISHRA

..... Appellant

Through: Mr.Apoorv Agarwal, Advocate with
Mr.Nayam Gautam and
Mr.Abhimanyu Jhalani, Advocates.

versus

DELHI UNIVERSITY & ANR

..... Respondents

Through: Mr.Mohinder J.S.Rupal, Advocate
with Mr.Prang Newmai, Advocate for
R-1/University of Delhi.
Mr.Amit Bansal, Advocate with
Ms.Seema Dolo, Advocate for R-2.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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23.04.2019

Dr. S. Muralidhar, J.:

1. The present appeal is directed against an order dated 9th April 2019 passed by the learned Single Judge dismissing the Appellant's W.P. (C) 3144/2019 whereby she had sought for a direction to the Respondent No.1 Delhi University to permit her to sit for the 6th Semester of B.Com (Hons.) Course.

2. The admitted fact is that the 6th Semester exams were held in May 2015. The Appellant cleared all papers in the 6th Semester except the 'Business Communications'. According to the Appellant, she was unable to appear in

the said exam as she was in Lansdowne at the relevant time and was unable to reach New Delhi owing to incessant rainfall.

3. More than four years thereafter in January 2019 she approached the College requesting that she should be permitted to take the exam in the 'Business Communications' paper.

4. The learned Single Judge noted that under Ordinance (V) a maximum period of six years was provided from the time of joining the course for completion of the course. The Appellant having joined the course in June 2012 was expected to complete it by June 2018.

5. The learned Single Judge took note of the decision of the learned Single Judge of this Court in *Awadesh Kumar v. Delhi University (2016) SCC OnLine Del 1949* where in similar circumstances the request for appearing in an exam which the Petitioner in that case could not take was turned down both by learned Single Judge. This was affirmed by the Division Bench (DB) by its order dated 26th September 2016 dismissing LPA 258 of 2016 (hereafter '*Awadesh Kumar DB*').

6. The distinction sought to be drawn by learned counsel for the Appellant based on the observations in para 5 of the judgment of the learned Single Judge in *Awadesh Kumar (supra)* was rejected by the learned Single Judge in the impugned order. The learned Single Judge also took note of the fact that the provision for relaxation which was existing in the Ordinance permitting a student 'a special chance' stood removed from the Statutes

governing the Delhi University in 2017. Consequently there was no provision in terms of which the Appellant's request could be entertained. Accordingly, the writ petition was dismissed.

7. Learned counsel for the Appellant has again placed reliance on the distinction between two sets of cases which was adverted to by the learned Single Judge in ***Awadesh Kumar*** (*supra*). His contention is that the case of the Appellant was different from the case of ***Awadesh Kumar*** and therefore the ratio of the decision of the learned Single Judge in that case, which has been approved by the Division Bench, would not come in the way of the present Appellant.

8. The facts in the ***Awadesh Kumar*** (*supra*) case as noticed by the learned Single Judge in para 2 of the judgment are as under:

“2. It has been averred in the petition that the petitioner was required to complete his LL.B. Course by 2014 i.e. within the prescribed span period. Learned counsel for petitioner states that petitioner could not complete the course within the stipulated period as he is a Central Government employee who had been transferred from one place to another. Thus according to him, non-completion of course was due to circumstances beyond petitioner's control.”

9. Thereafter in Para 5, the learned Single Judge drew a distinction between the facts of ***Awadesh Kumar*** and the facts in the decision dated 4th August 2015 of the learned Single Judge in W.P.(C) 9320/2014 (***Major Amandeep Singh v. University of Delhi***) and held that the decision in ***Major Amandeep Singh*** (*supra*) would not help the case of the Petitioner.

10. This Court has perused the judgment of the learned Single Judge in ***Major Amandeep Singh*** (*supra*). Para 1 of the judgment sets out the facts which read as under:

“1. The petition impugns the refusal of the respondents No. 1 & 2 University of Delhi of permission to the petitioner to take supplementary examination in the subject of Jurisprudence-II of VI term Bachelor of Law (LLB) Programme and seeks a mandamus to the respondents University of Delhi and its Examination Branch to allow the petitioner to take the said examination.”

11. This makes it clear that the above two judgments deal with different factual situations. The decision in ***Major Amandeep Singh*** (*supra*) was in a circumstance where the Petitioner had already taken an exam which he failed to pass and then was seeking to take a supplementary exam in the same subject. This is further clarified from Para 3(iv) of the judgment in ***Major Amandeep Singh*** (*supra*) which reads as under:

“that he thereafter sought permission from the respondents University to, notwithstanding the time gap aforesaid, allow him to take the supplementary examination in one of the subjects of Vth term which he, in the examination of December, 2004 had failed to pass and to re-admit him in VIth term to enable him to complete the LLB degree.”

12. The facts in ***Awadesh Kumar*** (*supra*) on the other hand as already noticed were where he could not even sit for the exam because he was a Central Government employee ‘being transferred from one place to another’ and therefore could not complete the course within the stipulated period. In the case of ***Awadesh Kumar*** (*supra*) it was noticed that there was no

provision which permitted extension of the overall period for completion of the course beyond the period stipulated under the Ordinance. It was this that was again noticed by the DB in ***Awadesh Kumar DB*** whereby the judgment of the learned Single Judgment was affirmed. The DB referred to the decision dated 27th November 2014 in LPA 956 of 2013 (***Amit Kumar v. Delhi University***) and held:

“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.

13. The Court is therefore unable to agree with the contention of the learned counsel for the Appellant that in the impugned judgment in the present case the learned Single Judge has incorrectly understood the ratio of the decision of the DB ***Awadesh Kumar DB***.

14. It was then contended that the option for a ‘special chance’ which existed in the ordinances and which stood removed in 2017, did not have retrospective effect. It is contended that with the Appellant having enrolled for the B.Com course in June 2012 itself her request for a ‘special chance’ should be considered in terms of Rule that existed prior to 2017. In support of his contention learned counsel for the Appellant places reliance on the decision of the High Court of Bombay in ***Bhakti v. State of Maharashtra (2018 (5) Mh LJ 365)***.

15. The facts in ***Bhakti v. State of Maharashtra*** (*supra*) were that the

Petitioners enrolled for a BDS course in September 2014. As of that date the rule required them to complete the first year BDS examination within three years. On 27th April 2015 there was an amendment which provided that the entire course of the BDS including internship could be completed within a period of nine years. The Petitioners who were still in the first year BDS were allowed to pursue the course and appear for the examination and were permitted to take advantage of the amendment position. It was directed that ‘merely because the Petitioners had joined BDS course on 1st September 2014, they will not be continued to be governed by the old provision which was no more in existence. They were allowed to pursue the BDS course and appear for the exam without considering the time limit fixed before the amendment dated 27th April 2015.’

16. The factual situation here is entirely different. In *Bhakti v. State of Maharashtra*, the Petitioner was given benefit of a changed provision that came into effect after the student had enrolled to the course and therefore it was decided to extend the beneficial provision retrospectively. In the present case, however, the removal of the ‘special chance’ took place even before the Petitioner sought permission to take the exam. Unfortunately for the present Appellant she waited too long to approach the University to sit for the Business Communications paper.

17. Learned Counsel for the Appellant sought to contend that the circumstances which constrained the Appellant were that both her parents were facing a terminal illness and her younger brother was visually challenged. While these are extenuating circumstances, it still does not

justify the Appellant waiting for four years after 2015 to even approach the University to sit for the 'Business Communications' paper by which time in any event the provision for a 'special chance' stood removed.

18. In the circumstances the Court finds no error having committed by the learned Single Judge in turning down the Appellant's request.

19. The appeal is dismissed.

CM APPL.17994/2019 & CM APPL.17995/2019 (exemption)

20. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 23, 2019

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