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

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Date of Decision: 18.10.2019

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W.P.(C) 9059/2019 & CM No.45761/2019

MIHIR SATTAVAN

..... Petitioner

Through : Mr. Rajeev Sharma and Mr. Atal Tyagi, Advs.

versus

UNIVERSITY OF DELHI AND ANR.

..... Respondents

Through : Mr. Mohinder J.S. Rupal, Mr. Hardik Rupal and Mr. Kausik Ghosh, Advs. for R-1.
Mr. Rajesh Gogna and Mr. Upendra Sai, Advs. for R-2/Hansraj College.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

JUSTICE RAJIV SHAKDHER (ORAL):

CM No.45761/2019

1. This is an application filed on behalf of respondent no.2 college i.e. Hans Raj College for seeking condonation of delay in filing the counter affidavit.
2. According to learned counsel for respondent no.2 college, there is a delay of 31 days.
3. For the reasons stated in the application, the delay is condoned.
4. The counter affidavit of respondent no.2 college is taken on record.
5. The captioned application is disposed of.

W.P.(C) 9059/2019

Background: -

6. The notice in this petition was issued on 21.08.2019, when, respondent no.1 i.e. the University of Delhi was represented by Mr. Rupal. The notice was accepted on that date by learned counsel for respondent no.1/University of Delhi. However, thereafter, the matter was posted for further proceedings on 27.08.2019, when, two weeks were granted both to learned counsel for respondent no.1/University of Delhi and respondent no.2 college.

7. As noted hereinabove, respondent no.2 college has filed a counter affidavit, *albeit*, after some delay.

8. Insofar as respondent no.1/University of Delhi is concerned, no counter-affidavit has been filed as yet. On the previous date, i.e. 27.08.2019, the petitioner's grievance that his second semester exam result had not been declared was noted. It was the petitioner's case that non-declaration of the second semester result was critically impacting his ability to undertake classes and sit for the exam for the third semester.

9. I was told that the third semester exam is to take place in December 2019. It is in these circumstances, the respondents were directed to permit the petitioner to fill the exam form subject to the outcome of the writ petition.

9.1. Furthermore, a direction was issued that the petitioner will be allowed to provisionally appear in the internal exam which was to take place on 04.09.2019.

9.2. This direction was issued subject to the condition that the petitioner would not claim any equity if he failed in the writ petition.

10. Mr. Rajesh Gogna, who appears on behalf of respondent no.2 college, affirms that the petitioner, pursuant to the direction issued by this court, was permitted not only to sit for the internal exam but also his forms for the third semester exam were accepted. As would be evident, the petitioner's immediate grievance is the non-declaration of his result *qua* the second semester.

11. The facts which have emerged on perusal of the record are that the petitioner enrolled himself with respondent no.2 college in B.A. Economics Course in the academic session 2018-2019. The petitioner was enrolled on 14.07.2018. The petitioner claims that due to difficult circumstances obtaining in the family and ailments, he could not appear for the first semester exam which was held in November – December 2018.

12. Consequently, the petitioner wrote to the Deputy Registrar (Academics), respondent no.1/University of Delhi on 28.03.2019. In this communication, the petitioner indicated that due to unavoidable difficulties concerning his family and his ailments, he was unable to take the first semester exam and that he should be allowed to sit in the second semester exam as well as the subsequent semesters, *albeit*, as a regular student.

12.1. With this letter, the petitioner had enclosed the following documents:

- (i) Identity card issued by respondent no.2 college.
- (ii) Exam details.
- (iii) Exam attendance.
- (iv) E-letter issued by the Principal allowing him to sit for the second semester exam.

12.2. Notably, this letter contains the following endorsement made by the Deputy Registrar of respondent no.1/University of Delhi:

“If approved, the Principal, Hans Raj College may be requested to consider the case of Mihir Satavan in accordance with provisions laid down ordinance-IV and Ordinance IX (Copy enclosed). Submitted please.”

13. It is not in dispute that the petitioner was issued an admit card by respondent no.2 college for taking the second semester exam. It is pertinent to note that the admit card bears the signatures of not only the Principal, respondent no.2 college but also the Dean of the Examinations, respondent no.1/University of Delhi.

14. The petitioner, based on the permission given by respondent no.2 college, sat for the second semester exam. The petitioner, however, to his surprise found that his result *qua* the second semester exam was withheld.

15. It is in these circumstances, that on 04.07.2019, the petitioner wrote to the Controller of the Examination, respondent no.1/University of Delhi. In this communication, the petitioner averred that even though he had taken his second semester exam in March – April 2019, the website of respondent no.1/University of Delhi was indicating the following: ***“Result not found.”***

15.1 The petitioner thus, requested for release of his result.

16. The aforementioned request was followed by the petitioner with a request to the Dean of Examination, respondent no.1/University of Delhi, *via* communication dated 22.07.2019.

16.1 In this communication, there is a reference to an earlier letter, perhaps written to the Dean of Examination, dated 05.07.2019. The petitioner *via* this communication as well sought release of his second semester exam. In fact, the petitioner also averred that because he had not received a response to his earlier communication dated 05.07.2019, he was approaching the Dean of Examination once again *via* the said communication.

17. Since the petitioner had not got a response to his earlier communication, he followed it up with yet another communication dated 30.07.2019 addressed to the Dean of Examination, respondent no.1/University of Delhi.

17.1 This time around, the petitioner enclosed with his letter the permission given by the Deputy Registrar (Academics), the first semester attendance as well as the attendance obtained by him in the second semester, copy of the Ordinance VIII and IV (Academics), and the permission given to him *vide* e-letter dated 28.03.2019, issued by the Principal, respondent no.2 college.

18. The petitioner having received no response whatsoever to any of his communications, felt constrained to approach this court.

19. As noticed above, the writ petition was listed in court for the first time on 21.08.2019 and thereafter on 27.08.2019. As to what transpired at these hearings has been, broadly, noted right at the beginning of the judgment.

20. Thus, the issue which arises for consideration in the present proceedings is: as to whether respondent no.1/University of Delhi should release the petitioner's second semester result.

21. In support of his case, learned counsel for the petitioner has relied upon Clause 12(1)(c) appearing in the notification dated 08.05.2017 (Sub: Amendments to Ordinances), which reads as follows:

“12. Passing and Promotion Rules for all the Under-Graduate Courses under Choice Based Credit System

12(1)

(a) -----No change-----

(b) Passing Rules:

The results shall be prepared on the basis of the formula prescribed at Table 'A' with the computation of grade cut off. The passing criteria of attaining 40% marks in numerical value is therefore to be 'deleted'.

(c) Promotion Rules:

A student shall be eligible for promotion from 1st year to 2nd year/III semester provided he/she has passed 50% papers of I and II semester taken together and similarly for promotion from 2nd year to 3rd year/V semester."

22. Based on the aforesaid, it is argued that if the petitioner clears 50% of the first and second semester papers when taken together, he would be eligible for promotion from first year to the second year. Similarly, from second year to the third year.

23. In the instant case, the petitioner is looking for promotion to the second year.

24. Mr. Gogna, who appears for respondent no.2 college, as indicated above, does not dispute the fact that the admit card was issued to the petitioner for taking the second semester exam.

24.1 In fact, Mr. Gogna, on instructions of Mr. Bajrang Prasad, Section Officer (Administration) informs me that the admit card is signed by the Principal, respondent no.2 college only after the Dean of Examination, respondent no.1/University of Delhi appends his signatures on the admit card.

25. Though, respondent no.1/University of Delhi, as indicated above, has not filed its counter affidavit, Mr. Rupal has made submissions in opposition

to the reliefs sought in the petition. Mr. Rupal says that only if a student sits in the first semester exam, can he avail of the benefit of the aforementioned provision i.e. Clause 12(1)(c).

25.1 Furthermore, Mr. Rupal has placed before me a notification dated 03.01.2012 which reads as follows:

“NOTIFICATION

With reference to the Notification No.Acad.-I/Semester/2011/124 dated 7th September, 2011, it is further clarified that the students who are detained from appearing in any semester examination of any Under-graduate/Post graduate course, due to shortage of attendance or for any other reason, will not be eligible for promotion to the next semester and will have to be re-admitted in the next academic session to the same semester of the course in which they were detained.

-s/d-
REGISTRAR”

25.2 Based on the said notification, Mr. Rupal says that the petitioner’s result for the second semester cannot be released.

Analysis and Reasons

26. Having heard learned counsel for the parties and perused the record, the following facts have emerged which are not in dispute:

- (i) First, the petitioner did not sit for the first semester exam.
- (ii) Second, the petitioner made a representation stating that he could not attend the first semester exam on account of unavoidable and difficult family circumstances and medical ailments.
- (iii) Third, a request was made by the petitioner both to the Principal as well as the Deputy Registrar (Academics) of the respondent no.1/University

of Delhi on 28.03.2019 to excuse the infraction for the reasons given therein and this communication carried an endorsement of the Deputy Registrar, respondent no.1/University of Delhi, to which, I have referred to hereinabove.

(iv) Fourth, the petitioner was issued an admit card which bore the signatures of not only the Principal, respondent no.2 college but also that of the Dean of Examination, respondent no.1/University of Delhi.

(v) Fifth, the petitioner was allowed to sit for the second semester exam.

(vi) Lastly, the petitioner's result *qua* the second semester exam has not been declared as yet.

27. Therefore, the position which emerges is that though the petitioner was allowed to sit for the second semester exam, respondent no.1/University of Delhi now takes the position that he ought to have been detained because he did not attend classes in the first semester.

27.1. The argument, according to me, is untenable, as no detention order has been passed *qua* the petitioner. As a matter of fact, the petitioner was given permission to sit for the second semester exam after he had made a representation in that behalf. The representation made by the petitioner appears to have found favour with both the respondents, resulting in issuance of an admit card for the second semester exam.

27.2 The fact that the admit card bears the signatures of both the Principal, respondent no.2 college and the Dean of Examination, respondent no.1/University of Delhi supports the case of the petitioner.

27.3 This apart, insofar as Clause 12(1)(c) is concerned, it does not make a distinction between those who could not on account of certain circumstances appear in the first semester exam and those who sat in the exam and failed

50% of the papers of the first and second semester taken together. Clause 12(1)(c), it appears, attempts to give a second chance to the students to get promoted to the second year if the student clears 50% of the papers stipulated in the first and second semester.

27.4 As to whether, the petitioner has cleared 50% of the papers would only be known once the result is declared.

27.5 For the respondent no.1/University of Delhi to now claim that the petitioner ought to have been detained, and therefore, his result ought not to be declared, according to me, is a stand, if at all, which should have been taken in the very first instance by advising the respondent no.2 college not to issue the admit card.

27.6 The respondent no.1/University of Delhi appears to have delegated the power to respondent no.2 college to take a decision in the matter. The respondent no.2 college interpreted the provision in a particular manner and permitted the petitioner to take the second semester exam. The attendance of the petitioner was not made an issue given the circumstance in which he was placed.

28. Given this backdrop, I see no reason as to why petitioner's second semester result should not be declared.

29. I may also indicate that a careful perusal of the notification dated 03.01.2012, on which Mr. Rupal placed reliance, shows that a student can be denied promotion from one semester to another only if he/she is detained.

30. Concededly, the respondents have not passed any order of detention and, as a matter of fact, permitted the petitioner to sit for the second semester exam.

Conclusion: -

31. Therefore, for the foregoing reasons, I am inclined to direct respondent no.1/University of Delhi to declare the petitioner's second semester exam result.

32. The other direction, which the petitioner seeks, which is that he should be allowed to sit in the third semester exam, can only arise if he passes the second semester exam.

32.1 As noted above, the petitioner has already appeared in the third semester internal exam and has also deposited the fee for the third semester exam.

32.2 Furthermore, Mr. Gogna says that the petitioner has also attained the requisite attendance criteria *qua* the third semester.

33. Thus, respondent no.2 college will take a decision in this behalf only when the petitioner passes 50% or more papers, as stipulated in Clause 12(1)(c) of the notification dated 08.05.2017.

34. The captioned writ petition is disposed of in the aforesaid terms.

35. *Dasti.*

RAJIV SHAKDHER, J

OCTOBER 18, 2019

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