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

Date of decision: 2nd May, 2019

- + W.P.(C) 3824/2017 & CM APPL. 16824/2017
- + W.P.(C) 4827/2017 & CM APPLs. 20831/2017, 11610/2018
- + W.P.(C) 2221/2018
- + W.P.(C) 3881/2018 & CM APPL. 15310/2018

RAID HOODA
AMIT KUMAR
BHOOPENDRA KUMAR
SURAT SINGH

..... Petitioners

Through: Mr. R. K. Saini, Adv. with
Mr. Prashant Sharma, Adv.

versus

UNIVERSITY OF DELHI & ANR
UNION OF INDIA & ANR

..... Respondents

Through: Mr. Mohinder J. S. Rupal,
Mr. Hardik Rupal and Mr. Prang Newmai,
Adv. for University of Delhi

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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

1. The petitioners were admitted to the LL.B. course of the University of Delhi (hereinafter referred to as "the University") in the year 2006-07. Six years of the said course were completed by the petitioners, in 2012.

2. The petitioners were, however, able to pass only twenty six, out of thirty papers constituting the said course, within the said six years.

3. Ordinance X-C of the Ordinances, governing the University – which constitutes the sheet-anchor of the petitioners’ case, reads thus:

“X-C. Permissive Provisions

The Academic Council may, in exceptional cases grant exemption from the operation of any of the Ordinances governing admission of students, migration, the courses to be pursued by them, attendance at lectures or sessional or other work or the examination of candidates and authorise what is proper to be done instead in such cases, provided that no such exemption and authority shall be deemed to have been granted unless not less than two-thirds of the members present of the Academic Council voted in favor of the motion for such exemption and authority made by, or with the written authority of the Vice-Chancellor; and

Provided further that this two-thirds majority voting for the exemption should not be less than half the total strength of the Academic Council at the time.”

4. 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, *vide* Notification dated 10th October, 2012, which reads thus:

“It is hereby notified that henceforth applications for grant of ‘Special Chance’ beyond the stipulated span periods shall not be considered by the University. Consequently, the students will have to complete their courses of study within the span periods prescribed for the courses concerned.”

5. In other words, with the issuance of the afore-extracted notification, dated 10th October, 2012, of the University, the right of a student to appear in any back paper beyond the span period of six years, stood effaced. All students were, therefore, required to successfully complete all the thirty papers within the span period of six years.

6. Aggrieved by the said notification, the petitioner filed W.P.(C) 7266/2012 (*Annmary Luke Kocherry v. University of Delhi*).

7. During the pendency of the said writ petition, the University, as a one-time measure, permitted in March, 2013, the students to appear in the left out/backlog papers. However, even availing of the said opportunity, the petitioners were unable to clear all the thirty papers. Certain backlog papers remained to be cleared, in the case of each petitioner.

8. *Vide* order dated 6th August, 2013, W.P.(C) 7266/2012 was dismissed having become infructuous.

9. The petitioners re-approached this Court by way of W.P.(C) 7425/2013, again challenging the afore-extracted notification dated 10th October, 2012, which abolished the facility of a “special chance”, for students to appear in backlog papers beyond the span period of six years.

10. The said writ petition was dismissed by a learned Single Judge of this Court *vide* judgment dated 27th November, 2013, on the ground that Ordinance V of the Ordinances mandatorily required candidates, who took admission to the LL.B course of the University, to complete the said course within six years from the date of admission thereto.

11. Apropos Ordinance X-C, and the issue of whether, by operation of the said Ordinance, a student could appear in backlog papers beyond the span period of six years, the learned Single Judge of this Court held thus:

“A careful analysis of the aforesaid provision would show that the Academic Council can grant exemption in exceptional cases only from the Ordinances of governing the following matters; (a) admission of the students; (b) migration; (c) the courses to be pursued by the students; (d) attendance at lectures or sessional or other work; (e) the examination of the candidates. The aforesaid Ordinance, in my view, does not empower the University to permit a student to continue in the LLB course in case he fails to complete the said course within six years from the date of taking admission in the first year of the course, in terms of the requirement of Ordinance V, Appendix II, which prescribes the duration for completing LLB Course and does not deal with the matters enumerated in Ordinance XC. Therefore, the relaxation granted by the University in the past, in my

view, was not authorized and was clearly beyond its powers. Be that as it may, the case aforesaid of the petitioner is not covered under the exemption granted by the University which was a onetime measure. The petitioner cannot claim parity with the students who were allowed in the past to appear in the LLB examination, despite having failed to complete the course within the prescribed period of six years computed from the date of admission in the first year of the course. It is settled proposition of law that no negative equality can be claimed by any person and a person seeking intervention by the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution must necessarily establish either a the contravention of a legal right or a case of positive discrimination. A person cannot claim in law that merely because something wrong has been committed in one case similar wrong should be committed in his case as well, thereby perpetuating the said mistake. The concept of equality before law and equal treatment by the State pre-supposes the existence of a legal right vesting in the petitioner and a wrongful action on the part of the State. It may be possible for a person to question the validity of an order passed in favour of a person but in law was not entitled to such an order but he cannot claim passing of an order which is not sanctified by law and would result in contravening a statutory provision. The extraordinary and discretionary power of the High Court under Article 226 of the Constitution cannot be exercised for the purpose of repeating or perpetuating an illegality or a mistake committed by the State. The petitioner under the rules of the University has no legal right to appear in the examination to either take admission in the third year of the LLB course or to appear in the examination for the said year since he failed to complete the course within six years of taking admission in the first year of the course.”

12. Aggrieved by the above decision, the petitioners appealed, before the Division Bench of this Court by way of LPA 189/2014. The said appeal was disposed of *vide* detailed judgment dated 27th November, 2014. Paras 24 to 30 of the said judgment may be reproduced thus:

“24. We find that the rules and regulations, of the two universities, with which we are concerned, prescribing the span period, to have been formulated decades back. We do not know whether the Universities / educationists have relooked at the same in today’s context and life. If not, we feel there is certainly an occasion therefor. More so with the world shrinking and the international barriers disappearing; our educational system has to gear up to cater to the current needs rather than continuing to being run on patterns which were good decades back and which may not be good today. Recently, a Division Bench of this Court in *Govt. of NCT of Delhi Vs. Sachin Gupta MANU/DE/2360/2013* also observed that with the march of times the imparting of education at the Graduate level is changing all over the world and the Directorate of Education should keep in mind that it has to march in tune with the rest in the onward march in time. A Division Bench of the High Court of Gujarat also as far back as in *Gujarat State Cooperative Union Vs. Commissioner of Income Tax MANU/GJ/0040/1992* observed that the changing times and the ever widening horizons of knowledge may bring changes in the methodology of teaching, a shift for the better and that advancement of knowledge brings within its fold suitable methods of its dissemination and it may become necessary to have a different outlook; it is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel – its progress lies in the acceptance of new ideas. We have also looked up the rules and regulations of certain newer universities but find the same to be modelled on the old universities only. We are again not aware whether the

said newer universities while formulating their policies merely aped the older universities or there was a conscious decision that the decades-old policies are apt in the modern context also.

25. On the other hand, we are also mindful of the extreme paucity of educational institutions in the country. In the absence of any span period, students may indefinitely block seats, other facilities and amenities in the educational institutions to the prejudice of those becoming eligible for admission in succeeding years. Allowing an educational course/programme to be completed at any time, without any limitation, may also pose a problem where say the course content has changed. Also, there is generally continuity in the syllabus/curriculum in successive semesters/years of an educational course/programme and a long break may interfere therewith, impacting the course/programme.

26. We do not consider ourselves competent or qualified to take a decision on the aspects which we have highlighted above and we also do not have available all the materials/factors which may be relevant for taking such a decision. All the stakeholders are also not before us. We therefore refrain from judging on the aforesaid two rival aspects. The Supreme Court as far back as in ***Dr. Jagdish Saran Vs. UOI (1980) 2 SCC 768*** even though having prima facie found a rule relating to education to be inappropriate, stopped short of invalidating the same reasoning that the Court must act on sure ground, especially when matters of policy, socio-educational investigation and expert evaluation of variables are involved and held that to doubt is not enough to demolish.

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.

28. In this light, the only order which we can make in these proceedings is to direct the Universities to consider the matter, including in the light of our aforesaid observations, within a time bound period. Needless to state that if the outcome is to do away with the span period or to provide relaxation therein, the appellants/petitioner would be the beneficiaries thereof, notwithstanding having so become time barred prior thereto. Else, as we have already observed, appellants/petitioner have no right.

29. As far as the University of Delhi is concerned, what we find strange is that the same Ordinance X-C (supra), for nearly 35 years, was construed/interpreted by the University itself as empowering the Academic Council to relax/grant exemption in exceptional cases vis-a-vis span period. No material has been placed before us as to what caused the change in interpretation. The ordinary rule is, for an interpretation/practice long in vogue, being not disturbed, as consistency, trust, logical and valid and fair regularity are essential elements of public law. Even the Courts are loath to depart from an established practice unless it lacks the sanction of law or is grossly erroneous.

30. We are also disturbed by the fact that though the decision to grant such exemption/relaxation qua span period was of the Academic Council of the University, which we are told comprises of 200 members and who

we are sure must be having rich knowledge of academics and education, the decision to do away the same is of one man only i.e. the Vice Chancellor.

Certainly when 200 minds, we expect, after discussion, concluded and resolved that Ordinance X-C applies to span period also, the change thereof by one mind does not inspire confidence. When it is doubtful whether the power to take an important decision lies with an individual or with a group, the collective wisdom is generally preferred to individual wisdom. We are of the view that it is for the Academic Council of University of Delhi to, besides taking a call as directed above, also consider this aspect. We hope when all the members of the Academic Council pool their resources/ideas and deliberate, a right answer will be reached. Reference in this regard may be made to ***Lily Kurian Vs. Sr. Lewina (1979) 2 SCC 124*** where a blanket unguided, uncanalised power given to the Vice-Chancellor of the University to veto the disciplinary action of the managing body of a minority educational institution was held to be violative of the right of administration guaranteed under Article 30(1) of the Constitution. We are also of the view that it would be inappropriate for this Court to interpret Ordinance X-C before the Academic Council which is better equipped has had an occasion to consider the same inasmuch as the same is more a matter of policy than interpretation. A provision of a statute, rule, regulation giving an opportunity to seek exemption from application thereof cannot be said to be vesting a right for it to be said that the appellants have a right to be considered. A person who does not fulfill the qualifications cannot claim, as of right the grant of exemption. The Supreme Court in ***State of Rajasthan Vs. J.K. Udaipur Udyog Limited (2004) 7 SCC 673*** held that the recipient of a concession has no legally enforceable right against the grantor to grant a concession except to enjoy the benefits of a concession during the period of its grant. It was held that this right to enjoy is a defeasible one in the sense that it may be taken away in exercise of the very power under

which the exemption was granted. The defence of the members of the Academic Council being deemed to have ratified or concurred with the decision of the Vice Chancellor by not raising the said issue in the meetings, cannot be accepted. The failure or pre-occupation if any of the members of the Academic Council in not taking up the matter, cannot be a substitute for a discussion on the subject.”

(Emphasis supplied)

13. The Division Bench ultimately disposed of the appeals/writ petitions, led by LPA 189/2014, in the following terms:

“**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.”

(Emphasis supplied)

14. It was pursuant to the above directions, issued by the Division Bench, in LPA 189/2019(*supra*) that the following decision was taken by the Academic Council of the University on 19th July, 2016:

“The Academic Council of the University at its meeting held on 19.07.2016 vide item No. 5-1/-(Page-4 of the Agenda) considered the report dated 26.10.2015 of the Committee to look into the need for continuation of the span period and applicability of Ordinance X-C.

The resolution passed by the Academic Council on the said item is as under:-

“The Academic Council noted that the Hon'ble High Court of Delhi, vide judgment and order dated 9th May, 2014 passed in *Raid Huda Vs. University of Delhi & other* (LPA No. 189/14), directed University of Delhi & others in the connected matters to lay down policy Guideline to be followed by the Universities regarding:

(a) the need to continue with the span period and

(b) Whether ordinance X-C of University of Delhi Calendar applies to the span period also. The Academic Council was further directed to pass a resolution on both the aspects giving therefor.

In pursuance of above directions, the Academic Council deliberated upon the matter and vide resolution No.42 dated 21.01.2015 and authorized the Vice-Chancellor to constitute a Committee to take into all aspects of the matter and submit its recommendations. The Vice-Chancellor constituted the Committee which was

reported to Academic Council vide resolution No.32(3) dated 13.07.2015, as under:

1. Justice S.K. Aggarwal (Retd.) (Chairman)
2. Prof. J.M. Khurana (Dean Students Welfare)
3. Prof. Devesh Sinha (Dean Faculty of Science)

The committee submitted its report vide letter dated 26.10.2015.

The Council noted that the Committee submitted its report in conformity with the guideline notified by the University Grants Commission vide letter No. F.12-1/2015/(CPP-II) dated 15.10.2015 on determination of a Uniform Span period within which a student may be allowed to qualify for a degree. The council noted that as per the guideline of the UGC a student may be allowed two years period beyond the normal, period to clear the backlog to be qualified for the degree. In addition a further extension of one year can be granted under exceptional circumstance to be spelt out clearly by the relevant statutory body of the University. More so, during the extended period the student shall be considered as a private external candidate and also not eligible for ranking.

The Council resolved to accept the above guideline period noted by the UGC on determination of a Uniform Span Period within which a student may be allowed to qualify for a degree for the students admitted from the academic session 2016-17 for all courses / institutions including SOL, NCWEB and others.

Further, the Academic Council also considered the provide of Ordinance X-C of the University for its applicability to the span period. The Academic Council resolved that such provisions cannot be invoked wherein specify guideline directions have been issued by the UGC/MHRD/GOI to maintain its sanctity in consonance

with the directions issued by MHRD/GOI vide letter No. F.No.61-19/2015-Desk (U) dated March, 2016.

The Academic Council also recommends that the consequential amendments in the relevant Ordinance of the University be made accordingly after the approval by the Executive Council”

(Emphasis supplied)

15. To the extent, the above-extracted resolution holds that no exception, from the applicability of the span period, could be granted, the present petition lays the challenge. Accordingly, the prayers in this writ petition read thus:

“(a) A Writ of Certiorari calling for the records of the case for perusal;

(b) A Writ of Certiorari quashing the University of Delhi Academic Council Resolution dated 19.07.2016 (Annexure P-10), being illegal arbitrary, discriminatory, bad in law, unjust and in violation of principles of equity, justice, good conscience, public trust and public policy and consequently all subsequent actions taken by the University in pursuance thereto;

(c) A Writ of Mandamus directing the Respondent University to act in consonance with the Ordinance X-C, Delhi University Act and give Special Chance to the petitioner to appear for his left-out paper LLB course alongwith Exams being held for the academic session 2016-2017 in May 2017;

(d) A writ of mandamus commanding the respondents to pay the costs of this petition to the petitioner

(e) Any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

16. Arguments were addressed, on behalf of the petitioners, by Mr. R.K.Saini, and, on behalf of the respondents, by Mr. Mohinder J.S. Rupal.

17. The attention of Mr. R. K. Saini, learned counsel for the petitioners, was invited to the judgment, dated 26th September, 2016, of the Division Bench of this Court in LPA 258/2016 (***Awadesh Kumar v. Delhi University***) as well as on my judgment, dated 9th April, 2019, in W.P.(C) 3144/2019 (***Aruvita Mishra v. Delhi University***) and on the judgment, dated 23rd April, 2019, of the Division Bench of this Court in LPA 263/2019 (***Aruvita Mishra v. Delhi University***), which dismisses the appeal filed thereagainst.

18. It was suggested to Mr. Saini that, *prima facie*, the controversy in issue stood covered by these decisions. Mr. Saini, however, sought to contend that these decisions could not impact the challenge ventilated by his client.

19. Insofar as the judgment of the Division Bench in ***Awadesh Kumar (Supra)*** is concerned, the attention of Mr. Saini was drawn to to para 6 thereof, 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 other limit for completing the educational course. *In the absence of any provision for 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)

20. Mr. Saini sought to raise two contentions. He firstly contended that the judgment of the Division Bench in *Awadesh Kumar (Supra)* has not taken into account Ordinance X-C of the Ordinances governing the University. This submission has only stated to be rejected, as the Division Bench has considered its earlier decision in *Amit Kumar (supra)*, in which Ordinance X-C fell squarely for consideration. As such, when the Division Bench of this Court held that, in the absence of any provision for relaxation of the span period, no right could be claimed by any student to appear for back papers beyond the span period, it was done so in full awareness of Ordinance X-C (*supra*) and not in ignorance thereof.

21. Mr. Saini then sought to contend that the italicized words in the above extracted para 6 of the judgment of the Division Bench in *Awadesh Kumar (Supra)*, did not reflect the correct legal position, as a provision for relaxation of the span period was, in fact, contained in Ordinance X-C.

22. It is obviously not permissible for me, sitting singly, to even countenance such a submission. The Division Bench of this Court has, with the knowledge of the existence of Ordinance X-C, held that there was no provision for relaxation of the span period and that there is no right, therefore, for any student to appear in back papers beyond

the span period. Clearly, therefore, the upshot of the findings of the Division Bench in para 6 of the judgment in *Awadesh Kumar (supra)*, is that in spite of Ordinance X-C, no provision for relaxation of the span period exists, and no student can appear in back papers beyond the span period.

23. Mr. Saini has advanced an alternative argument, *qua* the judgment of the Division Bench in *Awadesh Kumar (supra)*, by contending that the italicized findings in para 6 of the said judgment, as extracted hereinabove, did not constitute part of the *ratio decidendi* in the said decision. He has sought to rely, in this behalf, on the judgments of the Supreme Court in *Dalbir Singh v. State of Punjab*, (1979) 3 SCC 745, *State of Orissa v. Sudhansu Sekhar Misra*, AIR (1968) SC 647, *Krishena Kumar v. UOI*, AIR (1990) SC 1782 and *M. Bhargavan Pillai v. State of Kerala* (2004) 13 SCC 217.

24. These decisions, in my view, cannot advance the case propounded by Mr. Saini, to any appreciable extent. In *Dalbir Singh (supra)*, Mr. Saini has invited my attention to para 22, which reads thus:

“22. With greatest respect, the majority decision in *Rajendra Prasad* case does not lay down any legal principle of general applicability. A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less “law declared” within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. According to the well-settled theory of precedents every decision contains three basic ingredients:

“(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (i) and (ii) above.”

For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker: *The English Legal System*. Butterworths, 1972, 3rd Edn., pp. 123-24] It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of *Qualcast (Wolverhampton) Ltd. v. Haynes* [LR 1959 AC 743 : (1959) 2 All ER 38] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case.”

(Emphasis supplied)

25. There can be no cavil with the proposition enunciating the above-extracted passage. A finding, which is dependant on the facts and circumstances of a case, obviously does not constitute a binding precedent, or “law declared”, within the meaning of Article 141 of the Constitution of India. It is also a trite principle that the *ratio decidendi* of a judgment is the statement of the law as applied to the legal problems raised by the facts as found, upon which the decision was based. If one were, however, to apply the said principle to the judgment of the Division Bench in ***Awadesh Kumar (supra)***, one finds, even from a reading of the second para of the judgment, that the challenge of the petitioner in that case, as squarely laid before the Division Bench, was that, though he could not complete the L.L.B. course during the prescribed span period, he was entitled to appear in the back papers even beyond the span period. The challenge in that case was, therefore, identical to that in the present case. In the awareness of the existence of Ordinance X-C, the Division Bench has held that there is no provision of relaxation of the span period, and, consequently, that no right could be claimed by any student, to appear in back papers beyond the span period. The appeal of the appellant ***Awadesh Kumar*** was also, as a result, dismissed. Clearly, therefore, the italicised findings in para 6 of the judgment in ***Awadesh Kumar (supra)***, constitutes the *ratio decidendi* of the said decision, applying the understanding of the concept of *ratio decidendi*, as enunciated in para 22 of ***Dalbair Singh (supra)***, on which Mr. Saini seeks to rely.

26. Adverting, now, to the judgment in *Sudhansu Sekhar Misra (supra)*, Mr. Saini invites my attention to the statement of the law, as contained in para 13 thereof, which holds that a decision is only an authority for what it decides, and that what is of essence in a decision is the ratio and not the observations found therein, or what logically follows from the said observations.

27. In view of my finding, hereinabove, that the italicised words in para 6 of the judgment of the Division Bench in *Awadesh Kumar (supra)* (as extracted in para 19 *ibid*), constitute part of the *ratio decidendi* of the said decision, this enunciation of the law, as contained in *Sudhansu Sekhar Misra (supra)*, too, does not help Mr. Saini.

28. In *Krishena Kumar (supra)*, Mr. Saini places reliance on paras 18 to 20 to the report, which read thus:

“18. The basic question of law that has to be decided, therefore, is what was the ratio decidendi in *Nakara case [(1983) 1 SCC 305: 1983 SCC (L&S) 145: (1983) 2 SCR 165]* and how far that would be applicable to the case of the PF retirees.

19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain “propositions wider than the case itself required”. This was what Lord Selborne said in *Caledonian Railway Co. v. Walker's Trustees [(1882) 7 App Cas 259 : 46 LT 826 (HL)]* and Lord Halsbury in *Quinn v. Leathem [1901 AC 495, 502 : 17 TLR 749 (HL)]*. Sir Frederick Pollock has also said :

“Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.”

20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)

“The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.”

(Emphasis supplied)

29. In *N. Bhargavan Pillai (supra)*, Mr. Saini relies on the following passages:

“Finally, it was submitted that taking note of the small amount involved and the fact that the accused has already deposited the amount the benefit available under the Probation of Offenders Act, 1958 (in short “the Probation Act”) can be extended. Strong reliance is placed on a decision of this Court in **Bore Gowda v. State of Karnataka [(2000) 10 SCC 260 : 2000 SCC (Cri) 1244]** . It is pointed out that though the accused has died during pendency of appeal his legal representatives have been impleaded and benefit available under Section 12 of the Probation Act should not be denied to them.

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14. Coming to the plea relating to benefits under the Probation Act, it is to be noted that Section 18 of the said Act clearly rules out application of the Probation Act to a case covered under Section 5(2) of the Act. Therefore, there is no substance in the accused-appellant's plea relating to grant of benefit under the Probation Act. The decision in **Bore Gowda case [(2000) 10 SCC 260 : 2000 SCC (Cri) 1244]** does not even indicate that Section 18 of the Probation Act was taken note of. In view of the specific statutory bar the view, if any, expressed without analysing the statutory provision cannot in our view be treated as a binding precedent and at the most is to be considered as having been rendered per incuriam. Looked at from any angle, the appeal is sans merit and deserves dismissal which we direct.”

30. In view of my above findings, these passages, too, would not suffice to hold that the findings, of the Division Bench, in its judgment in **Awadesh Kumar (Supra)**, to the effect that a student could not claim any right to appear in back papers beyond the span period, could be ignored by me as constituting anything but the *ratio decidendi* of the said decision.

31. Incidentally, the SLP preferred by **Awadesh Kumar (supra)** against the judgment of the Division Bench in LPA 258/2016 was also dismissed by the Supreme Court *vide* order dated 20th March, 2017, albeit, *in limine*.

32. As I have already noted, hereinabove, this finding rendered by the Division Bench of this Court, binds me. It is impossible, therefore, for me to countenance a challenge, to the impugned resolution dated 19th July, 2016, based on the premise that Ordinance X-C permits a relaxation of a span period or permits students to appear in back papers beyond the span period, as any such decision by me would be in the teeth of para 6 of **Awadesh Kumar (supra)**. Though, even on this ground, it is not possible for me to grant the relief sought in the writ petition, I may also advert to my judgment in **Aruvita Mishra (supra)** and the judgment of the Division Bench, in the LPA preferred thereagainst.

33. Adverting, now, to my judgment in **Aruvita Mishra (supra)** and the judgment of the Division Bench in LPA 263/2019 thereagainst, it is seen that the petitioner in **Aruvita Mishra (supra)**, too, desired to appear in the back papers beyond the expiry of the prescribed span period of six years. I have held, in the said decision, that the issue stands covered by the judgment of the Division Bench in **Awadesh Kumar (Supra)**. I may, in this context, reproduce paras 8 to 15, of my judgment in **Aruvita Mishra (supra)**, which read thus:

“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 26th 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 28th 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.”

34. In para 24 of my judgment, I have also noted the reliance, placed by the learned counsel appearing for the petitioner in ***Aruvita Mishra (supra)***, of para 35 of the judgment of the Division Bench in ***Amit Kumar (supra)***, on which Mr. Saini has also sought to place

reliance. Paras 24 and 25 of my judgment would also, therefore merit reproduction thus:

“**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.”*

(Emphasis supplied)

35. By judgment dated 23rd April, 2019, LPA 263/2019, preferred by Aruvita Mishra against my aforementioned judgment dated 9th April, 2019 also stands dismissed by a Division Bench of this Court, finding that there was no error in the judgment under challenge. I also refer, with advantage, to paras 12 and 13 of the Division Bench in *Aruvita Mishra (supra)*, which read thus:

“**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 in Awadesh Kumar DB.*”

(Emphasis supplied)

36. In view of the above finding by the Division Bench in paras 12 and 13 of its judgment in Aruvita Mishra, the contention of Mr. Saini, that the observations in para 6 of the judgment of the Division Bench in *Awadesh Kumar (supra)* do not constitute the *ratio decidendi* of the said decision, too, cannot, obviously, sustain.

37. The issue in controversy is therefore, clearly not *res integra*. I do not see any reason, whatsoever, to re-invent the wheel.

38. In view thereof, the challenge in these writ petitions, being squarely covered by the judgments referred to hereinabove, has necessarily to fail.

39. The writ petitions are accordingly dismissed with no order as to costs.

C. HARI SHANKAR, J

MAY 02, 2019

dsn/bh