

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 24971 of 2016

Date of Decision: March 13, 2020

Tarun Gautam

....Petitioner

Versus

Army Institute of Law Mohali and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vaibhav Gupta, Advocate
for the petitioner.

Mr. Karan Bhardwaj, Advocate
for the respondents.

Lisa Gill, J.

This writ petition has been filed for quashing of order dated 17.08.2016 (Annexure P8) passed by the learned Permanent Lok Adalat whereby the petitioner's claim for refund of the admission fee amounting to ₹71,425/- has been declined.

The petitioner applied for and was granted admission under the Army category by respondent No. 1 in the discipline of LLM (one year course) for the session 2015-16. A sum of ₹71,425/- was deposited. A copy of receipt dated 27.07.2015 is attached as (Annexure P1) with this petition. It is averred that the petitioner was asked to report to the Institute on 05.08.2015 for attending the classes but on the said date, only two students including the petitioner were present. The classes were not conducted on 05.08.2015 as the petitioner was informed that classes could not commence until there are a minimum of ten students admitted to the course. It is averred that no classes commenced till 11.08.2015. In the meanwhile, the

petitioner who had applied for admission in LLM course with the department of Panjab University, Chandigarh, got admission with the Panjab University. He, accordingly, applied for refund of fees on 14.08.2015. Despite request, the amount was not refunded and the petitioner approached the learned Permanent Lok Adalat by way of application under Section 22C of the Legal Services Authority Act, 1987.

The petitioner's claim was contested by respondent No. 1 on the ground that the petitioner is not entitled to refund of the fees after commencement of the course and the seat remaining vacant. The petitioner is averred to have attended his classes from 05.08.2015 onwards till 11.08.2015. It is stated that the petitioner had only paid the first installment of ₹71,425/- and the balance amount of ₹32,250/- was still to be paid as second installment by 15.01.2016. Therefore, even after adjusting the refundable security of ₹10,000/-, it was the petitioner, who still owes a sum of ₹22,250/- to the Institute. Learned Permanent Lok Adalat dismissed the petitioner's application while observing that the petitioner attended his classes from 05.08.2015 till 11.08.2015 and thereafter took admission at Panjab University and that the seat which fell vacant after the petitioner left respondent No. 1 was not filled up, therefore, in terms of Clause 19 of the prospectus of respondent No. 1, the fee could not be refunded. Aggrieved therefrom, this writ petition has been filed.

Learned counsel for the petitioner vehemently argues that learned Permanent Lok Adalat has fallen in error in dismissing the petitioner's application. The last counselling by the respondent – Institute was held on 28.08.2015. Furthermore, it is averred that no classes were held

on 05.08.2015 till 11.08.2015. The attendance register (Ex.R3) is denied being incorrect. He relies upon decision in **Akhil Bhardwaj versus The Secretary of Human Resources Development, New Delhi and others 2013 (2) SCT 346**, **Nitish Bhardwaj versus Kurukshetra University, Kurukshetra 2014 (1) SCT 14** and **CWP 5793 of 2007 (Aayush Gupta versus Panjab University)**. It is further contended that out of fifteen (15) seats for LLM, only eight (8) were filled and seven (7) were left vacant. There was no waiting list from wherein the candidates could not be granted admission after the last date and consequent thereto prejudice was caused to the respondent – institute, by the petitioner leaving the institute. It is further contended that the petitioner's father is an Ex-Army personnel and the petitioner has been denied refund of the fees in an unjustified manner. It is, thus, prayed that this petition be allowed.

Learned counsel for the respondent – institute has refuted the averments as above and submitted that as per the specific terms and conditions contained in the prospectus (Annexure P4) and specifically Clause 19, which deals with refund of the fees, the petitioner is not entitled to any refund. In fact, the petitioner owes a sum of ₹22,250/- to the respondent – Institute. It is submitted that the petitioner has attended classes from 05.08.2015 to 11.08.2015 which is reflected in the attendance sheets. It is, thus, prayed that this petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

The petitioner was admittedly granted admission to the course of LLM (one year course - two semesters) for the session 2015-16. A sum of

₹71,425/-, which is detailed as hereunder, was deposited by the petitioner:-

<i>Details of charges</i>	<i>1st Inst. At the time of admission</i>	<i>2nd Inst. By 15 Jan 2016</i>
ONE TIME CHARGES	10,000/-	-
(a) Refundable Security (CF)		
ANNUAL CHARGES		
(a) Admission fee	4500.00	
(b) Building & allied charges	5500.00	
(c) Tuition Fee	32250.00	
(d)Library	5055.00	
(e) IT	5900.00	
(f)University Fee	7500.00	
(g) college Magazine & Journal	600.00	
(h)Group Insurance Policy	120.00	
Total	71425	32250

The petitioner is admittedly the son of an Ex-Army personnel and was afforded admission under the said category. Reference can gainfully be made to Clause 16.7 of the prospectus, which provides the eligibility criteria for wards of Army personnel. Learned counsel for the respondents is unable to deny that last counselling for students seeking admission to the course of LLM with the respondent - Institute was 28.08.2015. It is further a matter of record that the petitioner applied for refund of fees on 14.08.2015 itself i.e. prior to the last counselling. Out of fifteen (15) seats for the discipline of LLM, only eight (08) were filled and seven (07) left vacant. It is clearly not the case of the respondents that the petitioner not carrying on with the course, led to denial of admission to any other candidate or that due to commencement of the classes, even if so accepted, no other student could have been admitted to the discipline. This is specifically so due to the factum of the last counselling being admittedly held on 28.08.2015. Clause 19 of the prospectus, which deals with the

refund of the fees, reads as under:-

19. Refunds (Common for BA, LLB & LLM)

Following refunds are admissible:-

(a) Refund of Fees after commencement of the Course but before last date of admission, if a seat is filled by another candidate will be as follows: -

- (i) Admission fees to be refunded after deducting processing fee of ₹1000/-.
- (ii) Security deposit to be refunded in full.
- (iii) Student Association and Journal Fee to be refunded.
- (iv) Tuition fees, Allied Fee, IT & Library as per actual. A single day of the month will be treated as a full month for the purpose of fee.
- (v) Hostel Charges as per actual. A single day of the month will be treated as a full month for the purpose of fee.
- (vi) Electricity, Mess & Washerman as per actual. A single day of the month will be treated as a full month for the purpose of fee.

(b) Refund of Fees after commencement of the course, if a seat remains vacant will be as under:

- I. Admission fees : no refund
- II. Security fees to be refunded
- III. Student association and Journal fee: no refund
- IV. Tuition fees, allied fee IT and library : One year fee to be retained (adjusted fee, against security deposit)
- V. Hostel charges: One year Hotel charges to be retained
- VI. Electricity, Mess and Washerman charges : As per actual. A single day of the month will be treated as a full month for the purpose of fee.
- VII. Convocation Charges : Note to be refunded if withdrawal is after 3rd year.

In the case of **Akhil Bhardwaj** (supra), the co-ordinate Bench

has considered the case where qua sixty (60) seats allotted to the institution, only eleven (11) students had joined the course out of which four (4) had concededly left. It is observed that there is no significance of a seat remaining vacant, where a number of seats were not filled and many were lying vacant. It is specifically observed as under:-

“ In this background, the Institution in my view would be unfair in pressing this plea to retain the fee deposited by the petitioner. One could have considered this line of submission as pursued by counsel for the respondents, if only the seat vacated by the petitioner had remained unfilled or even to some extent 2 or 3 seats had so gone waste because of late vacation of seats by some students. This Institution, which is allotted 60 seats, is running this course with 7 students and the action of the petitioner in vacating the seat, which has remained unfilled is of no significance.”

The institution was held entitled to deduct the proportionate fee for the months for which the petitioner had remained on the rolls. The Division Bench of this Court in CWP 5793 of 2007 (Aayush Gupta versus Panjab University) also directed refund of admission fee while observing that refund cannot be denied without showing any valid justification. Mere expiry of date, by which making of application has been laid down, it is held could not be treated as a valid ground to deny refund, in the facts and circumstances of a particular case. So it is in the present case, where the petitioner admittedly asked for refund before the last counselling which was scheduled for 28.08.2015. Respondent – institute is unable to show any kind of right accruing to it to withhold the refund of fees on the basis of the seat remaining vacant. Admittedly, the petitioner is the ward of an Ex-Army

personnel.

In my considered opinion, it would be unjustified to deny refund of the fees to the petitioner. However, keeping in view the attendance sheets, the Institute is entitled to withhold the processing fee of ₹1000/- as well as proportionate tuition fees of ₹5,375/- for the month of August, 2015. Thus, order dated 17.08.2016 passed by the learned Permanent Lok Adalat is set aside and the petitioner is entitled to refund of the fees as above.

Present petition is, accordingly, disposed of.

March 13, 2020

rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No