

\$~17 (2021 Cause List)

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

Date of Decision: 16th December, 2021

+ W.P.(C) 3593/2021

AJAY KUMAR

..... Petitioner

Through: Mr. Manish Pratap Singh, Adv.

versus

UNIVERSITY OF DELHI

..... Respondent

Through: Mr. Anshuman Mehrotra, Adv.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. The present writ petition has been filed for the following relief:-

“A) Issue a Writ, Order, or Direction in the nature of mandamus permitting the petitioner to appear in B.Com 3rd years cost accounting paper for the year 2020-2021.

B) Pass any other order in favour of the petitioner in the interest of justice”

2. The petitioner was a student of the respondent-University of Delhi [“the University”] in the B.Com. degree [“the degree”]. He was admitted to the University in 2012 and took examinations of the degree in the years 2013 and 2014. However, he was arrested on 09.03.2015 in connection with FIR No. 168/2015, under Sections

376/506 of the Indian Penal Code, 1860 registered at Police Station Ranhola. The petitioner was convicted of the offences by a judgment of the Trial Court 18.10.2018. He filed Criminal Appeal No. 141/2019, which was allowed by a judgment of this Court dated 30.09.2020 and was released immediately thereafter.

3. Although the petitioner had taken all the papers of the degree examinations during the period 2012-2018, he failed in one paper, i.e. Cost Accounting. The grievance with which he has approached this Court is that he has not been permitted to sit for the said paper again as the University contends that he has already completed the span period of six years during which the degree is required to be completed under the Ordinances of the University.

4. The relevant stipulation with regard to the span period is contained in Ordinance VIII of the Ordinances of the University, which states that a candidate for the B.Com. degree must complete it within six of admission to the first year class and five years after admission to the second year class. As the petitioner was admitted in the year 2012, he has not been permitted to take the examinations again.

5. Mr. Manish Pratap Singh, learned counsel for the petitioner, relies on Ordinance I Rule 5 of the Ordinances, which reads as follows:

“5. Notwithstanding anything contained in any other Ordinance, no person who has been convicted of an offence involving moral turpitude shall be admitted to a course of study or permitted to take any examination of the University until a period of two years has elapsed

from the date of expiry of the sentence imposed on him. However, the Academic Council may, in a special case, exempt any person from the operation of this Rule.”

6. According to Mr. Singh, the petitioner, having been arrested in March, 2015 and convicted on 18.10.2018, was not eligible to take the examinations after his conviction until two years thereafter had elapsed. He submits that the petitioner's appeal having been allowed only on 30.09.2020, the petitioner be permitted to take the examinations at this stage.

7. Mr. Anshuman Mehrotra, learned counsel for the University, on the other hand, points out that the petitioner had, in fact, taken the examinations in every year from 2013 to 2018, including during the period that he was in custody. He passed in all his papers, except Cost Accounting. According to Mr. Mehrotra, Ordinance I Rule 5 has no application to the facts of the present case as the petitioner was never prohibited from taking the examinations. Mr. Mehrotra also relies upon a notification of the University dated 10.10.2012, which states that no application for a special chance beyond the stipulated period shall be considered by the University.

8. Having heard learned counsel for the parties, I am of the view that the relief sought by the petitioner cannot be granted. Admittedly, the petitioner was admitted in 2012, and the span period came to an end in 2018. He has taken his examinations even while he was in custody. The petitioner has himself placed on record the marksheet of his examinations in the year 2018, declared on 10.10.2018, before he suffered the conviction. Unfortunately, he was unable to clear one

paper even within the maximum span period of six years.

9. Mr. Singh's reliance on Ordinance I Rule 5 of is, in my view, misplaced. The said rule only provides that a person who has been convicted of an offence of moral turpitude will not be permitted to take the examination until a period of two years after the expiry of the sentence imposed on him. In the petitioner's case, the conviction and the sentence were imposed after the span period had already lapsed. There is no suggestion that he was ever debarred from taking the examinations on this ground. The said rule, therefore, does not come to the petitioner's aid.

10. Mr. Singh submits that the petitioner was in custody from 2015 to 2020, which period would count towards the sentence imposed upon him pursuant to conviction by the Trial Court. On such an interpretation, the petitioner would not have been allowed to take the exams at all during the period he was in custody. That was not the case. I am therefore unable to appreciate how this assists the petitioner in the facts of this case.

11. The relief sought by the petitioner would in effect grant him more chances to take the examinations, and a longer period to do so, than any other candidate admitted at the same time to the same course at the University. This is beyond the scope of the Ordinance and no writ of *mandamus* can be issued for such a purpose.

12. The writ petition is accordingly dismissed.

PRATEEK JALAN, J

DECEMBER 16, 2021/ 'hkaur'