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

Date of Decision: 20th July, 2022

+ W.P.(C) 8582/2019 & CM APPL. 35466/2019, CM APPL. 23281/2022, CM APPL. 23282/2022.

KINJAL GOEL

..... Petitioner

Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl
and Ms. Apoorva Bahl, Advocates
with Petitioner (in-Person).

versus

UNIVERSITY OF DELHI AND ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Ms. V.
Bhavani and Ms. Kriti Bhatia,
Advocates for R-1.
Ms. Nidhi Mital and Ms. Seema Dolo,
Advocates for R-2.
Mr. Mrinal Harsh Vardhan, Advocate
for R-3 & 4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Petitioner who is presently working with Aviva Life Insurance Company Ltd., is exceedingly distressed because the University of Delhi has not issued her degree for the under-graduate course of B.A. (Hons.) Economics, despite her having completed the same in 2018.

2. The brief facts of the case are as follows: Petitioner was granted admission in B.A. (Hons.) Economics by Respondent No. 2 – Sri Ram College of Commerce in the Academic Session 2015-18. She contends that



though she has gone through the examination process for all the six semesters of the course, she has not passed one subject in the sixth semester (Political Economy-II), basis whereof her degree has not been awarded. It must also be noted that on the basis of her under-graduate studies, the Petitioner had joined and even completed the MBA course of Symbiosis International (Deemed) University, but her post-graduate degree cannot be awarded as her undergraduate degree has not been issued. Though she is currently in employment, she has not submitted her degree certificates as the same are being withheld. This has brought the aggrieved Petitioner to the Court, as denial of the relief prayed for would have a serious repercussion on her professional career.

3. The Petition, as filed in 2019, focussed on the directions for rectifying the result of the Petitioner in respect of the paper – Political Economy-II of VI semester, for which she had appeared in the examination on 17th May, 2018 and failed. However, in view of the stand taken by the University, it emerges that there is a greater controversy surrounding the denial of degree.

4. Attention of the court is invited to an amendment introduced in 2017 to the University's Ordinance IX by an Executive Council Resolution, wherein Clause 12(1)(e) of the same was modified. Relying on the said provision, the University determinedly asserts that the Petitioner has not qualified for issuance of a degree, as she has not cleared all the papers of the first year, second year and third year, which is a mandatory requirement for issuance of a degree. Since the above referred provision is the fulcrum of the dispute, it would be apposite to reproduce the old as well as the amended clause:



Pre-Amendment Clause 12(1)(e):

“(e) If a student has secured an aggregate of minimum 40% marks taking together all the papers in theory examination (including internal assessment/ project, wherever applicable) and practical exam separately till the end of the third year, i.e., upto the end of the VIth semester, then she/he shall be awarded the degree in which the student has been admitted.”

Post-Amendment Clause 12(1)(e):

“(e) Eligibility for award of degree:

A student shall be declared eligible for degree provided he/she passed all the papers of 1st year 2nd year and 3rd year of a course as per clause 12(3) of Ordinance IX.”

5. As can be seen from the above, earlier, for award of a degree, students had to secure minimum 40% marks taking together an aggregate of all the papers, in theory examinations (including internal assessment/ project, wherever applicable) and in practical exams separately, till the end of the third year, i.e., upto the end of the VI semester. Counsel for the Petitioner points out that it was thus entirely possible that a student may have failed in a few papers but still managed to meet the overall 40% threshold, and thus be awarded a degree, which, he states, was the Petitioner’s case as well.

6. This provision underwent a striking change in 2017, and now, a student can only be declared eligible for a degree after passing all the papers of all the three years. Clause 12(3) now prescribes for a system of letter grades and grade points, wherein the grade point for clearing an exam is ‘4’ which is allocated the letter grade of ‘P’ (Pass), which is the minimum requirement to be obtained in each course of all semesters in order to complete the eligibility criteria.

7. Keeping the afore-noted amendment in view, it must be noted that the Petitioner joined the course in 2015, when, the pre-amendment rule was applicable to her. She has an aggregate of more than 40% marks and this is



not in dispute. However, since she has not cleared one subject of the VI semester, the University, relying upon the amended provision, is denying her the degree.

8. Therefore, the short question is – whether, on account of not passing one subject in the VI semester examinations held in 2018, the Petitioner can be denied a degree, in view of the amended Clause 12(1)(e).

9. Mr. Mohinder J.S. Rupal, Counsel for the Respondent No. 1, has argued that the Petitioner had joined the undergraduate course under the Choice Based Credit System (CBCS) which was introduced on 14th July, 2015. The Petitioner was therefore aware of the scheme of grading, and further, the 2017 amendment was also within her knowledge as the same was proposed early on. To flesh out this point, Mr. Rupal places reliance on Annexure R-2 attached with the University's counter affidavit dated 9th January, 2020 wherein the agenda item for the proposal to amend the promotion rules was signed by the members of the Executive Council on 13th / 14th June, 2016.

10. Although Mr. Rupal has also submitted that the Petitioner has not laid any challenge to the amended provision of Ordinance IX and the grounds urged are confined to re-evaluation of the result of the exam dated 17th May, 2018, however, in the opinion of the Court, challenge to the provision is not necessary for the Petitioner to succeed. Her case is not that the provision is bad in law, but merely that that the impugned rule cannot be made applicable to her.

11. The objection raised by the University is legally untenable in view of the rule against retroactivity. The afore-noted amendment was carried out on 28th February, 2017 / 7th March, 2017 which is the date of the Executive



Council Resolution, and the same cannot be applied to the Petitioner who joined the course in 2015, when the old provision was applicable. It would be a grave injustice to a student in case the whole process of evaluation and award of degree is changed mid-course. The Petitioner had joined the undergraduate course, aware of the fact that the requirement to obtain a degree was only to secure an aggregate of minimum of 40% marks (separately for theory and practical examinations). On that basis, she continued with her education. The amendment, which has been brought in 2017, would therefore not be applicable to the Petitioner as her rights stood vested in 2015 when the pre-amendment provision was in force, and would continue until the completion of her course. Needless to clarify, the same would not be the position for students who took admission in 2017 onwards.

12. On this issue, the Court would also place reliance upon a decision of this Court in **Vikas Bhaskar v. University of Delhi & Anr.** decided on 11th May, 2018 in W.P.(C) 1944/2018. Although the facts of the said case were slightly different, the situation therein was somewhat alike, as the Petitioner-student was aggrieved by modification of the rules contained in the admission brochure/prospectus, pertaining to a supplementary examination, which were modified mid-course. Considering this ground, the Court had relied upon the settled legal position that a rule (and amendment thereto) cannot operate retrospectively so as to divest a person of his/her vested legal rights.

13. In the opinion of the Court, the principle of law enunciated in the afore-noted judgment is in consonance with the view taken in several cases by this Court as well as the apex Court. Enforcing an amendment retrospectively would have the effect of taking away substantive rights of



the Petitioner. The University of Delhi has failed to consider the fact that the entirety of the Petitioner's education was under a provision which entitled her to secure a degree on the basis of obtaining the minimum passing marks of an aggregate of 40% and that formed the basis for her joining the course.

14. Moreover, the submission that since the amended clause was proposed in 2016, and hence the same would bind the Petitioner, cannot be countenanced. A proposal may be in the pipeline for a prolonged or a short time; but it will only have an effect in law once it is formally approved and notified, which, in the instant case was done only on 28th February, 2017/ 7th March, 2017.

15. Before parting, it must also be briefly mentioned that Mr. Behl had also urged another ground, pertaining to the controversy regarding the examination of the subject – Political Economy-II – that the Petitioner has not passed. On this aspect Mr. Bahl had pointed out that in response to the Petitioner's RTI application and the counter affidavit filed by SRCC, it emerges that the Petitioner had in fact used two supplementary sheets while writing her exam, however ultimately, the evaluation was done on the basis of one supplementary sheet, and the other seems to have been lost. Mr. Rupal controverted the contention and submitted that regardless of the same, the Petitioner re-appeared for the examination in November/December 2018, but again did not clear the same. Be that as it may, in the opinion of the Court, this aspect need not be engaged with, as the Petitioner is entitled to succeed on the first ground itself.

16. In light of the foregoing, the present petition deserves to be allowed.

17. University is directed to issue a degree on the basis of the marksheet which is provided at Annexure P-4, within a period of three weeks from



today.

18. The petition is disposed of.

19. A copy of this Order be given *dasti* under the signature of the learned Court Master.

SANJEEV NARULA, J

JULY 20, 2022

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