

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**OWP No. 1455/2012
CMA Nos. 2400/2012 & 2046/2012**

Date of Decision: 27.12.2012

Akash Chuni V. University of Jammu & ors.

Coram:

Mr. Justice J. P. Singh.

Appearing Counsel:

For Petitioner(s) : Mr. B.S.Salathia, Sr. Advocate with
Mr. Ashish Sharma, Advocate.

For Respondent(s) : Mr. W.S.Nargal, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes. |
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JUDGMENT

Though ineligible, the petitioner was admitted to the Master of Business Administration Programme (MBA), 2012 of University of Jammu but provisionally and subject to his furnishing documentary evidence of having passed the qualifying examination requisite for admission to the programme, within 21 days of the commencement of class work.

At the time of his provisional admission, he had backlog of IIIrd semester paper, i.e., MTH-313 of his BE(IT), which was one of the essential qualifying examinations necessary for admission to the Course. The Course commenced on July 24, 2012 but the petitioner failed to furnish documentary evidence of having cleared the qualifying examination.

His admission was, accordingly, suspended. Aggrieved by suspension of his provisional admission, the petitioner has approached this Court seeking directions for regularization of admission to MBA course 2012-2014.

While entertaining the Writ Petition for University's Response thereto, a direction was issued to the University to consider the petitioner's Representation.

The University, accordingly, considered the Representation but rejected it vide order dated 26.10.2012 finding no merit therein. The order passed by it, reads as follows:-

“ORDER”

Sub: OWP titled Akash Chunni v/s University and Others.

Whereas, Akash Chunni S/o Rajive Chunni r/o Bakshinagar, Jammu who applied for admission into the MBA programme was provisionally admitted to the Master of Business Administration Programme (MBA) along with other candidates for the year 2012; and,

Whereas, the said Akash Chunni was required to submit/furnish documentary evidence of having passed his qualifying examination in full within 21 days of the commencement of the class work MBA programme which commenced on the 24th of July, 2012; and,

Whereas, the said Akash Chunni, as required submitted an affidavit duly attested by the Notary to the effect that his provisional admission was subject to his being able to submit/furnish documentary evidence of having passed his qualifying examination in full within 21 days of the commencement of the class work of the MBA programme failing which his provisions admission to the said programme shall stand automatically cancelled; and

Whereas, the said Akash Chunni had a backlog in his BE(IT) IIIrd semester paper i.e. MTH-313 and he failed to submit/furnish documentary evidence of having passed his qualifying examination in full within the stipulated period as a consequence of which his provisions admission to the said programme deemed to have been cancelled as per the University Statutes; and,

Whereas, the said Akash Chunni instead of filing appeal before the Appellant Committee as envisaged under University Statute approached Hon'ble High Court of Jammu & Kashmir at Jammu by way of filing Writ Petition which is registered as OWP No. 1455/2012 and the Hon'ble Court by virtue of Order dated 16.12.2000 has been pleased to observe as under:-

Appearing Counsel:-

Mr. B.S.Salathia, Sr. Adv. with Mr. Monish Chopra, Adv.
Mr. W.S.Nargal, Advocate.
Heard.

Notice for rule nisi.

List on 29th of October, 2012.

Meanwhile, reply affidavit.

At this stage, Mr. Nargal, learned counsel appeared and submitted that he has instruction to accept notice on behalf of respondents. His statement is taken on record.

CMA No. 2046/2012 :

Notice accepted as above.

Respondents will consider the representation of the petitioner with regard to his admission and take a decision in the matter. Meanwhile, respondents to consider as to whether petitioner shall be allowed to attend the classes in MBA Course.

Whereas, the said Akash Chunni filed a detailed representation on October 22, 2012 at 12.40 p.m.

Whereas, the matter has been considered by the University and it is seen that the in terms of the Statue 6(c)of the University of Jammu governing admission to the MBA programme it has been provided that:-

“(c) Such candidate shall, however, be considered for admission only if he/she furnishes documentary evidence in support of his/her having passed the qualifying examination in full with the requisite percentage of aggregate marks within 21 days of the commencement of classes.”

Whereas, the facts of the matter is that the class work of the MBA programme stated on the 24th of July 2012 and the examination for the engineering 3rd semester MTH 313 paper was held on 5th September rand the result was conveyed by the Controller of Examinations to the department confidentially on 28.09.2012 when the period of 21 days from the start of the class work of the MBA programme was already over rendering him ineligible for admission as per the statutes; and,

Whereas, Ms. Ruchi Gupta who was also similarly situated, preferred an appeal before the appellate committee constituted for the purpose but her appeal was turned down. Whereas, the said Akash Chunni did not prefer appeal before the appellant committee as per University statutes and chose to file writ petition directly.

Whereas, in view of the background and circumstances of the case and the express bar under the University Statutes governing the admission to the MBA programme it is amply clear that there is no scope for allowing the said Akash Chunni admission into the MBA programme 2012 or to allow him to attend the classes for the said programme.

Now therefore, in compliance to the Hon'ble High Court Order dated 19.10.2012 passed in OWP No. 1455/2012, CMA No. 2046/2012, the case of the petitioner has been duly considered and it is hereby ordered that the provisional admission of the said Sh. Akash Chunni into the MBA programme 2012 shall be and shall always deemed to have been canceled with effect from the date the period of 21 days from the date of commencement of classes in the said programme was over, and further, that he cannot be allowed to attend the classes in the said programme on the same analogy as has been done in the case of Ruchi Gupta, whose appeal was turned down by the Appellate Committee.

Sd/-
Registrar,
University of Jammu,
Jammu.”
No. DAA/12/4238-41
Dated: 26.10.2012”

The order passed by the University rejecting petitioner's Representation has not been questioned by him.

However, during the currency of the Petition, he filed a Supplementary Affidavit urging that he was discriminated against by the University, in that, relief of regularization of admission allowed to similarly situated persons, was denied to him, without any justification. It is pleaded that the University had regularized admission of M/S Abhishek Gupta, Meenu Gupta, Soubhika Sharma and Vibha Mahajan, although they had not furnished result of clearing the qualifying examination within 21 days but the petitioner's admission was withdrawn adopting a course different from the one that had been followed in case of candidates referred to hereinabove.

University's Response to the petitioner's Supplementary Affidavit is as follows:-

"7. That the petitioner has tried to project that four students namely Abhishek Gupta, Meenu Gupta, Soubhika Sharma and Vibha Mahajan had furnished their reply probably on 24 August, 2012 i.e. beyond the statutory period. In this regard, the deponent clarifies that as per the mandate and spirit of University statutes, that such candidates shall be considered for admission only if he/she furnishes documentary evidence in support of his/her having passed qualifying examination in full with the requisite percentage of aggregate marks within 21 days of the commencement of the classes and the candidates mentioned supra have cleared the qualifying examination within the stipulated period which is evidence from a bare perusal of the marksheets issued by the concerned authority and the passing of the qualifying examination and the declaration of the result before the cut-off date was within the knowledge of the University and this was precisely the reason that the admission aforementioned candidates have been legalized and they have been allowed to attend classes. However, the case of the petitioner is distinguishable in the light of the fact as pleaded in Para 6 of the writ petition, wherein, the petitioner has specifically admitted that the petitioner was having backlog in 3rd semester examination of MTH-313 exam for which the examination was held on 5th September, 2012 and the result was conveyed to the deponent confidentially on 28 September, 2012. Thus, it can safely be concluded that the case of the petitioner is distinguishable than that of the aforementioned four candidates. Copies of the marksheets of all the four candidates are enclosed herewith and marked jointly as Annexure-B."

Heard learned counsel for the parties.

Before considering the issue projected by the petitioner for regularization of his admission, regard needs to be had to the Statute governing admission to the MBA Course. Statutes 3 and 6 read thus:-

“ 3. Selection for admission to the course shall be made on the basis of:-

- (a) Common Admission Test (CAT)
- (b) If seat remain vacant in offsite campuses of the University and other affiliated colleges/Institutes the same shall be filled on the basis of Management Aptitude Test (MAT).
- (c) The weightage of the Academic record.
- (d) Group Discussion and Personal Interview to be conducted by an admission Committee duly constituted and approved by the Dean Academic Affairs, University of Jammu.

PROVIDED that no candidate shall be called for Group Discussion and Personal Interview unless he/she has passed the Written Entrance test as mentioned above with at least 50 percentile marks (40 percentile for the candidates belonging to the Sc/St) However, if situation so warrants the Vice-Chancellor on the recommendation of the Admission committee, may lower the qualifying percentile for a session.

6(a) Notwithstanding anything contained in Statute 3, a candidate who has appeared or is appearing in the Final Year of the qualifying Examination in April/May immediately proceeding the academic session and expecting to pass with requisite percentage of aggregate marks in the said examination can also apply and appear in the Written Entrance Test provisionally.

(b) In case such a candidate is called for Group Discussion and Personal interview, he/she shall be permitted to do so only if he/she produces a certificate from Head of the Institution last attended, if he/she is a regular candidate or the Controller of Examinations, in case he/she is a private candidate, testifying that he/she is appearing or has appeared in the final year of the qualifying examination as mentioned in Statute 3.

(c) Such candidate shall, however, be considered for admission only if he/she furnishes documentary evidence in support of his/her having passed qualifying examination in full with the requisite percentage of aggregate marks within 21 days of the commencement of classes.”

Perusal of Statute 6 indicates that a candidate, who had appeared or was appearing in the Final year of the qualifying examination in April/May immediately proceeding the academic session and expecting to pass with requisite percentage of aggregate marks in the said examination, *can also apply and appear in the Written Entrance Test provisionally*, but he/she would be considered for admission

only, if he/she furnished documentary evidence in support of his/her having passed the qualifying examination in full with requisite percentage of aggregate marks within 21 days of the commencement of classes.

To become eligible for undergoing the Course, the petitioner, who had not cleared final year of the qualifying examination, was, therefore, required to pass the qualifying examination in full with requisite percentage of aggregate marks, **within 21 days of the commencement of classes**.

In the present case, the petitioner had not even taken the examination of 3rd semester MTH 313, i.e., the qualifying examination, within 21 days of the start of classes on July 24, 2012, the question of his clearing it within the time stipulated in the Statute would not, therefore, arise. He was, therefore, ineligible to undergo the Course.

Thus, being ineligible to undergo the Course, the petitioner was not entitled to regularization of provisional admission which was withdrawn by the University finding him not to have cleared the qualifying examination within 21 days.

Regularization of admission in violation of the Statutes governing admission being impermissible, there was no discretion left in the University to consider the petitioner's case for regularization and that too when the Statute does not provide for such relaxation.

Relaxation may be considered only, if non-essential conditions were not complied with within the time prescribed therefor. Clearance of the qualifying examination within the

time prescribed by Statute, being an essential condition for admission to the MBA course, the petitioner's claim for regularization can not be entertained.

The petitioner's plea that the University had regularized the admission of M/s Abhishek Gupta, Meenu Gupta, Soubhika Sharma and Vibha Mahajan, who were similarly situated with the petitioner and he was discriminated against without any justifiable reason, is found without substance, in that, the admission of the candidates, referred to by the petitioner in his Affidavit, was regularized by the University because they had attained eligibility within the time prescribed by the Statute but had delayed only furnishing of Certificates in support thereof. The petitioner having not attained eligibility within the time prescribed by the Statute, his case was, therefore, clearly distinguishable from the case of other candidates.

The view taken by the University in rejecting the petitioner's case for regularization of admission cannot, therefore, be faulted.

For all what has been said above, this Writ Petition is, therefore, found without merit, hence dismissed.

(J. P. Singh)
Judge

Jammu:
27.12.2012
Vinod