

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

LPAOW no. 8/2013
CMA no. 9/2013

Date of order: 31.01.2013

Aakash Chuni v. University of Jammu and ors.

Coram:

Hon’ble Mr. Justice M. M. Kumar, Chief Justice.
Hon’ble Mr. Justice Hasnain Massodi, Judge.

Appearing counsel:

For the Appellant(s) : Mr. Abhinav Sharma, Advocate.
For the respondent(s) : Mr. W. S. Nargal, Advocate.

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| i) | Whether to be reported in
Press, Journal/Media | : | Yes/No |
| ii/ | Whether to be reported in
Digest/ Journal | : | Yes/No |

M. M. Kumar, CJ

1. The instant appeal under Clause 12 of the Letters Patent is directed against judgment and order dated 27.12.2012 rendered by the learned Single Judge of this Court, holding that the admission of the appellant-petitioner to the Master of Business Administration Programme (MBA), 2012-14 in the University of Jammu could not be regularised because such an order would violate the provisions of Statute 6(c). The aforesaid statute needs to be set out in extenso, which reads thus:-

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."

2. A perusal of the Statute would show that a provision has been made by making eligible all such candidates who have either appeared or appearing in the final year of the qualifying examination in April/May and expecting to pass with the requisite percentage of aggregate marks. Accordingly, they were allowed to appear in the Written Entrance Test provisionally. Clause (c) of Statute 6 makes it further clear that such candidates were to be considered for admission only if he was to furnish documentary proof of having passed the qualifying examination in full with requisite percentage of aggregate marks within 21 days of the commencement of the classes.

3. It is not disputed before us that at the time of his provisional admission, the appellant-petitioner has back-log of

3rd Semester paper i.e. MTH-313 of his BE (IT), which was one of the essential qualification necessary for admission to the MBA course. The course commenced on 24.07.2012 but he failed to furnish the documentary evidence of having cleared the qualifying examination within 21 days. Accordingly his admission was suspended and he has challenged the action of the University and has sought directions for regularizing his admission to MBA course 2012-14.

4. It is appropriate to mention that the appellant-petitioner had also filed an affidavit on the prescribed format provided by the University which contained the recital that he would submit the documentary evidence of having passed the qualifying examination in full with requisite percentage of marks within 21 days of the commencement of the class work of MBA programme, failing which his provisional admission would automatically stand cancelled. During the pendency of the writ petition an interim direction was issued to the respondent-University to consider the representation made by the appellant-petitioner, which was rejected on 26.10.2012. The University cited Statute 6 (c) and held that the class work of MBA Programme commenced on 24.07.2012 and MTH 313 paper of BE (IT) was held on 05.09.2012. The result was conveyed by the Controller of Examination confidentially on 28.09.2012. The period of 21 days from the date of

commencement of the classes of MBA Programme had come to an end rendering the appellant-petitioner in-eligible for admission as per the Statute.

5. The learned Single Judge noticed that the order dated 26.10.2012 passed by the University was not challenged by the appellant-petitioner. However, a supplementary affidavit was filed by him, alleging discrimination because the relief of regularization of admission was allowed to Abhishek Gupta, Meenu Gupta, Soubhika Sharma and Vibha Mahajan. The assertion made by the appellant-petitioner was that aforesaid candidates were not able to furnish the result of clearing the qualifying examination within 21 days, as required by Statute 6 (c). The plea raised by the appellant-petitioner was rejected on the ground that M/S Abhishek Gupta, Meenu Gupta, Soubhika Sharma and Vibha Mahajan were not similarly situated. All of them had attained eligibility within the prescribed period of 21 days, however, there was delay in furnishing of certificates, therefore, the plea did not weigh with the learned Single Judge.

6. In the case of the appellant-petitioner, he had not even taken the examination of 3rd Semester of MTH-313 paper of BE(IT) within 21 days of the commencement of the classes and the question of clearing it within the statutory period stipulated by Statute 6 would not therefore arise. He was not eligible to undergo the MBA course.

7. We have heard Mr. Abhinav Sharma and Mr. W.S.Nargal at some length and are of the view that there is no legal infirmity in the opinion expressed by the learned Single Judge which may warrant interference of this Court.

8. The sanctity of the University Statute has to be maintained by all sundry. The object of the Statute 6 (c) of the University of Jammu is that on account of delay in declaration of the result of the qualifying examination, a candidate should not suffer and a period of 21 days from the commencement of the classes has been afforded to such a candidate. The object of the Statute is not to rehabilitate a candidate who is to take supplementary examination on account of his failure to clear 1st, 2nd, 3rd, 4th or 5th Semester examination of the qualifying examination. Even in such a case the candidate should have passed before the expiry of period of 21 days. The appellant-petitioner took the examination when the period of 21 days had already come to an end because the classes had commenced on 24.07.2012. One Ruchi Gupta, who was similarly situated, preferred an appeal before the Appellate Committee constituted to hear such like cases but her appeal was also rejected. Therefore, we find that the view taken by the learned Single Judge is in consonance with the provisions of the Statute and we concur with the same.

9. The argument of Mr. Sharma, learned counsel for the appellant-petitioner is that the admission of the appellant-petitioner should have been cancelled and on account of the conduct of the University, equitable estoppel would apply. Mr. Sharma has maintained that non-passing of an order of cancellation of admission on expiry of 21 days has resulted in grave prejudice to the appellant-petitioner as he did not take admission in other courses.

10. We are afraid that the argument of Mr. Sharma is wholly without substance and thus liable to be rejected. Firstly the appellant-petitioner has filed an affidavit to submit the documentary evidence of passing the qualifying examination in full with requisite percentage of marks within a period of 21 days of the commencement of the class work of MBA Programme. The affidavit further stipulates that if he fails to do so then his provisional admission to the MBA Course was to be automatically cancelled. The aforesaid affidavit is consistent with the provisions of Statute 6 (c) of the University Calendar. Once the appellant-petitioner himself has submitted the affidavit then there is no room for any such argument that the University was under an obligation to pass some order. Moreover, the University suspended his admission. Secondly, it is well settled that there cannot be any estoppel against the Statute. Once the Statute itself provides for furnishing of documentary evidence of

passing the qualifying examination in full with the requisite percentage of marks within 21 days of the commencement of the MBA Classes then there is no escape from the conclusion that it has to be done in accordance with the Statute. We find no ground to disagree with the view taken by the learned Single Judge.

11. For the reasons aforementioned the appeal does not warrant admission and the same is hereby dismissed.

12. No order as to costs.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
31.01.2013
Anil Raina, Secy.