

RAJASTHAN HIGH COURT

Mohammad Irfan

Vs.

M. Dayanand Saraswati University

Civil Writ Petn. No. 866 of 2000

(V.S. Kokje, J.)

27.04.2001

ORDER

V.S. Kokje, J.

1. The case was fixed for consideration of stay application but with the consent of the parties, it was finally heard.

2. The question involved in the case is as to whether the petitioner was entitled to appear at the LL.B. First year examination. The petitioner for the first time appeared in 1997-98 as examination of LL.B. First Year as a regular student. In September, 1998, the result of the examination was declared and the petitioner was declared failed in that examination. In April, 1999, the petitioner appeared as an ex-student in the LL.B. First Year examination. In August, 1999, the result of the examination was declared and the petitioner was declared to have failed because he could not secure 48% marks in aggregate in all the subjects though he had secured minimum 36% marks in each subject. He appeared in November, 1999 examination but failed. The petitioner wanted to appear in the examination for the year 2000, LL.B. First Year examination but the University held him to be disqualified for taking the examination. He, therefore, filed this petition.

3. Meanwhile, while appearing at the supplementary examination for the year 1999, the petitioner sought admission as a regular student for LL.B. Second Year and deposited fee for the LL.B. Second Year. On the declaration of the result of the supplementary examination, the petitioner having failed therein, the respondent told him that he will not be allowed to prosecute the studies for LL.B. Second Year and also not be allowed to take the examination of the Second Year. The petitioner

thereupon filed this petition. On 27-4-2000, this Court allowed him to take the examination of the LL.B. Second Year subject to the result of this petition.

4. The petitioner's contention is that he was entitled to one more chance to appear in the LL.B. First Year examination under Ordinance 163(ii) of the University Ordinance which reads as under :-

"O. 163. Ex-students shall be entitled to appear at the examinations of the University without keeping terms except in the Faculty of Medicine and Pharmaceutics and the Ayurvedacharya (B.A.M.S.) and Ayurveda Brahaspati examination in the Faculty of Ayurveda."

Provided that :

(i) xxxx xxxx xxxx

(ii) An ex-student for the LL.B. First/Second/Third Year examination shall be required to take the examination in the immediately following year and if he fails again or does not take the examination, he will be given further two consecutive chances only to clear the examination."

5. The petitioner contends that he was entitled to appear at the LL.B. First Year, 2000 examination as well as LL.B. Second Year, 2000 examination. He claims that an ex-student is entitled to appear in the examination next year of his failure and if he fails again and does not appear in the said examination he is to be given two consecutive chances to appear in the examination. According to the learned Counsel for the petitioner, the petitioner appeared in the 1999 examination as an ex-student and failed, he was, therefore, entitled to further two consecutive chances to appear, out of which one chance had already been taken in the November, 1999 Supplementary examination in which he again failed. He was, therefore, entitled to appear at the next examination conducted in the year 2000. On the contrary, the respondent has contended that the examination of the LL.B. First Year in accordance with the old course was discontinued in the year, 2000 and there was no examination of old course of LL.B. First Year held in the year 2000. This fact was already notified to all the candidates. The petitioner himself has filed notice dated 8-2-1999, Annexure-6 to the writ petition issued by the University in which it was notified to all LL.B. First Year students of the Session 1998-99 that ex-students shall be entitled to appear in the LL.B. First Year examination for the year 1999 which will be the last chance for them. It was categorically stated in this notice that those who failed in LL.B. First Year

examination, 1999 shall have to take admission in LL.B. First Year again on the basis of merit. The University has also filed a circular issued to all the Principals of Law Colleges, affiliated to M.D.S. University dated 13-1-1999, in which it has been categorically stated that the students appearing in LL.B. First Year as ex-students in the ensuing 1999 examination shall be allowed to appear in all the six papers as per Syllabus 1997-98. This will be their last chance. In case of failure of such students will be required to seek admission in LL.B. First Year on merit basis in new scheme of nine papers.

6. The learned Counsel for the petitioner contends that right given to the students by Ordinance 163(ii) cannot be taken away by circulars issued by the University. Provisions of the Ordinance have statutory force and they cannot be taken away by administrative circulars issued by the University. The argument on the face of it is attractive but on a proper interpretation of provisions of the Ordinance 163(ii), it would be clear that it has no force.

7. Ordinance 163 pre-supposes that the course continues and the examinations are held. It is only a provision permitting an ex-student to appear in examination without following a regular course of study by attending an affiliated College. It is essentially a concession given to ex-students to appear at the examination without attending regular classes. It is not a provision guaranteeing holding of an examination for ex-students till they pass out. The provision also does not put any restriction on the power of the University to discontinue a particular course or an examination. If the University decides not to hold the examination for a particular course from a particular year, it cannot be compelled to hold such an examination only for ex-students. When the general examination open to regular students as well as ex-students itself is not being held, there is no question of an ex-student taking a chance at such an examination. What is given to an ex-student by Ordinance 163 is only a chance to appear at an examination and not a guarantee that the examination will be held for ex-students till each of them exhausts his maximum chances. Obviously, if the examination itself is not being held, an ex-student has no occasion to take a chance at the examination. The provision does not give any right to an ex-student to claim that an examination shall be held for regular students and ex-students and the ex-students should be given a chance at such an examination. There is no question of any prejudice caused to the petitioner also because the University had notified even prior to 1999 examination its intention to discontinue the LL.B. First Year examination

under the old course from the next year. The petitioner cannot make any grievance on that account.

8. The learned Counsel for the petitioner heavily relied on a Full Bench decision of this Court in *Virendra Kapur v. University of Jodhpur*,¹ for the proposition that any notification issued by the University cannot override the Ordinance is also for the proposition that once a student is admitted to a course on the basis of certain rules he has to be dealt with under those rules only and new rules do not apply to him. I have carefully gone through the decision. In the facts of that case, Rule 38 provided that if a candidate failed in one written paper only in an examination and if he gets an aggregate of 55%, he shall be permitted to keep terms in the next higher class. It further provided that he shall appear and pass in the paper in which he failed along with the next higher examination. The new rule provided for a supplementary examination on failing in which they had to take admission in the original class. The ruling is clearly distinguishable. The case in hand relates to closure of an old course and discontinuation of an examination. It is not a case of change of rules. On the correct interpretation of Ordinance 163, I have concluded that an ex-student can take advantage of the rule only when general examination open for general students is being held. If the general examination is not being held an ex-student cannot force the University to hold it to enable him to appear at it.

9. In view of the aforesaid discussions, the petition has no force, it is dismissed. As the petitioner has not passed LL.B. First Year examination, he was not eligible to appear at LL.B. Second Year examination which he has taken under the orders of this Court. The LL.B. Part-2 examination of the petitioner taken under the direction of this Court is hereby cancelled. The University shall not declare his result of LL.B. Part-2 examination.

Petition dismissed.

Cases Referred.

1. AIR 1964 Raj 161