

Allahabad High Court

Leena Gupta vs Institute Of Medical Sciences, ... on 29 September, 1988

Equivalent citations: AIR 1989 All 35

Author: Khare

Bench: V Khare, J Dubey

JUDGMENT Khare, J.

1. By means of this petition under Article 226 of the Constitution the petitioner has come up before this court praying for issuance of a writ of mandamus directing the Director of the Institute of Medical Science, Banaras Hindu University, Varanasi to admit her in M.B.B.S. course.

2. Kumari Leena Gupta, the petitioner, was admitted in B.Sc., Part I course in Mahila Mahavidyalaya, Varanasi in the year 1986-87. It appears that her attendance fell short, and she could not appear in B.Sc. Part I in the said year. In the academic year 1987-88 she took readmission in B.Sc. Part I in the said college. She claims to have pursued her studies in the said course in the academic year 1987-88. The Institute of Medical Science of Banaras Hindu University imparts education and examines students for M.B.B.S. Course. For that purpose the Academic council of the University has framed Ordinance. Fifty seats in the course are available every year for admission to Ist Year M.B.B.S. course in the Institute of Medical Sciences of Banaras Hindu University. Under the Ordinance a quota of five seats is reserved for the bona fide students of degree course who have attended the prescribed course of studies and who are on the roll of Banaras Hindu University at the time of appearance at the Pre-Medical Test and qualify in the said test.

3. Banaras Hindu University issued an advertisement for holding Pre-Medical Test for admission to M.B.B.S. course for the year 1988-89. The said advertisement provided that in case any student desired admission against supernumerary quota, a certificate was required to be submitted in the pro forma prescribed. The petitioner applied for Pre-Medical Test for admission in M.B.B.S. course for the academic year 1988-89. Along with her application she annexed a certificate dated 15-2-1988 of being a bona fide student of degree course. The petitioner's application was accepted and she was allowed to appear at the Pre-Medical Test. It appears that she had qualified for being admitted against the quota of five seats reserved for bona fide students of degree course but she was refused admission on the ground that she was not a bona fide student of degree course. It is at this stage that the petitioner has approached this Court.

4. Counter and rejoinder affidavits have been exchanged. Learned counsel for the parties agree that this petition may be decided finally at the admission stage. We, therefore, propose to decide this petition finally at the admission stage.

5. Learned counsel for the petitioner argued that the petitioner was a bona fide student of degree course and her name not having been struck off from the rolls of the University it was not open to respondents to refuse admission to her in M.B.B.S. Ist year course.

6. Sri Dinesh Kacker, on behalf of respondents, tried to justify the action of the University on the following grounds : --

I. That the petitioner was not a bona fide student of degree course and, therefore, was not entitled to admission in M.B.B. S. Ist year course against quota reserved for bona fide students of degree course.

II. That the name of the petitioner was struck off from the rolls of the University and, therefore, she was no longer entitled to the benefit of being considered against five seats reserved for bona fide students of the degree course.

III. That the petitioner has not put in required number of attendance in B.Sc. Part I and therefore, was not entitled to the benefit of quota reserved for bona fide students of the degree course.

7. On the arguments of the learned counsel for the parties the following questions arise for determination :

i. Whether the petitioner was a bona fide student of the degree course?

ii. Whether the petitioner's name was struck off from the rolls of the Banaras Hindu University in the academic year 1987-88?

iii. Whether the petitioner has not put in the required number of attendance in B.Sc. Part I course in the academic year 1987-88?

Since questions Nos. 1 and 2 are overlapping we propose to deal with these questions together.

8. Learned counsel for the petitioners, during arguments, took us to various annexures to the writ petition, and argued that the petitioner was a bona fide student of the degree course and thus was entitled to be admitted against the quota of five seats reserved for bona fide students of degree course and the action of respondents in refusing admission was illegal and arbitrary.

9. Sri Dinesh Kacker, on behalf of respondents placed three circumstances before us showing that the petitioner was not a bona fide student of degree course; The first was that the petitioner took admission in B.Sc. Part I in the session 1986-87 but did not pursue her studies seriously and dropped out, and secondly, in the year 1987-88 she again took readmission in B.Sc. Part I, but in that year also she did not pursue her studies and her attendance fell short, and thirdly, that her name was struck off from the rolls of the University.

10. From the above three circumstances, the learned counsel emphatically argued that the petitioner was not a bona fide student of degree college and, therefore, was not entitled to admission against the quota reserved for the bona fide students of degree course.

11. The relevant Ordinance is reproduced below :

"A quota of 5 seats is reserved for the bona fide students of Degree Course who have attended the prescribed course of studies and who are on the rolls of Banaras Hindu University at the time of

appearance in the Pre-Medical Test."

12. The word 'bona fide' appearing in the Ordinance has not been defined in the Statute or Ordinance framed by the University. The rule of interpretation is that if the word is not defined the Court will give that word its ordinary meaning and interpret the word in question accordingly. In Black's Law Dictionary meaning of word 'bona fide' is "In a good faith, honestly, openly, sincerely, without deceit or fraud." In Law Lexicon the word 'bona fide' means "In good faith or with sincerity or genuineness."

13. The above meanings convey an idea of absence of intent to deceive or pursuing the matter on false pretence or false motive or for achieving some ulterior purpose. In the light of these meanings it has to be seen as to whether the petitioner took admission in B.Sc. Part one only for purpose of being considered against five seats reserved for the bona fide students of the degree course although she never desired to pursue her studies genuinely in the said course.

14. The first circumstance, as pointed out by the learned counsel for the respondents that the petitioner did not genuinely pursue her studies in the year 1986-87 as she dropped out, is without substance. It is true that the petitioner took admission in B.Sc., Part I in the year 1986-87 but could not pursue her studies due to her serious illness. She applied for readmission in B.Sc. Part I in the academic session 1987-88. If the University authorities were of opinion that the petitioner was not genuinely interested in pursuing her studies they could have refused her admission in B.Sc. Part I in the year 1987-88, yet the respondents admitted her in the year 1987-88. From this circumstance it cannot be said that petitioner took readmission in B.Sc. part one on false pretence only for getting admission in M.B.B.S. course against quota reserved for bona fide student of degree course.

15. In support of the second and third circumstances learned counsel for the respondents, referred to us Annexure 3 to the writ petition and argued that the name of the petitioner was struck off from the rolls of the University on 17th October 1987. This argument is not correct as there is nothing on record in support thereof. A perusal of Annexure 3, the certificate issued by Banaras Hindu University to the petitioner clearly certifies that the petitioner was a bona fide student of the college in B.Sc. Part I in the year 1987-88 and she had attended the prescribed course of studies and was on the roll on 17th October 1987. We fail to understand, how this document is helpful to the respondents. On the contrary, this document recites that the petitioner is a bona fide student of the college and her name was on the roll on 17th October 1987. It nowhere states that name of the petitioner was struck off from the roll. Not only this, the respondent University by letter dated 31st October 1987 addressed to the petitioner's father informed that his ward Km. Leena Gupta was having attendance less than 75% (21.8%) up to 17-10-1987 while 75% attendance was compulsory for appearing in the final examination of B. Sc. I 1987-88 session. Again by letter dated 11th January 1988 the petitioner's father was informed that his ward was having attendants less than 75% (10.9%) up to 24-12-1987 and that she had still more time to improve her attendance till her final examination for which as per University Rules 75% attendance was compulsory. Explanation of the petitioner for shortage of attendance was her illness which has not been denied in counter affidavit. This document dated 11-1-88 clinches the matter. From this, it is clear that till January 1988 the petitioner was being treated as a bona fide student, her name was not struck off from the rolls of the

University and she was being advised that she might make up shortage of 10% attendance to enable her to appear, as there was still time to make up and appear in B.Sc. Part I Examination. We have gone through the record and find that there is no material on record to show that the petitioner's name was struck off from the rolls of the University. On the contrary, there is ample evidence on record that in January and February 1988 she was treated as a bona fide student being on the rolls of the University. We are, therefore, of opinion that petitioner, who has been readmitted in the college and treated as a bona fide student, although her attendance fell short yet there was a chance to make up and cover up the attendance and her name having been not struck off from the roll of the University, was a bona fide student of the college.

16. The last submission of the learned counsel for the respondents is that the petitioner having not put in the required number of attendance in B.Sc. Part I was not entitled to the benefit of reservation quota for bona fide student of the degree course. Learned counsel laid emphasis on the words "prescribed" appearing between the words "Attended" and "Course" used in the Ordinance quoted above. On the strength of this, learned counsel argued that the petitioner was required to put in the prescribed attendance in B.Sc. Part One course in order to get benefit of the quota aforesaid. In construing an ordinance like the present one, it has been truly stated to be duty of the Court to give effect to the words as used if expression is reasonable, intelligible and plain. If it is without any ambiguity it must be accepted without modification by resort to construction or conjectures. On a bare reading of the Ordinance, by no stretch of imagination it can be said that the word 'Prescribed' referable to the word "attendance". In fact the word "Prescribed" refers to the word "course". We are, therefore, of opinion that the Ordinance does not lay down that the bona fide student must have put in prescribed attendance in an academic session to enable him to get admission in M.B.B.S., course against the quota reserved for bona fide students of degree course. We find no merit in the submission of the learned counsel for the respondents and it must be rejected.

17. Moreover, the petitioner applied for appearing at the pre-medical Test annexing with her application form the required certificate of being a bona fide student of the college. The said certificate that the petitioner is a bona fide student of degree course was issued by the University authorities, and the application form and certificate having been accepted by the respondents, she was entitled to appear at the examination and considered against the quota reserved for students of degree course. It is too late in the day to say now on the ground, as stated on behalf of the respondents, that the petitioner was not a bona fide student of the college concerned.

18. For the foregoing reasons, we hold that the petitioner was a bona fide student of degree course and was thus entitled to admission against the reserve quota meant for bona fide students of degree course as it is not the case of the respondents that the petitioner does not stand in merit for being admitted against reservation quota for bona fide students of the degree course.

19. The petition is allowed We direct the respondents to admit the petitioner in M.B.B.S. 1988-89 session, if she fulfils terms and conditions necessary for admission in the said course, within a period of two weeks from the date of service of a certified copy of this order upon the Director of Institute of Medical Sciences, Banaras Hindu University, Varanasi.