

Before Mahabir Singh Sindhu, J.

ISHITA UPPAL—*Petitioner*

versus

PANJAB UNIVERSITY, CHANDIGARH AND OTHERS—

Respondents

CWP No.20275 of 2019

February 23, 2021

Constitution of India, 1950—Art. 226—Petitioner meritorious law student from economically weaker section (EWS) category—Freeship/EWS scholarship discontinued in fourth year, removed from rolls, internship cancelled—Due to illness petitioner was unable to appear in one paper of 6th semester—Medical record received by concerned Clerk—No positive response received for one year—After delay, Director informed that she is entitled to appear for the paper with 10th semester regular examination, asked to submit tuition fee of 8th semester considering the case as compartment/re-appear, not as opportunity in case of serious illness—Requests to hold tuition fee of 8th semester or not to deny freeship/EWS scholarship—Went unheard—First Vice Chancellor and then Board of Control declined requests without affording opportunity of hearing—Petitioner condemned unheard—Held, orders passed by authorities to record reasons—Actions cannot be justified by filing affidavits in Court—Observing student is not created for university, but university exists for student—Writ Petition allowed with costs of Rs.1 lakh—Arbitrary, unreasonable actions/stand of University deprecated.

Held that, Director, UILS has tried to justify the actions of the respondents by way of affidavit/additional affidavit, but the orders passed by the competent authority i.e. Vice Chancellor/ Board of Control, UILS, rejecting the claim of the petitioner on account of her serious illness for French-II paper as well as discontinuation of freeship/EWS scholarship, have neither been produced on record, nor supplied to her till date.

(Para 34)

Further held that, it is quite elementary that no one should be condemned unheard and the authority deciding such types of matters is under an obligation to afford the opportunity of hearing to the effected party. Not only this, even the reasons must be recorded by the

competent authority to sustain the legality of such an order. Still further, the reasoning must come from the mouth and pen of the concerned authority; mere fling of an affidavit by some other person, would not be the substitute of the order passed by the competent authority, in any manner. Concededly, in the present case, there is no such order (s) available on record; nor the same was/were supplied to the petitioner at any point of time. Moreover, neither from impugned letter dated 26.06.2019 (P-4); nor from communication dated 10.07.2019 (P-5), it is discernible that what was/were the reason(s) for rejection of the claim of the petitioner by Vice Chancellor/Board of Control, UIIS, respectively.

(Para 35)

Further held that, the Vice Chancellor has been delegated the powers under clause 7.1 (ibid) to grant another opportunity to the candidates in case of serious illness etc., for passing the examination in the same year after his satisfaction on the basis of evidence produced by the candidate; thus, the petitioner ought to have been afforded an opportunity to prove her case before passing the rejection order. Since the Vice Chancellor as well as Board of Control have failed to afford any opportunity of hearing before rejection of the claim of the petitioner, therefore, in the opinion of this Court, there is a gross violation of principle of natural justice.

(Para 37)

Further held that, it needs to be emphasized that the prosperity of a nation depends, not on the collection of huge revenues, or on account of embracing the formula of profit & loss-making; or on the high rise buildings; but on the basis of hard work of its citizens, more particularly, the persons having better understanding of human values, with honesty as well as complete dedication in the national interest and cultivated through good education.

(Para 38)

Further held that, Respondents, while taking drastic steps in the matter, did not realize that “*student is not created for the university, but the university exists for the student*”. It seems that instead of encouraging a brilliant student from EWS category, respondents tried to debar her to complete the BA, LL.B. course for few thousands of rupees which she was not able to pay on account of financial incapacity. Perhaps, respondents remained oblivious of the fact that they are not running a private establishment; rather manning the University having glorious past, which produced many great

personalities including former Chief Justices of India as well as the Prime Ministers of the Country, apart from other scientists of repute.

(Para 41)

Further held that, there is no hesitation to observe that action of the respondents is running, not only contrary to the main functions of the University which were articulated by the great visionary in the report extracted hereinabove; but also grossly erroneous and the same is indefensible in law, being antithesis to the concept of inclusive education.

(Para 42)

Ishita Uppal, herself through Video Conference.
Subhash Ahuja, Advocate
for respondents.

MAHABIR SINGH SINDHU, J.

“When God contemplates some great work, He begins it by the hand of some poor, weak, human creature, to whom he afterwards gives aid”.

Martin Luther

(1) Petitioner, who topped 10+2 examination (Year,2014-15) in the Union Territory, Chandigarh, got admission in 5 year B.A., LL.B. course offered by the University Institute of Legal Studies (UILS), Panjab University, Chandigarh. She belongs to an Economically Weaker Section (EWS); being meritorious, was granted freeship/ EWS scholarship by the respondents; but the same had been discontinued in 4th year and conveyed to her vide impugned letters/communications dated 26.06.2019 & 10.07.2019 (P-4 & P-5), respectively. She has also been removed from the rolls of the Department, which ultimately led to cancellation of her internship programme in 9th Semester by Director UILS on 19.07.2019 (P-8).

(2) Aggrieved against the above action, petitioner has filed present writ petition for quashing of the impugned letters /communications as well as for directing the respondents to restore her freeship/ EWS scholarship; further prayer is for interim stay on termination of her internship programme.

(3) Brief facts of the case are that after getting admission during academic session 2015-16 in 5-year B.A., LL.B. course, petitioner was provided freeship /EWS scholarship from the very beginning; but due to her illness on 12.05.2018, she could not appear in one paper (French

III) of 6th Semester scheduled to be held on 14.05.2018. As per medical record (P-1), petitioner was advised 5 days' bed rest by the doctor w.e.f. 12.05.2018 to 16.05.2018, which was duly sent to the office of UIILS and received by concerned clerk, namely, Ms.Parveen.

(4) In terms of guideline No.9 of Handbook of Information (P-9), petitioner was granted benefit of freeship/EWS scholarship and which she continued for two years. As a result thereof, respondents used to refund her fee which she had already paid; but in fourth year, when she asked to refund the fee of the 3rd year, respondents did not agree on the premise that petitioner has not produced her Detailed Marks Card (DMC) of 6th Semester. Petitioner tried to convince the respondents that she could not appear in her French- III paper on account of her illness, but no positive response was received in the matter for a period of one year. For the first time, petitioner was informed by Director, UIILS vide letter dated 06.06.2019 (P-2) that she is eligible to appear for French III paper along with regular examination of 10th Semester in April/ May 2020, but she was asked to submit her tuition fee of 8th Semester. This communication also stated that as and when she will be eligible for the concession under the EWS category, her case would be forwarded to the competent authority for further necessary action. Thereafter on 24.06.2019 (P-3), the father of the petitioner also requested Director, UIILS as well as Vice-Chancellor, to hold tuition fee for 8th semester or to withhold the scholarship until she clear her French-III paper; but not to deny her altogether the chance for freeship/ EWS scholarship. Vice-Chancellor without affording any opportunity of hearing, rejected the above request and the same was communicated to the petitioner vide letter dated 26.06.2019 (P-4). Even the Board of Control, UIILS also adopted the similar approach and declined the request of the petitioner, which was sent to her vide letter dated 10.07.2019 (P-5). Thereafter on 12.07.2019, the petitioner was deputed for her internship programme from 15.07.2019 to 29.07.2019 (P-6), which she duly started, but on asking of the above-named Clerk of the Department, petitioner was not allowed to continue the same and her name was removed from the list of candidates undergoing internship programme. Aggrieved against the above action, again a representation dated 19.07.2019 (P-7) was made by the petitioner, but Director, UIILS rejected it vide communication dated 19.07.2019 (P-8), while observing that she was not on the rolls of the Department due to non-payment of fee for the 8th & 9th Semester and also stated that her request for fee concession under EWS category has already been rejected by Vice Chancellor as well as Board of Control.

(5) It is relevant to mention here that as per notice dated 04.07.2019 issued by UILS (P-10), the last date for receipt of admission fee without late fee for the 9th Semester was fixed from 15.07.2019 to 27.07.2019 in the following manner:-

“First Installment of Rs.39780/- in favour of Registrar, P.U., Chandigarh. Demand Draft of Rs.9300/- in favour of Director, UILS.”

(6) This is an admitted fact by the respondents that petitioner deposited the above amount through banker’s cheque.

(7) In pursuance of the notice of motion, a short reply on behalf of respondents by way of an affidavit of Prof. Rattan Singh, Director, UILS was filed; in which inter-alia submitted that it is not an EWS scholarship; rather merely a concession/ freeship for tuition fee/Lab. charges. Also submitted that benefit was allowed in view of academic performance of the petitioner in 10+2 examination for the 1st Semester, but the same was discontinued in 4th year as she could not clear her 6th Semester examination. Also submitted that petitioner was enrolled as a regular student of 6th Semester during the academic session 2017-18, but she failed to appear in her French-III paper on 14.05.2018, which came to the notice of concerned Clerk only on 12.06.2018, when father of the petitioner submitted an application along with medical certificate. Further submitted that on 13.06.2018, documents of the petitioner were forwarded to the Controller of Examination for necessary action to re-conduct French-III paper of the petitioner on 14.07.2018 and date-sheet was notified in this regard on 06.07.2018, but she did not appear. Again on 17.05.2019, examination for French-III paper was conducted for regular students of the 2018-19 session, but she did not apply. As a result thereof, her case was considered as compartment/ re-appear candidate for the 6th Semester. Since continuation of the freeship for EWS students is allowed only to those student (s) who clear all papers with 55% marks in aggregate in first attempt, but petitioner did not clear the same, therefore, as per clause (vi) of guideline 9 of the Handbook, she is not entitled for any freeship. Also submitted that concession cannot be claimed as a matter of right and the condition stipulated under clause (vi) is to be read strictly. Respondents further submitted that participation in internship programme is permissible only to those students who are on the rolls of institute; but the name of petitioner was not on the roll of the Department as she neither deposited the fee for 8th Semester; nor got admission in 9th Semester, thus, disentitled herself to participate in the

internship programme.

(8) Allegations levelled against the staff member were denied being false, baseless, and motivated. Also submitted that petitioner along with her father disturbed the atmosphere of the Department while using unparliamentarily language and she wanted undue favour to take participation in internship programme without depositing the fee of 8th Semester. Staff member acted as per rules; thus, the petitioner cannot be permitted to take benefit of her own deficiency.

(9) An additional affidavit was also filed by Director, UILS and apart from repeating the pleas made in the earlier affidavit, it was submitted that as per date sheet dated 06.07.2018 (R-2), a special chance was given to all those students who could not appear in their exams due to 'Clash or Sports Events or Medical ground in May/ June 2018. Also averred that the application submitted by the father of petitioner on 12.06.2018 was forwarded to the Controller of Examinations on 13.06.2018; dealing official of the examination branch informed the petitioner telephonically on 25.06.2018, that her case has been cleared by the doctor of Panjab University on medical ground and she can appear whenever a date-sheet is issued. It is candidly admitted in para 5 of additional affidavit that "no individual intimation to the candidates for appearing in the examinations pursuant to date-sheet dated 06.07.2018 (R-2) was given by the respondent institute."

(10) Hearing of this case was conducted through virtual mode. Petitioner argued her case with clarity which could be expected from a lawyer of good standing and made the following submissions:-

i) That in view of clause (vi), guideline no. 9 of Hand Book, the action of respondents to discontinue the benefit of freship/ EWS scholarship while considering the petitioner as compartment/reappear candidate for 6th Semester, is totally illegal and violative of Articles 14 and 21 of the Constitution.

ii) That respondents removed the name of petitioner from the roll of UILS and terminated her internship programme in 9th semester on account of bad faith, to destroy her career, which is apparently suffering from legal malice;

iii) That action of the respondents is violative of principles of natural justice, as no opportunity of hearing was afforded to the petitioner before passing the orders by the Vice Chancellor or Board of Control, UILS, rejecting the claim

while treating her in the category of compartment/ re-appear candidates as well as for freeship/ EWS scholarship; nor copy of any such orders have ever been supplied to her till date, except the impugned letters/ communications dated 26.06.2019, 10.07.2019 & 19.07.2019 (P-4, P-5 & P-8), respectively;

iv) That action of the respondents has resulted into extreme mental agony and harassment to the petitioner; thus, caused great prejudice to her studies.

(11) On the other hand, learned counsel for the respondents vehemently opposed the above contentions and submitted as under:—

(I) Since the petitioner failed to secure 55% marks in her previous examination i.e. 6th semester, as she did not appear in French-III paper, therefore, in view of clause (vi) of guideline 9, the benefit of freeship/ fee concession has rightly been withdrawn while considering her case as a compartment/ re-appear candidate.

(II) That despite availing three opportunities i.e. firstly in May 2018; second in July 2018; and thirdly in May 2019, petitioner could not clear her French-III paper and she did not even deposit the fee for 8th & 9th Semester; therefore, her name was rightly removed from the rolls of Department, resulting into automatic termination of the internship programme which is absolutely *bona fide* exercise on the part of the respondents.

(III) All the representations made by the petitioner as well as her father were duly considered by the competent authorities and she has been timely informed about the fate of the same vide impugned letters/ communications dated 26.06.2019, 10.07.2019 & 19.07.2019 (P-4, P-5 & P-8), respectively, thus, there is no violation of principle of natural justice;

(IV) Petitioner wants to take the benefit of her own wrong, as she neither deposited the fee on time; nor cleared the French III paper of 6th Semester, therefore, there is no prejudice caused to her.

(12) After hearing both sides and perusal of the paper book, the following points are culled out for adjudication of the matter in controversy:-

A) Whether in view of Clause (vi) of guideline No.9 (P-9), the action of the respondents to withdraw the benefit of freeship/ EWS scholarship while considering the case of the petitioner as a compartment / re-appear candidate for 6th Semester, is legally sustainable?

B) Whether the action of the respondents while not treating the petitioner on the rolls of the Department and consequently terminating her internship programme is based on legal malice and liable to set aside?

C) Whether the action of the respondents while rejecting the claim of the petitioner for freeship/ EWS scholarship is violative of principles of natural justice?

D) Whether the action of the respondents has caused great prejudice to the petitioner resulting into miscarriage of justice?

POINT A

(13) Guideline no.9 of the Handbook would be material for adjudication of the matter in controversy, therefore, the relevant part of the same is extracted as under:-

“9. Guidelines for freeship and tuition fee concession:

(i) The University may provide five per cent of seats freeship for meritorious students belonging to economically weaker sections of the of the society in all partially Self-supporting courses/ departments running in Panjab University/ Institutes/ Regional Centres of the Panjab University.

(ii) Freeship would mean (tuition fee+Lab charges) concession only, not to be claimed by students as a matter of right.

(iii)

(iv) The concerned Board of Control/ Co- ordinators shall list out the candidates who are eligible for freeship concession.

(v) For the purpose of the above concession, candidates must have passed the qualifying examination in the first class (60 percent marks-proof to be added) and the total

family income from all sources not exceed Rs.2.5 lac per year. For proof of family income from all sources should not exceed Rs.2.5 lac per year, the income certificate shall be accepted when issued by the competent authority which shall mean the Tehsildar, SDM, or the employer as the case may be. In addition an affidavit duly attested by a Magistrate, giving full details of total family income should be submitted. Candidates holding yellow cards/ yellow ration cards would be given preference over other candidates provided other merit conditions remained the same.

(vi) For continuation of the freeship granted to students during the first year of admission to a course, the following rider be imposed:

“The freeship will be continued in the subsequent years also if the student passes the previous examination with a minimum of 60 per cent marks in the aggregate for science students and 55 percent marks for students in departments other than science. The student should have passed the examination in first attempt i.e. should not have a reappear or compartment.” Photocopy of lower examination passed detailed marks certificate may enclosed with the refund form.”

(14) There is no dispute that petitioner stood topper of the 10+2 examination for the session 2014-15 in Union Territory, Chandigarh; was granted admission under Roll No.23/2015 in 5 years' B.A., LL.B. course; and she was also granted freeship/EWS scholarship on the basis of her merit by the respondents, which she availed up to 4th Semester. There is no dispute that the petitioner also qualified her 5th Semester, but she could not appear in one paper (French III) of the 6th Semester on account of her illness. As per medical certificate dated 12.05.2018 (P-1 colly) she was advised bed rest by the doctor for 5 days i.e. from 12.05.2018 to 16.05.2018 and UILS was duly intimated in this regard. It is categorically averred in para 3 of the writ petition that medical certificate of the petitioner was duly handed over to Clerk of UILS and paras 3 and 4 of the petition being relevant, are extracted as under:-

“3. That in the Semester –VI examinations of the petitioner, which were being held in May 2018, the petitioner could not appear in her French examination (scheduled on dated 13.05.18) due to severe Medical illness and submitted a

medical certificate of the same to the Department and kept a copy of the same after getting the signatures of the concerned Clerk Mrs.Parveen, herein respondent No.2 as 'receiving. (Attached as Annexure P1).

4. That instead of marking 'MEDICAL' as the reason for her not giving an exam, the Department marked the petitioner 'ABSENT' for the French examination which made the petitioner fall in the category of re- appear/ compartment candidates which is certainly not the case. The petitioner even retained a copy of the medical certificate signed by respondent No.2 as an evidence of her receiving since she had a past record of misplacing students' documents."

(15) It is necessary to observe here that there is no specific denial to the averments made in para No. 3 by the respondents or the concerned Clerk. The respondents were very well aware about the illness of the petitioner, but due to non-forwarding of her medical certificate to the concerned quarter at the relevant point of time by the concerned Clerk, she was forced to run from pillar to post for complete one year. Although in para 2 of the additional affidavit, it is averred by the respondents that the father of the petitioner submitted an application on 12.06.2018 to Director, UILS to the effect that she could not take her examination from May 12 to May 16, 2018, on account of acute health problem; the same was forwarded to Controller of Examinations on 13.06.2018 for necessary action; the petitioner was informed by the dealing official of examination branch telephonically on 25.06.2018 that her case has been cleared by the doctor of Health Centre, Panjab University, regarding re-conduct of French- III paper on medical ground; she can appear, whenever the date sheet is issued; but, it is specifically admitted by the respondents that "*no individual intimation to the candidates for appearing in the examinations pursuant to date-sheet dated 06.07.2018 (R-2) was given by the respondent institute.*" Also necessary to mention here that for a period of one year no intimation was sent to the petitioner by the respondents that her request for French-III paper on medical ground has been accepted or rejected by the Vice- Chancellor or UILS. There is no document or order produced on record by the respondents that at the relevant point of time, petitioner was intimated about the fate of her request regarding French-III paper on medical ground. It is only after a period of one year, the respondents have sent impugned communications to the

petitioner that she remained absent for French-III paper, therefore, her case has been treated as compartment/ re-appear while taking shelter under clause (vi) of guideline 9.

(16) It is necessary to mention here that as per clause 7.1 of Chapter VIII, Volume II, Panjab University Calendar (2007), there is a provision for granting another opportunity by the Vice-Chancellor for passing the examination, in case a candidate has been unable to appear in the examination on account of serious illness and the clause being material, is extracted as under:-

“7.1 If a candidate accepted for an examination has been unable to appear in or to complete the annual examination on account of his serious illness or accident to himself, or has been unable to complete his examination on account of death of a near relative on one of the days of the examinations he may be given another opportunity of passing the examination in the same year by the Vice Chancellor if he is satisfied by the evidence, produced, that the concession applied for is justified.”

(17) Despite the above legal provision, petitioner has not been afforded any opportunity of hearing before rejecting her claim for grant of one chance for taking her French-III paper on medical ground. Although respondents have treated the petitioner as a compartment/ re-appear candidate, but no such order passed by Vice Chancellor has ever been supplied to her till date; except the impugned letters/ communications; which, in the opinion of this Court, cannot be termed as the order of the competent authority-Vice Chancellor or Board of Control.

(18) It seems that respondents are having just only one motive i.e. to treat the petitioner as a compartment/ re-appear candidate just to deprive her for claiming the benefit of freeship/ EWS scholarship under the garb of clause (vi) of guideline 9. It is curious to notice that respondents are not sure as to whether the case of petitioner is falling in the category of re-appear or compartment; but they have vaguely mentioned both i.e. compartment/ re-appear.

(19) Concededly, due to her acute illness petitioner could not avail her first chance to appear in French-III paper on 14.05.2018; therefore, by no stretch of imagination, it could be construed that she made her first attempt in terms of clause (vi) of guideline 9 Secondly, a candidate is to be considered in the category of re-

appear only in case the student had appeared on the first occasion, but for the sake of repetition, in the present case, petitioner could not appear first time on account of her illness; therefore, she cannot be considered as a re-appear candidate. Obviously, a student is to be considered in the category of compartment, in case he or she failed in the previous examination, but that is also not the position here.

(20) The stand of the respondents that petitioner was granted special chance on the basis of date sheet dated 06.07.2018 is also not acceptable for the following reasons:—

(i) During the course of hearing, petitioner submitted that at the time of issuing date sheet dated 06.07.2018 for examination of few students i.e. total 05(five), the University was closed for summer vacations and this fact was not controverted by learned counsel for the respondents; therefore, she cannot be expected to have the knowledge about the special chance being granted on medical ground in the absence of any communication received from the respondents.

ii) This is an admitted position that no individual intimation was sent by UILS regarding the special chance. Even the plea of the respondents that petitioner was informed by dealing official of the examination branch through telephone is also not convincing, as no such mode has been prescribed by the competent authority in the matter of this type, having serious consequences with the career of a student.

iii) At the time of issuing above date sheet, the petitioner was never intimated about the fate of her request about the consideration of her case on medical ground for French-III paper;

(21) In May 2019 also, petitioner genuinely did not take a chance to apply in the category of compartment/ re-appear candidate for French-III paper, as she was orally told by the UILS that her freeship/ EWS scholarship has been discontinued on account of non-submission of DMC of 6th Semester. Thus, she was quite apprehensive to lose the benefit of freeship/ EWS scholarship, till her case was decided by the Vice Chancellor on medical ground. In such a scenario, the petitioner cannot be held responsible for not appearing in French-III paper during May, 2018; July, 2018 and May, 2019.

(22) Also necessary to mention here that the Director of UILS

himself has appreciated the work of the petitioner and reference in this regard can be made to the certificate dated 25.04.2017(P-12), which reads as under:-

“This is to certify that Ms.Ishita Uppal, D/o Capt. Deepak Uppal is a bonafide student of 4th semester of B.A.; LL.B. (Hons.) 5 years Integrated Course in the University Institute of Legal Studies, Panjab University, Chandigarh bearing Roll No. 23/15.

It is further added that she is very much regular with the projects and submission in time and completes research work properly. Her participation in all the projects is very much enthusiastic. She is the holder of many national and International awards. Her past profile is very high. She keeps thorough knowledge of her subjects. She is also very active in all the co-curricular activities. She is regular, punctual, passionate and dedicated in her work. The department has no objection of her internship during summer vacations. Hence, I strongly recommend her name for the same and wish her success in life.”

(23) In view of the above factual position, it is apparently clear that the petitioner was having a good track record, but unfortunately, on account of her illness, she could not appear for one paper on 14.05.2018, which was not intentional, but beyond her control.

(24) There is no quarrel that petitioner could not avail her first chance on account of health problem; therefore, by no stretch of imagination her case is to be considered as compartment/ re-appear candidate. Even from perusal of guideline 9 of Handbook, it is nowhere discernable that non-appearance of a student in one paper due to serious illness would also be considered as a case of re-appear/ compartment candidate. Thus, clause (vi) of the above guideline cannot be interpreted in a manner, which would deprive the petitioner from availing the benefit of freeship/ EWS scholarship while treating her to be a case of re-appear/ compartment. Therefore, the stands of the respondents while considering the petitioner in the category of re-appear/ compartment, is wholly erroneous and contrary to intent and purpose of clause (vi) of guideline 9.

(25) Moreover, there is no hesitation while observing that text of clause (vi) is to be read in context of the present subject matter of the controversy i.e. freeship/ EWS scholarship of a poor student; thus, the

respondents ought to have interpreted it to serve the purpose of the guidelines and not to defeat the same.

POINT B

(26) Petitioner, as well as her father, made repeated representations to the respondents that she belongs to the EWS category and not having enough money to pay the fee; therefore, requested for waiving of the 8th Semester fee with the undertaking as per satisfaction of the respondents to the effect that in case she does not pass her French-III paper in 2020, the entire fee would be deposited.

(27) Still further, the father of the petitioner in his representation dated 24.06.2019, prayed mercy for her helpless daughter on account of their poverty, and relevant part of the same reads as under:-

“Sir, it is being specifically mentioned that Ms. Ishita belongs to (EWS category) Economical Weaker Student. It itself mentions that the student is not having enough money to pay for regular fee. That is way she was given EWS scholarship.

Therefore, we wish to submit that kindly hold her 8th semester fee, we can given written undertaking to your good office as per your satisfaction that if she doesn't pass out in her French exam in 2020, we will submit the fee to UILS. Sir, by giving sympathetic consideration to our request to hold the 8th semester fee of a brilliant student who had been Chandigarh model School topper of 10+2 exam of Chd of her future, kindly do the needful. We shall be highly thankful to you.”

(28) Also necessary to mention here that even Director, UILS vide his communication dated 06.06.2019 (P-2) intimated to the petitioner that she was eligible for her French-III paper along with regular examination of 10th Semester, and she was asked to submit tuition fee of 8th Semester with an assurance that as and when she will be eligible for the concession under EWS category, her case would be forwarded to the competent authority and which reads as under:-

"In reference to office letter NO. 951/UILS dated 6.6.2019, this is to inform you that as per Hand Book of Information, 2016 Rule 5 (iii) at page 140 which reads as under:-

“The re-appear examination of both odd and even semester shall be held with regular examination of each of the respective

semester”.

Therefore you are eligible in April/May 2020 to appear in 6th-semester re-appear examination along with the regular examination of 10th semester.

Further it is pertinent to mention that you should submit the tuition fee of 8th semester and later on when will you eligible for the concession under EWS category your case of concession will be forwarded to the competent authorities for further necessary action.”

(29) Despite the above factual position, respondents did not pay any attention and rejected the most reasonable claim of the petitioner while adopting wholly erroneous approach contrary to the object of guideline no.9 and against the basic concept of imparting higher education to the dis- advantaged section of the society.

(30) Facts of the present case clearly reveals that, respondents have not only rejected the request of the petitioner for granting an opportunity to clear her French-III paper of 6th Semester being a case of serious illness in terms of clause 7.1 (ibid), but also declined the benefit of freeship/ EWS scholarship in a totally arbitrary manner.

(31) Still worse, when the petitioner was not able to pay the fee for 8th and 9th Semesters on account of financial incapacity, her name was removed from the rolls of the Department by Director, UILS, resulting into termination of internship programme vide impugned letter/ communication dated 19.07.2019 (P-8) without affording any opportunity of hearing.

(32) Also relevant to mention here that termination of internship programme was having grave consequences; respondents, instead of cooperating with a poor but brilliant student, have acted in a totally hostile manner, just to hamper her career while pressing into service the niceties of technicalities so that she may not complete her B.A., LL.B., course in time; thus, their actions certainly smack legal malice.

POINT C

(33) Respondents have firstly treated the case of the petitioner in the category of re-appear/ compartment without considering her medical certificate handed over to the Clerk of the Department; secondly withdrawing the benefit of freeship/ EWS scholarship without affording any opportunity of hearing; thirdly, the name of the petitioner was removed from the rolls of the Department and even her internship

programme was also terminated. It is specifically observed that till date, respondents have neither supplied the copy of order passed by the Vice Chancellor while rejecting the claim of the petitioner in terms of clause 7.1 (ibid); nor of the Board of Control, UILS under guideline 9; but simply sent intimation vide impugned letters/ communications dated 26.06.2019, 10.07.2019 & 19.07.2019 (P-4, P-5 & P-8), respectively, and that too after a period of one year.

(34) Although Director, UILS has tried to justify the actions of the respondents by way of affidavit/ additional affidavit, but the orders passed by the competent authority i.e. Vice Chancellor/ Board of Control, UILS, rejecting the claim of the petitioner on account of her serious illness for French-III paper as well as discontinuation of freeship/ EWS scholarship, have neither been produced on record; nor supplied to her till date.

(35) It is quite elementary that no one should be condemned unheard and the authority deciding such types of matters is under an obligation to afford the opportunity of hearing to the effected party. Not only this, even the reasons must be recorded by the competent authority to sustain the legality of such an order. Still further, the reasoning must come from the mouth and pen of the concerned authority; mere fling of an affidavit by some other person, would not be the substitute of the order passed by the competent authority, in any manner. Concededly, in the present case, there is no such order (s) available on record; nor the same was/were supplied to the petitioner at any point of time. Moreover, neither from impugned letter dated 26.06.2019 (P-4); nor from communication dated 10.07.2019 (P-5), it is discernable that what was/were the reason(s) for rejection of the claim of the petitioner by Vice Chancellor/ Board of Control, UILS, respectively. For the sake of reference, the entire operative part of both the above impugned letters/ communications are reproduced hereunder:-

Order dated: 26.6.2019 (P-4)

“This is to apprise you that the Hon’ble Vice- Chancellor has not acceded the request of Sh.Deepak Uppal father of Ms.Ishita Uppal a student of B.A./ B.Com. LL.B. 4th year on the subject aforementioned above for the session 2018-2019, as her case is not permissible under the rules & guidelines.”

Order dated 10.7.2019 (P-5)

“This is in reference to your letter regarding reconsideration

of holding the tuition fee of 8th semester; this is to inform you that the members of Board of Control of UILS in its meeting held on 8.7.2019 reject the request of holding the fee.”

(36) Perusal of the impugned letters/ communications clearly reveal that no reason (s) were assigned by the Vice Chancellor/ Board of Control while rejecting the claim of the petitioner; thus, the filing of affidavit by Director, UILS, would not be a substitute for the orders of competent authorities mentioned above, to justify the compliance of principles of natural justice.

(37) The Vice Chancellor has been delegated the powers under clause 7.1 (*ibid*) to grant another opportunity to the candidates in case of serious illness etc., for passing the examination in the same year after his satisfaction on the basis of evidence produced by the candidate; thus, the petitioner ought to have been afforded an opportunity to prove her case before passing the rejection order. Since the Vice Chancellor as well as Board of Control have failed to afford any opportunity of hearing before rejection of the claim of the petitioner, therefore, in the opinion of this Court, there is a gross violation of principle of natural justice.

(38) It needs to be emphasized that the prosperity of a nation depends, not on the collection of huge revenues, or on account of embracing the formula of profit & loss-making; or on the high rise buildings; but on the basis of hard work of its citizens, more particularly, the persons having better understanding of human values, with honesty as well as complete dedication in the national interest and cultivated through good education.

(39) Also noteworthy that after attaining independence, the first Commission for Higher Education, headed by Dr.Sarvepalli Radhakrishnan was constituted in the year 1948, which submitted a detailed report covering every aspect relating to education and relevant part dealing with grant of scholarship to economically weaker students, reads as under:-

“35. Economic Barriers-Owing to economic difficulties many young people are not getting the chance to which they are entitled and the nation is deprived of a large amount of potential leadership M. science and scholarship, industry, and commerce. If we are to give substance and actuality to the claim of equality we profess, we must devise a system in

which qualified individuals are not prevented by economic barriers from attaining the kind of education for which they are suited by their aptitudes and interests.

The President's Commission on Higher Education in America "recommends that in publicly controlled institutions there be no tuition or other required fees for the thirteenth and fourteenth school years, irrespective of whether they are offered by a 2-year or a 4-year college; and that fees above the fourteenth school year be reduced at the earliest possible moment to the level prevailing in 1939. Conditions in India are much worse. If we are to enable even the poorest to obtain not merely some but the best education they are capable of, we must organise a large and generous system of scholarships which will provide a ladder from the bottom to the university along which any child can climb to the limit of his capacity. These scholarships should cover not only tuition costs but costs of board, lodge and other living needs."

(40) Still, further, the report highlighted the function of the University in the following manner:-

“1. Functions of a University.-Education of the youth and the discovery of new truth are the principal functions of universities. The boys and girls of today are the matured citizens of tomorrow. An educated citizenry, according to Edmund Burke, are a greater defence to a democratic country than a vast standing army. The revelation of new knowledge by research not only enriches human life in the intellectual realm but is the chief arm of technical and economic development of a nation. Of the end-products of the university, the education of the individual should take priority. As knowledge increases, the mere task of transmitting the accumulations of the past to the on-coming generations becomes more difficult and important in spite of libraries, archives and museums. Ignorance is an enemy more formidable than Antaeus, the giant wrestler of old, who came up after each fall strengthened by mother Earth. Hercules could destroy him by strangulation in the air but ignorance is an implacable enemy to human freedom and happiness which is not so easily destroyed. It is an antagonist to all man's progress which perpetually

returns as fast as it is conquered.

2. Teaching Youth Most Important Task of University.

Universities are conglomerations of human and physical elements but the student is the most precious of these. Buildings and equipment are necessary, a competent staff more vital still, but these are means, the student properly equipped to live and take his place in a democratic society is the consummation most devoutly to be wished for. The emancipation of young minds, the awakening of the consciousness of personal dignity, and the consecration of fresh recruits to the cause of human progress and service, - here is the greatest task of the university. There is no more solemn duty on earth than the training and development of the human soul. The student is not created for the university but the university exists for the student and, therefore, it must spare no effort and omit no devices which may promote the fullest and most complete realization of the students' possibilities on all planes, physical, intellectual and spiritual. Education in a university should be for a student a source of interest and enjoyment whatever be his speciality; every student should develop an intellectual habit, an attitude of mind, a temper of social behaviour.”

(41) Facts of the present case reveal that respondents have acted diametrically opposite to the above magnificent work, done by the renowned Educationist, who later on became the second President of our country. Respondents, while taking drastic steps in the matter, did not realize that “*student is not created for the university, but the university exists for the student*”. It seems that instead of encouraging a brilliant student from EWS category, respondents tried to debar her to complete the B.A., LL.B. course for few thousands of rupees which she was not able to pay on account of financial incapacity. Perhaps, respondents remained oblivious of the fact that they are not running a private establishment; rather manning the University having glorious past, which produced many great personalities including former Chief Justices of India as well as the Prime Ministers of the Country, apart from other scientists of repute.

(42) There is no hesitation to observe that action of the respondents is running, not only contrary to the main functions of the University which were articulated by the great visionary in the report

extracted hereinabove; but, also grossly erroneous and the same is indefensible in law, being anti- thesis to the concept of inclusive education.

POINT D

(43) The facts and circumstances of the present case clearly reveal that the petitioner is having good talent, but she has been forced to suffer great trauma on account of the wholly unacceptable approach adopted by the respondents. She is being harassed by the respondents for the last two and half years; thus, obviously, her study has also been affected. Consequently, there is no hesitation to observe that the actions of the respondents have not only caused great prejudice to the petitioner, but also resulted into miscarriage of justice.

(44) Above all, in terms of the interim order dated 24.07.2019 passed by Coordinate Bench, petitioner has appeared in all the papers of B.A., LL.B. course; however, her result was ordered to be kept in a sealed cover. During the course of the hearing, upon asking of the court, learned counsel for the respondents gracefully agreed to produce the result of the petitioner and which he duly produced. Sealed envelope was retained in safe custody, but at the time of dictating this order, it was opened and perusal of the same reveals that petitioner has successfully completed her B.A., LL.B., course while securing good first division.

(45) In view of the facts and circumstances discussed hereinabove, irresistible conclusions would be as under:-

i)The action of the respondents while withdrawing the benefit of freeship/ EWS scholarship and considering the case of the petitioner as compartment / re-appear candidate for 6th Semester, is not legally sustainable;

ii)The action of the respondents while not treating the petitioner on the rolls of the UILS and consequent termination of her internship programme is based on legal malice and the same is liable to set aside;

iii) The action of the respondents while rejecting the claim of the petitioner for freeship/ EWS scholarship is violative of principles of natural justice; thus, the same is indefensible in law;

iv) Respondents have harassed the petitioner for the last two and half years while adopting wholly erroneous approach;

forced the petitioner for avoidable litigation leading to mental trauma; hampered her smooth studies, and as such, the same has not only caused her great prejudice, but also resulted into miscarriage of justice.

(46) As a result of the above conclusion, this Court has no option except to allow the writ petition.

(47) Consequently, this writ petition is allowed; impugned letters/ communications dated 26.06.2019, 10.07.2019 & 19.07.2019 (P-4, P-5 & P-8), respectively, are quashed and set aside. Respondents are directed to restore and release the entire benefit of freship/EWS scholarship to the petitioner without any further delay.

(48) Final result of the petitioner be declared forthwith.

(49) Since the respondents have not only acted in an arbitrary manner, but also taken most unreasonable stand while defending the present writ petition with full vigor just to harass a female student belonging to EWS category; therefore, the petitioner would be entitled for costs of Rs.1 lac (Rupees One lac), as a suitable compensation. At the first instance, costs shall be paid by Panjab University & UILS in equal share i.e. Rs.50,000/- each; however, they would be at liberty to recover the same from the erring official/officer.

(50) Envelope after putting proper seal be returned to Mr.Subhash Ahuja, Advocate for the respondents, by the Bench Secretary.

(51) Pending application (s), if any, also stands disposed off.

Shubreet Kaur