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**(2019) 08 CHH CK 0006**

**Chhattisgarh High Court**

**Case No:** Writ Petition (C) No. 1922 Of 2014

Somendra Singh Bhadoriya

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** Aug. 19, 2019

**Acts Referred:**

- Orissa Superior Judicial Service And Orissa Judicial Service Rules, 2007 - Rule 24

**Hon'ble Judges:** Goutam Bhaduri, J

**Bench:** Single Bench

**Advocate:** Manoj Paranjpe, Prateek Sharma, Rahul Jha

**Final Decision:** Dismissed

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**Judgement**

Heard.

1. The short question involved in this case is that the petitioner who appeared for entrance of the Ph.D. examination passed out the same with 63

marks whereas in Master's Degree he obtained 54.88% and not 55% which was the bench mark as per the statute. Because of such mark of

54.88 petitioner was not allowed to get admission in Ph.D. There is no dispute about the procurement of percentile marks in this case. Only question

revolves round as to whether 54.88% can be rounded off to 55%.

2. Learned counsel for the petitioner would submit that the petitioner has passed out the entrance examination which was meant for Ph.D. program

but he was not allowed to be admitted for Ph.D. on the ground that in the Master's Degree he was not having 55%. He placed his reliance on a

case law reported in (2002) 2 MP LJ 619 in between Dharmendra Kumar Shrivastava Vs. Jiwaji University, Gwalior and would submit that in the

similarly situation facts the High Court of M.P. on the basis of the different law laid down by the Supreme Court has directed that the percentile to be rounded off and in the instant case since the petitioner had got 54.88% which is more than 54.5% means half there off as such it should have been rounded off to 55% and accordingly the petitioner should have been made eligible to be admitted to the course of Ph.D.

3. Per contra, learned counsel for respondents No.2 to 5 submits that subsequent law laid down by the Supreme Court in case of Orissa Public

Service Commission & anr. Vs. Rupashree Chowdhary & anr. reported in (2011) 8 SCC 108 and in case of Registrar, Rajiv Gandhi University of

Health Sciences, Bangalore Vs. G. Hemlatha & ors. reported in (2012) 8 SCC 56 8the court has categorically laid down the fact that if the statute

prescribes certain percentile and there is no rule of power of relaxation, it cannot be rounded off or relaxed.

4. Heard learned counsel for the parties and perused the documents.

5. The ordinance No.45 which governs the Doctor of Philosophy for the respective Vishwavidyalaya which has a statutory effect framed under the

C.G. Vishwavidyalaya Adhiniyam, 1973 prescribes the following condition. The relevant part of Ordinance No.45 which prescribes the eligibility

criteria qua the petitioner are quoted herein below:-

â€œ3.Eligibility for Registration for the Degree of Doctor of Philosophy A. A candidate for the degree of Doctor of Philosophy must, at the time of

application, holds Master's Degree with at least 55% marks (50% marks for SC/ST/Differently Abled Candidate)/B in the seven point scale/ an

equivalent grade point average of a University, a deemed University or any other University incorporated by any law for the time being in force and

recognized by the University

OR

Holds M.Phil. Degree of a University, a deemed University or any other University incorporated by any law for the time being in force and recognized

by the University

OR

A candidate who has at least 7 years experience of research/teaching with at least 5 papers published in standard journal, even if he/she does not possess 55% marks at Master's Degree.

B. Provided that the candidate will be admitted to the Ph.D. program through an entrance test to be conducted once in a year, preferably in October

by the University. The modalities of the test shall be decided by the University.

Candidates provisionally admitted to the program through an entrance test will be awarded with the University Fellowship depending upon their availability.

C...xxx...xxx...

6. Admittedly in this case the petitioner has appeared in the entrance test as required under Ordinance No.45, clause 3(B) and secured 63 marks, the

same is not in dispute. The only question as to whether percentage of Master's Degree of 54.88% can be rounded off to 55% which is the minimum

bench mark as prescribed under clause 3(A) of Ordinance No.45 to get into stream of Ph.D. While dealing the issue the Supreme Court in case of

Orissa Public Service Commission & anr. (supra) has laid down the ratio that when the rules, in this case the Ordinance has prescribed minimum

marks to be obtained then in such case the candidate atleast should have procured minimum marks and there cannot be question of relaxation or

rounding off. Para 10 and 12 of the said judgement would be relevant for this case which are reproduced hereunder:-

“10. A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a

minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When

emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by

the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such

rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or

relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some

words to the said statutory rules for giving the benefit of rounding off or relaxation.

12. The entire record of the main written examination was also produced before us which indicates that there are also candidates who have got more

than the respondent in the aggregate but have not been able to get 33% marks in each paper and have missed it only by a whisker. In case, the

contention of the counsel appearing for the respondent is accepted then those candidates who could not get 33% marks in each paper in the main

written examination could and should have also been called for viva-voce examination, which would amount to a very strange and complicated

situation and also would lead to the violation of the sanctity of statutory provision.â€

7. Likewise the ratio laid down in case of Registrar, Rajiv Gandhi University of Health Sciences, Bangalore (supra) the court reiterated the principles

laid down in case of Orissa Public Service Commission & anr. (supra) and laid down the ratio that when the rule itself prescribes minimum mark to be

obtained there can be no relaxation or rounding off. Para 10 of the said judgement are reproduced hereunder:-

â€œ10. After considering the Orissa Rules, this court in Rupashree Chowdhary case (2011) 8 SCC 108 held that Rule 24 thereof made it clear that

â€œin order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of

marks in the aggregate in all the written papers in the main examinationâ€ (SCC p. 111, para 10)

This court observed that when emphasis is given in the Rule itself to the minimum marks to be obtained, there can be no relaxation or rounding-off. It

was observed that no power was provided in the statute/Rules permitting any such rounding-off or giving grace marks. It was clarified that: (SCC

p.112, para 10)

â€œ..... The [Orissa] Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the

said statutory Rules for giving the benefit of rounding-off or relaxation.â€

8. The reading of the Ordinance No.45 clause 3(A) would show that it prescribes the minimum Master's Degree percentile should be 55% marks for

a general candidate. The petitioner belongs to a general class of candidate as such he had to obtain 55 percentile irrespective of the fact that he has

passed out the entrance test for the Ph.D. When the words of statute are clear, plain and ambiguous it would be susceptible to one meaning and the court are bound to give effect to that meaning irrespective of the consequence. There is no ambiguity in the clause 3(A) of Ordinance No.45 that minimum percentile marks has to be 55% marks for the Master's Degree. Unfortunately it appears that the petitioner procured 54.88% the border line which do not reach to fulfill the criteria as prescribed in the Ordinance No.45 of 55%. The direction to round off the percentile would amount to legislate over and above the Ordinance No.45. When the candidate is seeking entrance in the particular stream and certain marks are prescribed, in such eventuality in order to get admission into such stream the court cannot relax it and interpret that above 54.5% would be rounded off to 55% as no rounding off is permitted in the Ordinance. In view of the clear and ambiguous language of Ordinance No.45 no relaxation can be given to the petitioner.

9. Accordingly, the petition is dismissed.