

(2000) 09 P&H CK 0048

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3693 of 2000

Rajive Kumar

APPELLANT

Vs

Guru Nanak Dev University and
another

RESPONDENT

Date of Decision: Sept. 27, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: R.C. Kathuria, J; N.K. Sodhi, J

Bench: Division Bench

Advocate: Mr. R.S. Bajaj, for the Appellant; Mr. P.S. Patwalia, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.C. Kathuria, J.

In this petition, the petitioner has prayed for a direction in the nature of certiorari quashing the order dated 28.3.2000 (Annexure P-2) passed by respondent No. 2 whereby he has been informed that he is not eligible to take admission in M.A. Part I (English).

2. The petitioner passed his B.A. examination as a private student from Guru Nanak Dev University, Amritsar, respondent No. 1 (hereinafter referred to as "the University") in June, 1999. He had secured 43, 54 and 59 per cent marks in English in B.A. Part I, Part II and Part III. respectively. The aggregate of these marks comes to 52 per cent. He applied for admission to M.A. Part-I (English) on 18.11.1999 as a private candidate. In terms of the eligibility provisions contained in the Prospectus, after making scrutiny of his Admission Form, the University issued roll number 2652 to the petitioner. Suddenly, to his surprise, he received the order dated 28.3.2000 (Annexure P-2) from the Controller of Examinations of the University (respondent No. 2) intimating to him that he cannot be allowed to take part in M. A. Part-1 (English) examination because he had not secured IInd Division in B.A. The

petitioner has averred that at the time he filled up the form for taking part in M. A. Part-I (English), he had disclosed all the material facts and, as such, he had not made any mis-representation to the authorities of the University and the University had no right to prevent him from taking the said examination. As the examination was to commence from 15.4.2000, aggrieved by the action of the respondents, he invoked the jurisdiction of this Court under Article 226 of the Constitution of India challenging the legality of the order dated 28.3.2000.

3. The respondents contested the claim of the petitioner. In the written statement, it was pleaded by them that as per the provisions contained in Clauses (ii) and (iv) of Ordinance 11 of the University Calender 1999, Volume-II, the petitioner was ineligible to take examination as he had not obtained 50 per cent marks in B. A. in all the subjects and further had not secured 45 per cent marks in the elective subject of English. On these premises, the impugned order dated 28.3.2000 was sought to be justified.

4. In the rejoinder, the stand taken by the respondents in the written statement was controverted by the petitioner on the ground that the enquiries made by him from the University revealed that Ordinance 11 ibid has not been amended in accordance with the prescribed procedure as laid down in the University Calender 1992, Volume III. Additionally, it was pleaded that the word "Elective" introduced in Ordinance 11 by way of amendment is superfluous because a candidate doing B.Sc./B.Com. cannot opt for English as an elective subject and for that reason the candidate would be debarred from taking admission in M.A. (English).

5. We have heard the learned counsel for the parties and have gone through the records of the writ petition.

6. As there is a variance in the eligibility provisions incorporated in the Prospectus and Clauses (ii) and (iv) of Ordinance 11, therefore, it is necessary to notice these provisions in extenso. The relevant provisions of the Prospectus are as under:

"(iii). B.A. (Pass), B.Sc. (Pass) examination in full subjects or has obtained B.A. Degree through English only ordinances obtaining at least 45 per cent marks in subject of the post-graduate course."

The relevant extract of the Ordinance 11 is as under-

"(i) xx xx xx

(ii) Bachelor's Degree in any faculty with 50% marks in the aggregate from this University or from any other recognised University, the degree of which has been recognised equivalent by this University.

(iii)xx xx xx

(iv) B.A. (Pass), B.Sc. (Pass) examination in Full Subjects or has obtained B.A. degree through English only obtaining at least 45% marks in the subject of post-graduate as

an Elective Subject."

7. So far as the objection taken from the side of the petitioner with regard to the validity of the provisions of Clauses (ii) and (iv) of Ordinance 11 is concerned, Mr. R.S. Bawa, Registrar of the University, in his affidavit has clarified the position. It is stated therein that the Syndicate in its meeting held on 16.1.1996, vide para 7(iii), has made the following amendments :

"7 (iii). B.A. (Pass), B.Sc. (Pass) examination in full subjects or has obtained B.A. degree through English only ordinances obtaining at least 45 per cent marks in the subject of Post-graduate course as an Elective Subject.

Note: This would take effect from the examination of April, 1995."

The above amendment had taken effect from the examination of April, 1995. The detailed procedure for amending an Ordinance has been prescribed in the University Calendar 1992, Volume III, which is as under:

"The proposed amendment, deletion or addition to an Ordinance shall first be administratively approved by the Syndicate as per procedure laid in the Guru Nanak Dev University Act. After the Syndicate has accorded administrative approval to the amendment, addition or deletion, it shall be referred to the Regulations Committee, and the Ordinances drafted by the Regulations Committee in the light of the decision of the Syndicate shall then be submitted to the Syndicate for approval.

The amendment/deletion/addition to an Ordinance will take effect from the date of its approval by the Syndicate on the recommendations of the Regulations Committee unless otherwise specified."

In view of the position explained in the affidavit of Mr. R.S. Bawa and the written statement, the eligibility clause for seeking admission to M.A. Part-I (English) has been amended as per procedure prescribed. Therefore, there is no force in the stand taken from the side of the petitioner in this regard.

8. Coming to the other stand taken in the writ petition, it is apparent that when the petitioner sought admission in M.A. Part-1 (English) on 18.11.1999, the eligibility provisions for seeking admission to M.A. Part-1 (English) contained in clauses (ii) and (iv) of Ordinance 11 *ibid* would be applicable. In terms of the said provisions, the petitioner is not eligible to take part in the said examination because the petitioner has failed to fulfil two pre-requisites in regard. Firstly, he was required to obtain 50% per cent marks in the aggregate of all the subjects in B.A., as per clause (ii) of Ordinate 11. In the instant case, admittedly, the petitioner has secured 48 per cent marks in aggregate of all the subjects in B.A., as stated by him in para 2 of the writ petition. Therefore, he had not fulfilled the requirement of having secured 50% per cent marks. Secondly, as stated by the respondents, there are two subjects of English out of which one is compulsory carrying 100 marks and this subject has to be offered by all the candidates. The other subject of English is elective subject

which carries 200 marks. As the petitioner had only passed compulsory subject of English and had not passed English as an elective subject, he was not eligible to take part in MA. Part-I (English) examination. The total aggregate of 52 per cent marks in the subject of English secured by the petitioner in B.A. Part-I, Part-II and Part-III, would not bring his case within the eligibility classes of the examination as laid down in Ordinance 11(ii) and (iv), referred to above.

9. The only dispute which now remains to be decided is as to what is the effect of the omission on the part of the University in not mentioning the eligibility conditions as contained in Clauses (ii) and (iv) of Ordinance 11 in the Prospectus, "the only difference between the eligibility clauses stated in the Prospectus and clause (iv) of Ordinance 11 is that the words "as an Elective Subject" following the word "post-graduate", mentioned in clause (iv) of the Ordinance, have been omitted in the Prospectus, it is apparent from the above-noted provisions that care has been taken by the University in mentioning the word "ordinances" in Clause (A)(iii) of the Prospectus as well. No doubt, this clause of the Prospectus has not been happily worded, but the fact remains that the requirement of the eligibility clause (iv) of Ordinance 11 has to be read as integral part of clause (A)(iii) of the Prospectus by process of incorporation of word "ordinances" in the said clause of the Prospectus. Therefore, the University has rightly informed the petitioner vide Annexure P-2 that she is not eligible to take admission in M.A. Part-I (English).

For the aforesaid reasons, this writ petition is devoid of any merit. Accordingly, the same is hereby dismissed.

10. Petition dismissed.