

(2013) 09 P&H CK 0363

High Court Of Punjab And Haryana At Chandigarh

Case No: L.P.A. No. 683 of 2011 (O and M)

Swami Devi Dayal College of Law
Barwala

APPELLANT

Vs

Kurukshetra University and
Others

RESPONDENT

Date of Decision: Sept. 19, 2013

Hon'ble Judges: Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench: Division Bench

Advocate: Anju Arora, for the Appellant; Amarjit Singh Virk, Advocate for Respondent
Nos. 1 to 4, for the Respondent

Final Decision: Partly Allowed

Judgement

Sanjay Kishan Kaul, C.J.

The original writ petition was filed by respondent No. 5 seeking declaration of his result of the 2nd year LL.B. Examination, for which he had appeared in May, 2009. The learned Single Judge in terms of the impugned order dated 18.11.2010 found that the petitioner, though was ineligible for admission on account of his marks in graduation being less than 45%, was admitted to the course. The University/respondent Nos. 1 to 4 also issued notice to the Principal of the Appellant-College as due care had not been taken while accepting the application of respondent No. 5. The learned Single Judge has opined that despite the loss of years for respondent No. 5 and the delay having been caused, it was not a case where respondent No. 5 should be permitted to complete the course, more so as the brochure clearly included the condition of obtaining at least 45% marks in the graduation. However, in the operative paragraph, two directions have been passed against the College; (i) refund of the entire tuition fees; and (ii) compensation at the rate of Rs. 50,000/- per year for three years amounting to Rs. 1,50,000/-. The present appeal has been filed by the College aggrieved by the latter aspect.

2. At the time of admission of the appeal also, it was noticed that the same impugned order had been assailed by respondent No. 5 in LPA No. 203 of 2011, but that appeal was dismissed by detailed order dated 10.2.2011. It is pointed out to us that SLP was also dismissed on 23.5.2011 being SLP (Civil) No. 15081 of 2011.
3. The matter has been called out for hearing. None has chosen to appear for respondent No. 5, though service had been effected and counsel had entered appearance, a day dedicated to hearing of regular matters and it is 3.20 PM.
4. On examination of the controversy, we are of the view that there may have been negligence on part of the appellant-College or collusion with respondent No. 5 and the said respondent cannot plead ignorance about the condition stipulated in the brochure that there was a minimum bench mark provided of 45% marks in the graduation.
5. Respondent No. 5, thus, took admission with his eyes open knowing fully well that he was ineligible. Merely because, later on it was found out that respondent No. 5 has been found ineligible, an aspect sustained right till the Hon"ble Supreme Court, cannot entitle the said respondent to claim compensation from appellant-college.
6. However, we are of the view that first direction of refund of fee by the appellant-college has to be sustained. We, thus, allow the appeal to the aforesaid extent and direct the appellant-College to refund the fee to respondent No. 5 within 15 days from today, to be sent to him by way of pay order on the last known address. Parties are left to bear their own costs.