

(2016) 08 P&H CK 0190

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No.22399 of 2014

Bhumika Kukreja

APPELLANT

Vs

Kurukshetra University,
Kurukshetra

RESPONDENT

Date of Decision: Aug. 19, 2016

Citation: (2017) 1 SCT 390

Hon'ble Judges: G.S. Sandhawalia, J.

Bench: Single Bench

Advocate: Mohinder Singh, Advocate, for the Respondents No.1 and 2.; Parminder Singh, Advocate, for the Petitioner; None, for the Respondent No.3.

Final Decision: Dismissed

Judgement

G.S. Sandhawalia, J. - The petitioner seeks a declaration of result of the B.Sc (Genetics) degree course, on account of the fact that she has appeared in all the six semesters, but her registration has not been allocated by the respondent-University. Resultantly, prayer has been made that her representation (Annexure P-5) for declaration and for issuing the detailed marks card of each semester be declared along with the allocation of registration number.

2. The pleaded case of the petitioner is that she had appeared in Senior Secondary Examination as a regular student in the year 2011 with the Central Board of Secondary Education (CBSE) and got a compartment in Physics (Annexure P-1). On the basis of the said result, she took admission in the B.Sc course of 3 years comprising of six semesters with respondents No.3-College affiliated with the respondents No.1 and 2-University. The petitioner had appeared in the academic session 2011-2012, 2012-2013, 2013-2014 and also in the 6th semester in the month of March, 2014 and accordingly sought the said declaration.

3. It is the case of the petitioner that though she had got compartment in the said senior secondary school examination, in 2011, but she had also enrolled in the

National Institute of Open Schooling (NIOS) and cleared her senior secondary examination also, in April, 2012 (Annexure R-3/2). It is her case that to avoid any ambiguity, she moved representation to the Central Board of School Education (CBSE) and the original certificates of the NIOS had been surrendered and another chance had been given to clear the compartment examination with the CBSE. Reference was made to Annexure P-3, the permission granted.

4. It is the case of the petitioner that, thereafter, she cleared her compartment with the Board in the year, 2014, as per the certificate issued on 28.05.2014 (Annexure P-4) in the subject of physics. Resultantly, she approached respondent-University for issuance of the registration number and for declaration of her result (Annexure P-5). It was the case of the petitioner that she had not withheld any of the information to be provided to the respondents. Non-clearance of the 10+2 certificate with the board was on account of the pass certificates issued by the NIOS. She had attended the college, paid the fees and roll numbers have been duly issued to her and the refusal to allot the registration number after the completion of six semesters is not justified.

5. The respondent-University in its reply took the plea that the admission had been taken with the respondent No.3-Dayal Singh College, Karnal. On account of the compartment in the subject of physics in the 10+2 examination, she was denied registration. She had failed to clear the same within the prescribed period by March, 2012 and, therefore, was not entitled for permission in the next session, as per the ordinance which provided that the re-appear is to be cleared in two consecutive chances from the concerned University/Board. It was averred in the defence that the answering respondent had been written to the concerned college (Annexure R-1) that there was a deficiency of the petitioner regarding the qualifying examination. As per instructions/guidelines, the student was not to be permitted for the next semester/class until he/she was registered with the University. In case the clearance was not there in two consecutive chances, his/her admission shall be cancelled ab initio. It was admitted that the petitioner had also approached the respondents with another qualifying examination of the NIOS for 10+2 on 08.06.2012/10.10.2013, but her request had been rejected on 21.11.2013 as she had taken admission on the basis of the 10+2 certificate from the CBSE. She had passed her compartment examination in the year 2014 in the 6th chance and, therefore, her case had been referred to the Academic Council of the University, who had rejected her request in the meeting dated 21.10.2014 (Annexure R-1/3). The benefit of subsequent certificate passed in the year 2012 could not be given to her and the admission given to her was provisional.

6. In the written statement filed by the respondent No.3-college, the plea taken is that as per the letter dated 17.02.2012, a notice was pasted on the notice board in which the photocopy of 10+2 detailed marks with compartment clearance certificate was also desired from the petitioner. In the meantime, the petitioner submitted the

photocopy of the detailed mark sheet issued by the NIOS. The same was sent to the respondent-University on 24.09.2012 (Annexure R-3/3). The petitioner was issued the roll number provisionally by the University for appearing in the exam of 2nd semester and her University registration number was 1116241285. Thereafter, also she was issued roll number for 4th semester in the month of May, 2013 and even the detailed mark sheet for the 3rd semester had been issued. The college had furnished all the desired documents as required by the University and, therefore it had no role to play as such. The University was estopped by its own act and conduct and it could not allege that it was the college who had allowed the petitioner to appear in examination.

7. The issues, thus, that arise are as under:-

(i) whether the petitioner was having not cleared her compartment examination in two consecutive chances, as per the ordinance mentioned in Volume II Part A of the Kurukshetra University is entitled for any benefit;

(ii) whether the petitioner in view of the senior secondary certificate issued by the NIOS was permitted to carry on with her classes and give the examination for all the semesters and whether the University is bound by the principle of estoppel in denying the relief of declaration of result.

Issue No.(i)

8. Admittedly as per regulation 3.2 A, a candidate was required to clear the compartment examination from the same Board. It is upto to the second semester a second chance could be provided as per clause 3.2, which reads as under:-

"3.2 A Candidates who has been placed under compartment or allowed to re-appear in one subject only in Senior Secondary Certificate Examination (10+2 Standard) of the Board of School Education, Haryana, or equivalent examination of another University/Board obtaining at least 40% marks in the aggregate may be allowed to read provisionally for the B.Sc. (General) I Semester Class. Such a candidate shall be allowed to clear the compartmental/re-appear subject in two consecutive chances from the concerned university/board. If such a candidate fails to clear/qualify in the compartment/re-appear subject at the supplementary examination, he/she shall be permitted to continue his/her studies for B.Sc. (General) II semester class and to appear again in the compartment/re-appear subject along with his/her B.Sc. (General) II semester examination provisionally. If he/she does not clear his/her compartment/re-appear subject even in the second chance, his/her provisional admission and the result of B.Sc. (General) I and II semesters shall be cancelled ab initio."

It is not disputed that the petitioner had failed to clear the same by the year 2013 and only got cleared her physics examination in May, 2014 beyond the prescribed period. The action of the respondents in not considering her

case on account of having passed her qualifying examination beyond the prescribed period cannot as such held to be suffering from any illegality and resultantly the first question is answered against the petitioner.

Issue No.(ii)

9. It is not disputed that on account of the objection being raised against the petitioner, she had submitted her NIOS certificate dated 08.06.2012 (Annexure R-3/2). On the basis of the same, the University started processing her case, but did not reject her request till 21.11.2013 by which time her time had run out. The rejection was on the basis she had taken admission on the basis of the 10+2 certificate passed from CBSE and, therefore, the compartment subject had to be passed from the said Board only and not from another Board.

The petitioner, thereafter, surrendered her certificate of NIOS with the Board and got a special chance from the Board by complying with the condition that she would accept marks, which she would obtain in the year 2014. Accordingly, permission was given to her for appearing in the examination of Physics as a private candidate as a special chance for compartment exam to be held in March, 2014 along with the candidates appearing for the main exam in Class 10+2, which she subsequently cleared.

In the meantime, as noticed she had also completed her 5th semester and, thereafter also the 6th semester. The delay on the part of the University by processing her case for one and half years led her forfeiting the chance to take her compartment examination with the respondent-Board till May, 2013, since it is the University who had rejected her request firstly on 21.11.2013 and then in November, 2014 and by the time she had become barred under Regulation 3.2 A.

In such circumstances, the action of the University in dilly dallying on the decision would stop it from now holding regulation 3.2 A against the petitioner. The rejection of the case of the petitioner has now only been done on 21.10.2014 (Annexure R-1/3) and by the time she had also been permitted to give her 6th semester examination of B.Sc. Course. It was the bounden duty of the University to process the case of the petitioner at the earliest, the moment the senior secondary certificate from the NIOS was received on 24.09.2012 from the college. On account of the inaction of the University in processing the case, it would lead to the petitioner being put back in the 1st year of B.Sc.

10. It has been held in various pronouncements that where a student was allowed to appear in the examinations, rightly or wrongly, then the statute, which empowers the University to withdraw the candidature, works itself out. The student could not be refused admission, subsequently, if any infirmity, which could have been looked into before giving the permission to appear had not been acted upon promptly. Reliance can be placed upon **Shri Krishan v. The Kurukshetra University, Kurukshetra 1976 (1) SCC 311**. The relevant observations read as under:-

"The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr. Nandy learned counsel for the respondent that the names of the candidates who were short of percentage were displayed on the Notice Board of the College and the appellant was fully aware of the same and yet he did not draw the attention of the University authorities when he applied for admission to appear in LL.B. Part II Examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court.

7. It appears from the averments made in the counter- affidavit that according to the procedure prevalent in the College the admission forms are forwarded by the Head of the Department in December preceding the year when the Examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi*, or *suppressio veri*. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in *Premji Bhai Ganesh Bhai Kshatriya v. Vice-Chancellor, Ravishankar University, Raipur and others*(ii) where a Division Bench of the High Court of Madhya Pradesh observed as follows:

"From the provisions of ordinance Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or

ordinance No. 48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result."

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the Examination in May 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the University to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the University authorities in cancelling the candidature of the appellant."

11. The said judgment was followed by the Apex Court in **Sanatan Gauda v. Berhampur University & others 1990 (3) SCC 23** wherein it was held that at the time of the declaration of the result, the University could not raise the objection of the so-called ineligibility of the candidate. The relevant observations read as under:

"11. This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the Final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter- Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course."

12. A Division Bench of this Court in **Ajeet Kumar Tripathi v. State of Haryana 1998 (4) S.C.T. 73** also held to the same effect that when the admission was cancelled after a long period of study on the ground that the marks obtained was less than 50% in aggregate, it was held, that once there was no fault of the candidate and he had studied for many years, he should be allowed to study in the said course. It was held that in such ambiguous situation, it is not proper to cancel the admission at such a late stage since the clock had moved on.

13. Reliance can also be placed upon a Division Bench judgment of this Court in **Ashu Singla v. Punjabi University, Patiala & another, 2004 (2) RSJ 720** wherein also, the students had been declared eligible in the second year on the principle of

promissory estoppel. This Court held that in the absence of any concealment of any documents from the respondents or misrepresentation, the admission was to be regularized. Similar view has also been taken by this Court in **Jaswinder Kaur v. State of Punjab & others 2013 (3) PLR 128** wherein it was held that once the University had permitted the candidate to appear in the examination of the final year, it was unwarranted on the part of the University not to issue DMC on the ground that the petitioner was ineligible. In **Shri Guru Govind Singh Khalsa College & others v. Panjab University, Chandigarh & another 2014 (3) RSJ 499**, similar relief was granted by holding that in the absence of any fraud or misrepresentation on the part of the students and on the failure of the College to inform them about their ineligibility, the admission was to be regularized.

14. Resultantly, this court is of the opinion that on account of the inaction of the University in raising the objection in a timely manner pertaining to the certificates of the NIOS which were furnished, the petitioner has been gravely prejudiced. Resultantly, she has also in the meantime appeared in the final year of B.Sc and therefore, she is entitled for declaration of the result of the said examination.

15. Accordingly, the present writ petition is allowed. The order dated 21.10.2014 (Annexure R-1/3) whereby her mercy appeal has been rejected is set aside, in view of the reasoning given above. Respondent- university is directed to confirm the registration number issued to the petitioner and declare her result and issue necessary certificates including DMCs and degree.