

(2010) 12 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10303 of 2009

Arpita Bisen

APPELLANT

Vs

M.P. Bhoj (Open) University and Another

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Citation : (2011) ILR (MP) 696 : (2011) 2 MPHT 258

Hon'ble Judges : Ravi Shankar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Jha, J.—The Petitioner who had approached this Court in the year 2009 had initially sought a relief of a direction to the Respondent University to forthwith conduct a special examination of M. Sc Previous (Botany) Course and allow her to appear in it. The Petitioner in the alternative has sought relief of awarding compensation to the tune of Rs. 5 lacs only for causing undue mental agony and hardship and for wasting one precious year of the Petitioner.

2. The brief facts, leading to the filing of the present petition, are that the Petitioner, who was a Science Graduate i.e. B. Sc (Biology) with Bio-Technology as a subject, applied for admission in M. Sc (Botany) Course for which applications were invited by the Respondent University by information brochure published for the year 2008-09. The Petitioner deposited her form with the Respondents on 26.2.2009 alongwith the requisite fees of Rs. 6,900/-and was granted admission in the M. Sc (Botany) Course. The Petitioner was also permitted to participate in the practical examination held sometime in the month of June-July 2009. In August 2009 the Respondent University published the schedule for M. Sc (Botany) Previous Examination which was notified to be held from 25.9.2009 to 7.10.2009 which date was later deferred to 5.10.2009.

3. As required, the Petitioner deposited her examination form alongwith the requisite fees on 26.8.2009 but the same was returned to her on 28.8.2009,

Annexure P-7, with a note that the Petitioner was not eligible to participate in the Examination of M. Sc (Botany) Previous as she did not have Botany as a subject in her B. Sc course. Similar communication was issued to the Petitioner on 29.8.2009. Being aggrieved by the aforesaid, the Petitioner served a legal notice upon the Respondent University on 10.9.2009 in response to which the Respondent University issued a letter on 26.9.2009 which was received by the Petitioner on 29.9.2009 to the effect that the Petitioner would be permitted to participate in the M. Sc (Botany) Previous examination provided she withdrew her legal notice.

4. As the examination was scheduled to commence from 5.10.2009 and the period given to the Petitioner was far too short to enable her to appear in the aforesaid examination, she immediately filed the present petition before this Court praying for the reliefs as stated in para-7.

5. It is submitted by the Learned Counsel for the Petitioner that the Petitioner has lost one valuable academic year on account of the casual and negligent act on the part of the Respondent University and in such circumstances the Petitioner is entitled to cost and compensation to the tune of Rs. 5 lacs on that count. The Learned Counsel has relied upon the decision of this Court rendered in the case of Board of Secondary Education Vs. Rakesh Kewat and Another, and Prem Ratan Agrawal Vs. Board of Secondary Education and Others,

6. Per contra the Learned Counsel for the Respondent University submitted that the Petitioner did not possess the degree in B. Sc (Biology) with Botany as a subject which was necessary for prosecuting studies in M. Sc (Botany) Previous. It is stated that the Petitioner was given admission inadvertently and was also permitted to participate in the practical examination. However, while scrutinizing her form at the time of the examination it was found that the Petitioner was not eligible and in such circumstances the impugned communication dated 28.8.2009 and 29.8.2009 were issued to the Petitioner. It is further submitted that on the Petitioner issuing a legal notice to the Respondent on 10.9.2009 the Respondent University issued a letter permitting the Petitioner to appear in the M. Sc (Botany) Previous examination inspite of which she chose not to appear in the same. In such circumstances, it is submitted that there is lapse on the part of the Petitioner in not approaching this Court promptly and in not availing of the opportunity provided by the Respondent University to appear in the M. Sc (Botany) Previous examination and in such circumstances the relief sought by the Petitioner regarding award of cost and compensation is misconceived as in the peculiar facts and circumstances of the present case the Petitioner's negligence is evident on the face of record. It is further submitted that as far as the Respondents are concerned, they had subsequently permitted the Petitioner to participate in the examination to be held on 5.10.2009 and have thereafter also informed the Petitioner that she could appear in the M. Sc (Botany) Previous examination in the subsequent year but the Petitioner has chosen not to avail of the opportunity and, therefore, the relief claimed by the Petitioner cannot be

granted to her. The Learned Counsel for the Respondents further pointed out that in fact the Petitioner by implication had withdrawn her claim for appearing in the examination by submitting an application dated 14.10.2009, Annexure R-2, praying for refund of the admission and examination fees and in such circumstances the claim of the Petitioner is misconceived and deserves to be rejected.

7. I have heard the Learned Counsel for the parties at length. From a perusal of the averments in the petition and the documents filed therewith it is clear that the brochure published by the Respondent University specifically prescribes Biology as the eligibility criteria for granting admission in M. Sc (Botany) Previous. It is, therefore, clear that the Respondent University did not either specify that B. Sc with Botany as a subject was an essential qualification nor did they clarify that a student who had passed B. Sc with Bio-Technology as a subject was ineligible. On the contrary, the eligibility prescribed was B. Sc with Biology group and in such circumstances the Petitioner, under bonafide belief that she was eligible, applied and was granted admission to the M. Sc (Botany) Previous course by the Respondent University. It is also clear that she was permitted to prosecute her studies and to participate in the practical examination conducted by the University and that it was only at the time of the theory examination that the Petitioner's eligibility was questioned and she was not permitted to participate in the examination. It is also clear that on the Petitioner issuing a legal notice on 10.9.2009, the Respondent authorities permitted the Petitioner to participate in the examination by their communication dated 26.9.2009 subject to her withdrawing the legal notice. It is further clear that the permission to appear in the examination granted to the Petitioner was received by the Petitioner on 29.9.2009, only five days prior to the date of commencement of the examination i.e. 5.10.2009.

8. In view of the aforesaid admitted facts, it is clear that the Petitioner was denied permission to appear in the M. Sc (Botany) Previous year examination by the Respondent authorities without any justification and that the permission ultimately granted to her after issuance of the legal notice, gave the Petitioner only five days time to prepare for the examination which by no stretch of imagination can be said to be sufficient or adequate for preparing oneself for an annual exam.

9. In such circumstances, I am of the considered opinion that the said act of the Respondents has resulted in loss of one academic year of the Petitioner and the subsequent permission granted by the Respondent authorities to the Petitioner to appear in the next year examination would not compensate or wipe away the loss of one academic year of the Petitioner specifically in view of the statement made by the Learned Counsel for the Petitioner that on the Petitioner being denied permission to appear in the examination, she has subsequently obtained admission in MBA and is prosecuting her studies and that she has infact lost one academic year.

10. In the case of Prem Ratan Agrawal (supra), this Court was dealing with a case of a student who had appeared in the 12th class examination and was given a wrong mark-sheet indicating that he had failed in the subject of Physic and on that count was denied admission in the Govt. Science College, Jabalpur. However, subsequently the Board of Secondary Education in the month of October 1999 informed the Petitioner therein that he should deposit the old mark sheet and collect the fresh mark sheet in which he was awarded 70 marks out of 100 in place of 17 marks in Theory Paper and was given distinction in all the subjects. In such circumstances, the Court held that the Petitioner therein was entitled to compensation of Rs. 10,000/-by observing the aforesaid in para-11 with a further direction to the concerned evaluator to pay compensation of Rs. 15,000/-to the Petitioner for her negligence in correcting the answer copies.

11....The loss caused to the Petitioner cannot be made good by grant of compensation, but the Board has to be put to task. A statutory body has to remain awake and act with alacrity and should not take an ambivalent stance. It is its duty to ameliorate itself and conceive of positive paradigm. The Board cannot afford to pave the path of anfractous and create a maze. It must understand the marrow of feelings and sensitivity of a young man. In the case at hand, as the Board has failed to do so, I am inclined to direct that it shall pay a compensation of Rs. 10,000/-(Rupees Ten Thousand Only) to the Petitioner within a period of two months from today.

11. In the case of Rakesh Kewat (supra) the Court was dealing with the case of a student whose result was wrongly withheld on account of a complaint of coping which was subsequently found to be incorrect. However, by the time the mistake was detected and the result was declared the supplementary and the main examination were over as a result of which the Petitioner therein who got supplementary in the subject of English (General), could not appear in the examination and suffered loss of one academic year on account of the delay and mistake on the part of the Respondent Board. This Court, again considering the aforesaid lapse on the part of the Respondent Board, upheld the award of compensation of Rs. 25,000/-by the learned Single Judge in Writ Appeal in the following terms:

6....The fact remains that the Board had treated the Respondent No. 1 to be involved in copying, though he was not involved. His result was cancelled. The mistake was that rectified later on but by that time had expired to sit in the supplementary examination. This led to waste of one year of the Respondent No. 1. The Board, as it seems, tried to redeem the situation by permitting him to appear in the 2009 Supplementary Examination. What appears to be redemption for the Board is humiliation to the writ Petitioner, Respondent No. 1 herein, and waste of his time. What flows with the efflux of time, cannot always be redeemed. It is not loss of money that one can recover. It is not a case where one is deprived of promotion and given promotion with retrospective effect with all consequential benefits. The factual scenario, as is luculent, put the writ

Petitioner in such a situation that he had to lose a valuable span of one year. The time that passed, never comes back. It does not revisit. One may hypothetically sit in a time machine and reconstruct the past but in the sphere of living reality the clock is never put back. It is an impossible facet of life. It is not only difficult to chain time but well nigh, impossible to arrest it even for a while. The Board, which has been bestowed the responsibility under the Statute and the Regulations to conduct the examination, is expected to have the requisite expertise and is expected to be extremely cautious and vigilant. No acts of the Board should be done in a hurry as it deals with the life and career of young students. Today's youth is tomorrow's social governor. Any authority while putting forth an allegation of copying has to be really careful so that, an innocent student is not put to unnecessary harassment and suffer mental agony. The anguish which a student suffers because of these kinds of faults can be very well imagined. Not for nothing it has been said, he who enjoys the power has to act with commensurate responsibility. The Board cannot advance a spacious plea that it has to conduct examination for lakhs of students and, therefore, this kind of mistake may sometimes happen because for the Board it may be conducting an examination but for the students it is the life time participation in life and for life of a student. A single lackdaisical act of the Board can mar the career and destroy the life. No Statutory Authority which has the responsibility towards the students can be unfair to them. It is worth noting a student who is at fault is bound to suffer. He who gets involved in copying or indulges in malpractice, has to face the wrath of law. But, a pregnant one, he who is innocent, cannot become a victim because of fault of the Board. Whoever may be the authority at fault, it is the vicarious liability of the Board to pay compensation to the grieved student, the writ Petitioner. Therefore, we are disposed to think that the learned Single Judge has appositely awarded compensation or Rs. 25,000/-keeping in view the relief sought for by the writ Petitioner, for in the relief clause there is a prayer for grant of compensation.

12. In similar circumstance, this Court has again awarded compensation to the Petitioner therein in the case of Madan Singh Thakur (supra).

13. In view of the Division Bench judgment of this Court rendered in the case of Rakesh Kewat (supra), which I am respectfully bound, I am of the considered opinion that the Petitioner, in the instant case, is also entitled to cost for the act of the Respondents which resulted in loss of one academic year to the Petitioner. While the exact compensation to which the Petitioner is entitled cannot be computed in writ proceedings and compensation to that extent cannot be awarded, however, in view of the aforesaid judgment, compensation on account of the negligence and casual attitude of the Respondents which has resulted in uncompensatable loss of one academic year to the Petitioner deserves to be awarded.

14. Taking the totality of the facts and circumstances into consideration, I am inclined to impose cost of Rs. 25,000/-(Rupees Twenty five Thousand) on the

Respondent University which would include the nation fees and other charges paid by the Petitioner for prosecuting the aforesaid course. The aforesaid amount be paid to the Petitioner by the Respondent University within one month from the date of receipt of a certified copy of the order passed today.

15. With the aforesaid direction the petition, filed by the Petitioner, stands allowed to the extent mentioned hereinabove.