
(2003) 02 MP CK 0098

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6088 of 2002

Bharat Kumar Singh

APPELLANT

Vs

The Registrar, Awadhesh Pratap Singh University and Another

RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14(3)(a)

Citation : (2004) 2 MPJR 375

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Rajeew Tiwari, for the Appellant; Arpan Pawar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner in the instant writ petition prays for the relief to issue appropriate writ or direction to declare the result of the examination of Master of Physical Education, First year. Petitioner appeared in the examination held in 2002 and to give admission in the final year.

Petitioner submits that APS University gave him admission in the Master of Physical Education Previous Year. No objection to the eligibility of the petitioner was raised at the time of admission. However, just on the verge of examination when examination form was filled, objection was raised by the Registrar, APS University about the eligibility and just on the eve of examination undertaking was obtained from the petitioner to the effect that in case he is not found eligible, examination may be cancelled by the University. University has not declared the result. Hence, present petition has been filed before this Court.

Petitioner has obtained the certificate of successfully completing one year course of "Vyayam Ratan" from Maharani Laxmi Bai Vyayam Mandir Vyayam College, Jhansi, U.P. which is deemed to be recognized. As per the prospectus P/1 of APS

University as petitioner has obtained post graduate diploma in physical education of atleast one year duration awarded by the University or a Board appointed by the Education Department of the State. Petitioner further submits that the National Council of the Teachers Education u/s 14(3)(a) of the National Council of Teachers Act, 1993 has granted recognition, to D.P.Ed. (Vyayam Ratan) one year course from the academic year 1998-99, as per order P/10, hence the action of the respondent University is uncalled for.

Petitioner is stated to be graduate in the subject of Arts and is possessing D.P.Ed (Vyayam Ratan) from the respondent No.2 College. It is stated that "vyayam Ratan" is diploma in physical education. Thus, for failure of University of recognizing, the said course the petitioner cannot be made to suffer. Petitioner further submits that "Vyayam Ratan" is recognized by Barkatulla University, Bhopal, Jiwaji University, Gwalior and many other Universities as equivalent to D.P.Ed.

In the return filed by the respondent University it is contended that the respondent No.2 College is not recognized College University on account of bonafide mistake, the said defect was skipped by the concerned Head of Department of Physical Education. However, at the time of scrutiny of examination forms, the said defect was detected by the examination cell and memo dt. 27.4.2002 was issued. Petitioner was wrongly admitted. Explanation was sought as per memo R/1 dt. 24.7.2002 from the Director. Another reminder R/2 was issued on 10.5.2002, but, no satisfactory reply was received from the physical education department, therefore as per letter R/3 dt. 22.5.2002 the examination form was cancelled. An application dt. 24.5.2002 was submitted by the petitioner along with an affidavit requesting for grant of conditional temporary permission to appear in the master physical education previous year examination which was going to start from 27.5.2002. It was submitted by the petitioner that in case College is not found to be recognized then University shall be at liberty to cancel his result. Treating the case of the petitioner sympathetically in view of the affidavit of the petitioner temporary admit card P/7 was issued and conditional permission was given to appear in master of physical education previous year examination 2002. Petitioner could not produce any oral or documentary evidence relating to recognition of the respondent No.2 College and it was found that respondent No.2 is not recognized College/ University, hence, result was withheld. Petitioner is not fulfilling the eligibility criteria.

After hearing learned counsel for the parties, perusing the various documents, in my opinion action of the University is clearly arbitrary. Initially university had admitted the petitioner without any objection as to the eligibility. Petitioner had not suppressed any fact from the University. In case petitioner was not possessing requisite qualification and was not eligible admission ought not to have been given by the University. But, petitioner persuaded the study for complete one year. Fee was realized by the University. All of a sudden on the

verge of examination University woke up and issued memo R/1 to the Director, even after objection being raised by the University temporary admit card was issued to the petitioner to appear in the examination. Thereafter the University has not decided about the matter of recognition and has thrown the burden on the petitioner and has withheld the result of the petitioner. Document P/11 suggests that the State of Uttar Pradesh has recognized "Vyayam Ratan" which is granted by respondent No.2 College equivalent to C.P.Ed. The Respondent No.2 College is also recognized under National Council of Teacher Act, 1993.

There is uncontroverted averment made in the petition that in Barkatullah University Bhopal and in Jiwaji University Gwalior "Vyayam Ratan" is recognized equivalent to D.P.Ed. Thus, once the University has admitted the petitioner, petitioner has persuaded the study for complete one year it would be highly unjust and improper for the university and say that the petitioner was wrongly admitted. It is not the case where it can be said that the petitioner was wrongly admitted in the institution and if it was so the University ought to have seen this aspect at the time of admission.

In *Sanatan Gauda Vs. Berhampur University and others*, . It has been laid down in paragraphs No.10 and 14 as under:

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 mark-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.

The Principal wrongly assured the University authorities that he had verified the position and that all the candidates were eligible. In these circumstances, the argument is that the appellant cannot take advantage of the fact that the University allowed him to appear at the examination. I am afraid, the stand of the respondent cannot be accepted as correct. From the letters of the University it is clear that it was not depending upon the opinion of the Principal and had decided to verify the situation for itself. In that situation it cannot punish the student for the negligence of the Principal or the University authorities. It is important to appreciate that the appellant cannot be accused of making any false statement or suppressing any relevant fact before anybody. He had produced his marks-sheet before the College authority with his application for admission, and cannot be accused of any fraud or misrepresentation. The interpretation of the rule on the basis of which the University asserts that the appellant was not eligible for admission is challenged by the appellant and is not accepted by the

College and my learned Brother accepts the construction suggested by him as correct. In such a situation even assuming the construction of the rule as attempted by the University as correct, the Principal cannot be condemned for recommending the candidature of the appellant for the examination in question. It was the bounden duty of the University to have scrutinized the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his results.

In *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, it has been held that once the candidate is 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 candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear and the giving the candidate permission to appear and the undertaking which was given by the student before appearing in the examination was held to be given in *terrorem* and in complete ignorance of his legal rights. It was held that the undertaking given by him did not put him out of courts if the university cancels his candidature.

The University is estopped in the instant case to round and to efface the education obtained by the petitioner for valuable one year. For the future purpose, respondent University may take specific decision whether to allow Vyayam Ratna equivalent to D.P.Ed. However, the University is bound by the admission given and declare the result of the petitioner and also allow the petitioner to prosecute the study of final year.

Resultantly writ petition is allowed. No order as to costs.