

(1999) 03 J&K CK 0026
In the Jammu And Kashmir High Court
Case No : OWP. No. 208-A of 1999

Guncha Sharma	Vs	APPELLANT
State of Jammu and Kashmir and others		RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 2 SCT 1005

Hon'ble Judges : G.D.Sharma, J

Bench : Single Bench

Advocate : D.S. Thakur, D.S. Chouhan, Rakesh Sharma, Advocates appearing for the Parties

Judgement

G.D. Sharma, J.—Through the medium of this writ petition issuance of writ of Certiorari is prayed for quashing Order No. F(ExCC) 50 of

1999 dated 4.2.1999. The case of the petitioner in brief is that she in the year 199798 passed Higher Secondary PartI examination under Roll No.

101396. The result of this examination was declared in the month of May 1998 and as per certificate issued by the Principal Govt. Higher

Secondary School, Mubark Mandi, Jammu (Achievement in academic and vocational subjects) she was shown to have passed by obtaining 239

marks in total. The petitioner took admission in Higher Secondary PartII class in the same school on 5.8.98 and had been attending the course as a

regular student under Roll No. 598. In the month of October 1998, she applied before respondent2 for seeking permission to take part in Higher

Secondary PartII examination and her application was routed through respondent5. In the month of January, 1999, application form submitted by

the petitioner was returned by the Joint Secretary (Exams) J&K Board of School

Education on the plea that she had not passed 11th class (Higher Secondary PartI examination) as she had failed in two subjects i.e. English and Home Science. She made a representation dated 29.1.99 before respondent3 through respondent5 who vide annexureD had recommended her case. Respondent No. 4 rejected the application of the petitioner vide his order dated 4.2.99 and debarred her to appear in Higher Secondary PartII which had to take place with effect from 13.3.99. The petitioner has challenged order No. F(ExCC) 50 of 1999 dated 4.2.1999 on the ground that she had taken admission in Higher Secondary PartII class and undergone studies and now for no fault of her she was being debarred to appear in the examination and was being asked to clear higher secondary partII class. Respondents cannot be allowed to take benefit of their own wrongs and even if the petitioner had failed in Higher Secondary PartI examination, even then, she was allowed to pursue the studies in the higher class, but she for no fault of her can be made to sacrifice two precious years of her life. The result of Higher Secondary PartI examination was declared in the month of May 1998 and the Achievement Card was despatched in the month of June/July 1998.

2. Objections have been filed by the respondents wherein it is pleaded that the examination of 11th class (Higher Secondary PartI) is conducted by the School authorities regularly on the basis of papers set by the Board of School Education. The answer scripts are evaluated by the School authorities themselves. After the completion of evaluation process each result is countersigned by the Board authorities. The school authorities had issued the Achievement Card showing the petitioner to have secured 47 marks in General English and 32 marks in Home Science, but the Board authorities when checking at the stage of countersigning, it was found that she had not passed in General English and Home Science. She was required to secure 49 marks in General English and 39 Marks in Home Science as against 47 marks secured by her in General English and 32 marks secured in Home Science. Assistant Secretary of the Board of School Education vide his letter dated Jan. 20, 1999 had informed respondent5 of this position. The petitioner had no cause against respondents No. 1 to 4 and could have the grievance against respondent No. 5 who had wrongly shown her to have passed in these two subjects. School

authorities had committed an error because they permitted the petitioner's admission in class XII when she was not eligible. School authorities had given permission to ineligible candidate and no writ of mandamus can be issued against respondents No. 1 to 4.

3. In the objections filed on behalf of respondent5, he has pleaded that he had issued Achievement Card in favour of the petitioner showing the marks which she had obtained, but upon verification of the result by the J&K State Board of School Education at the stage of countersigning, it was found that the petitioner had not cleared two subjects namely, General English and Home Science. For having passed in these two subjects she should have achieved 49 marks in General English and 39 marks in Home Science. It is also stated that the petitioner did not attend Higher Secondary PartII class regularly with effect from 1.11.98. No writ can be issued against a statute and as per requirement of the statute in question, the petitioner has not passed PartI Higher Secondary class examination.

4. Heard the arguments.

5. Learned counsel appearing for the petitioner has stressed that petitioner has not to suffer for no fault of her because respondent5 had by issuing Achievement Card in the examination in her favour showed her as a successful candidate and then granted the admission in the next class (Higher Secondary PartII class). That equity is in favour of the petitioner and in case she is not allowed to take part in the examination which is starting from March 13, 1999, but she will waste her two precious years of her life. Learned counsel has cited the cases of *Km. Maxey Charan v. Rohilkhand University*, AIR 1992 Allahabad 122, *Ku. Bharti Srivastava v. Jiwaji University*, Gwalior, AIR 1989 MP 197, *Basanta Kumar Mohanty v. Utkal University*, AIR 1990 Orissa 10 and *Miss Sangeeta Srivastava v. Prof. U.N. Singh and others*, AIR 1980 Delhi 27 and claimed

that the doctrine of equitable estoppel is applicable in the present case and respondents are debarred to pass any order whereby the petitioner cannot be allowed to take part in the Higher Secondary PartII examination. Learned counsel appearing for the respondents have contended that

the petitioner is ineligible candidate for XII class examination as according to the statute she has not passed 11th class. By mistake or inadvertence in case respondent No. 5 had issued an achievement card showing therein that

the petitioner had passed 11th class, that does not mean that respondents No. 1 to 4 are required to be connected with the commission of mistake or an act of inadvertence because in the discharge of their official functions, they have detected the mistake at an early time when the result had come for counter signing and pointed out the defect in the month of January 1999. The petitioner was not attending the classes regularly, therefore, she could not be personally told about her ineligibility.

6. After hearing the respective contentions of the counsel for the parties and going through the record, it is held that the petitioner is not found eligible to have passed Higher Secondary Part I examination in terms of the statutory criteria and thus she cannot claim to take part in the examination of the next higher class (12th class). In the case of *Km. Maxey Charan v. Rohikhand University* (supra) Allahabad High Court had given the petitioner the benefit of promissory estoppel when the mistake was committed by the University officials and on the basis of marks issued in her favour, she had improved her position which could not be altered to her disadvantage after a lapse of more than two years. The peculiar feature of the case was that the advantage gained by the petitioner in the case was on the express assurance given by the University which they had sought to be annulled after a lapse of two years, but that is not the present case. No act can be attributed to respondents No. 1 to 4 which could have given any assurance to the petitioner to change her position for the better. Rather, concerned officials of the Higher Secondary Board at the time of countersigning the result detected the mistake or the mischief and they cannot be held responsible for the act of respondent 5. In the case of *Miss Sangeeta Srivastava* (supra) applicability of the doctrine of equitable estoppel was allowed in educational qualification on the basis of inaction by the University resulting in admission to noneligible candidates, but the facts of the case in hand are different and the principle laid down has no application. Similarly, the law cited at the bar in the case of *Ku. Bharti Srivastava v. Jiwaji University, Gwalior* (supra) and *Basant Kumar Mohanty v. Utkal University* (supra) have no application. On this view of the matter, it is therefore, held that there is no merit in this writ petition which is accordingly dismissed.