
(2012) 03 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37797 of 2007

Jaiprakash

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Citation : (2012) 5 ADJ 771 : (2012) 4 AWC 4178

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Anand Kumar Srivastava, for the Appellant; Neeraj Tiwari and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble A.P. Sahi, J.—Heard learned counsel for the petitioner and Sri Neeraj Tiwari representing respondent Nos. 2, 3 and 4 and the learned Standing Counsel for the Respondent No. 1. The petitioner got himself enrolled as a Ph.D. Scholar in the University. He has been denied the right to pursue his Ph.D. Degree and his research papers are not being accepted on the ground that the petitioner's enrolment in the Ph.D. course was illegal as he lacked the minimum eligibility as required for such enrolment, namely, possession of at least 55% marks in a post graduate course recognized by the University. The petitioner is a M.Sc. but he has only 48% marks in the said course.

2. The argument of the learned counsel for the petitioner is that his admission has been voluntarily done by the University on the basis of the marks awarded to him in his M.Phil. degree which is 70% and, therefore, the minimum eligibility is possessed by the petitioner. It is further contended that this admission was voluntarily done by the University with open eyes and the University cannot now be permitted to take a "U" turn and deny the opportunity to the petitioner to pursue his Ph.D. research work.

This writ petition was filed with the following three prayers:

(i) issue a writ, order or direction in the nature of mandamus commanding the respondents to submit thesis of the petitioner of Ph.D. (Botany) topic on "STUDIES ON FRESH WATER CYANOPHYCEAE AND CHLOROPHYCEAE OF EASTERN UTTAR PRADESH.

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to award the thesis of the petitioner after evaluation by the examiner.

(iii) issue a writ, order or direction in the nature of a suitable manner as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

3. The petition was entertained and learned counsel for the University was directed to seek instructions for showing cause.

4. A counter-affidavit has been filed by the University bringing on record the photostat copy of the original application form submitted by the petitioner in his own hand writing at the time of seeking enrolment in the Ph.D. Research Course. A Rejoinder-affidavit to the same has been filed.

5. Having heard Sri Srivastava for the petitioner and Sri Tiwari for the respondent-University a perusal of the records indicates that the form which has been filled up by the petitioner categorically indicates his post-graduate qualification as M.Sc. while in the column No. 5 of other qualifications he has mentioned M.Phil. (Botany).

6. There is nothing on record to indicate that M.Phil, is a recognized postgraduate course of the University. Sri Srivastava relying on the dictionary meaning of Master of Philosophy, downloaded from the internet through Wikipedia, submits that Master of Philosophy is a postgraduate research degree and is a senior degree than what is taught at the masters level. The aforesaid definition in no way helps the petitioner in as much as the description in the said dictionary is that M.Phil, is a post graduate research degree.

7. The Ordinance No. 30 (a) (b) are reproduced hereinunder:

1.A candidate for the degree of Ph.D. must, at the time of application be, either :

(a) a M.A. M.Stat, M.Ed. M.Com, M.Sc, M.Sc. (Ag) of the University or of any other University incorporated by any law for the time being in force and recognised by the Executive Council, or

(b) an M.A. M.Ed. M.Com, M.Sc. or M.Sc. (Ag) of any University incorporated by any law for the time being in force who is working as a teacher in any college affiliated to the University.

8. Thus by the very definition it is not a simple post-graduate degree which according to the ordinances applicable for admission, is not the minimum eligibility criteria.

Apart from this the very disclosure in the application form is also clear. Coming to the arguments of the counsel for the petitioner that the University with open eyes allowed the petitioner admission to the course should be taken as an estoppel and, therefore, the petitioner cannot be now called upon by the University to discontinue is course, is also unacceptable. In the opinion of the Court there is no estoppel against statute. The ordinances framed by the University has a statutory force and the University cannot be compelled to take admission of a student against the qualifications prescribed in the statutes.

If the University has committed any mistake then it is for the petitioner to sue the University in case he is able to establish that such a mistake has resulted in any compensatory loss to be computed in monetary terms.

There is no prayer for damages made in the present writ petition to enable this Court to entertain the aforesaid plea as well. There is no merit in the petition hence the same is hereby dismissed.