

(2019) 05 RAJ CK 0252

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15406 Of 2017

Karamveer Singh

APPELLANT

Vs

Jai Narain Vyas University And Ors

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 RAJ CK 0252

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Nikhil Dunagwat, Ram Niwas Choudhary

Judgement

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"A/. By appropriate writ and direction the order dated 11-13.11.2017 (Annex.-07) may kindly be quashed and set aside.

B/. By appropriate writ and direction the Respondent may kindly be directed to issue revised mark sheet taking into consideration the improved marks as per marksheet dated 05.07.2017 (Annex.-04) in the subject "Political Science" in B.A. Final Year.

C/. Any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

D/. Writ petition filed by the Petitioner may kindly be allowed with costs."

2. Brief facts of this case, as noticed by this Court, are that the petitioner passed his Secondary and Senior Secondary Examinations with 70.67% and 76.60% marks respectively. The petitioner thereafter completed his B.A. Final Year in the year 2016. However, since the petitioner secured less marks in the Subject "Political Science" in B.A. Final Year Examination 2016, therefore, he opted for re-

evaluation, but the marks of the petitioner remained unchanged. The petitioner thereafter applied for percentage improvement in the Subject "Political Science (Part I and Part II)", whereupon he secured 114 marks in the said Subject, whereafter a provisional mark sheet was issued to the petitioner on 05.07.2017, which is on record.

3. The improved marks, as aforementioned, helped the petitioner in securing 52% marks in totality, which qualified him to appear for the B.Ed. Course through Entrance Examination of PTET, and therefore, the petitioner appeared in the PTET 2017 Examination and cleared the same. The petitioner thereafter, was allotted Deep Shikha TT College, RIICO Industrial Area, Sitapura, Jaipur, Rajasthan.

4. Thereafter, the petitioner sought his amended/revised/improved mark sheet from the respondent-Jai Narain Vyas University, Jodhpur for the B.A. Final Year, as per the improved marks, but the respondent-University rejected the claim of the petitioner on the ground that the petitioner appeared only in one Subject for improvement, and therefore, he not could be given the revised mark sheet, while adding the improved marks, as the same was contrary to Ordinance 114-A of the University.

5. The aforesaid Ordinance 114-A reads as under:-

"Ordinance 114-A. A candidate who has already passed the First Year or Second Year or the Third Year of the degree examination in Arts or Social Sciences, or Science, or Commerce of this University may be permitted to repeat the same examination in degree course last passed by him/her in the immediately succeeding year only, according to the scheme and syllabus prescribed for the current year's examination, in all the theory papers and practical's either as a regular student or without attending a regular course of study, as the case may be.

6. Learned counsel for the petitioner submitted that the petitioner made a representation before the respondent-University stating therein that he had applied for such improvement in accordance with the permission given by the University itself and was also issued an admit card dated 12.2.2017, which is on record, and thereafter, a provisional mark sheet, giving him improved marks in Subject "Political Science" was also issued. Therefore, at this juncture, if the University turns back its back over the petitioner, then the petitioner shall be made to suffer an irreparable loss due to rejection of his claim in respect of issuance of revised/amended mark sheet as per the improved marks.

7. Learned counsel for the petitioner further submitted that the learned Vice Chancellor had discretionary power under 12(5) of the Statute of 1962 and also had the power to relax the Rules and Ordinance in favour of the student, and it is a fit case, where the University was at fault, and thus, the petitioner could not be made to suffer in such a case.

8. Learned counsel for the petitioner also submitted that the petitioner is already pursuing his B.Ed. Course from Deep Shikha TT College, Sitapura, Jaipur, Rajasthan and the non-issuance of the mark sheet and rejection of the claim of the petitioner in respect of the improved marks would render him ineligible for the said Course, and the same will further render his B.Ed. Degree, which he is likely to attain, as a nullity.

9. Learned counsel for the petitioner further submitted that in light of issuance of the provisional mark sheet and declaration of the provisional result, pursuant to the petitioner appearing in the exam for percentage improvement with Roll No.15PBA90377 in 2017, the claim of the petitioner for issuance of the revised mark sheet, while taking into consideration the improved marks, has been wrongly rejected by the respondent-Jai Narain Vyas University, in the garb of Ordinance 114-A, which was well within the knowledge of the University before it permitted the petitioner to have the improvement in the sole subject of "Political Science".

10. Learned counsel for the petitioner relied upon the judgment rendered by a Division Bench of this Hon'ble Court in Nitesh Kumar Goyal & Ors. Vs. Maharaja Ganga Singh University, Bikaner & Anr. (D.B. Civil Special Appeal (Writ) No.244/2016 decided on 25.05.2016), relevant portion of which reads as under:

"In this factual background, we are having no doubt that the College intentionally and knowingly admitted the appellants to the course of M.Sc. despite their ineligibility. Learned Single Bench, thus, rightly observed that the College violated the Guidelines/Policy/Rules laid down by the University. We are also having our own doubts about the fact that the appellants were innocent and they were also not knowing about their ineligibility and further that they simply acted as per the prospectus published and issued by the College. True it is, the conduct of the College as well as the appellants is deplorable, but at the same time we are of the view that the appellants are young boys and they have spent two precious years in acquiring studies, hence, their conduct can be saddled in a better way by imposing some other punishment instead of cancelling their admission to the course of M.Sc. We would also like to state that the eligibility prescribed is not statutory but administrative in nature.

In the instant matter too the appellants have undergone two years studies and have also appeared in M.Sc. (Final) examinations. The cancellation of their examination at this stage shall be too harsh. The cancellation of their admission though will adversely effect their entire career, but shall not be any lesson for the College, the Principal culprit in committing the wrong. The College, as already stated, knowingly and intentionally admitted the appellant petitioners in the course of M.Sc., thus, deserves to be dealt with sternly. We are also of the view that the University should also be vigilant and should provide necessary guidelines to ensure that no Institution/Body/ person may misuse its authority relating to admission in educational courses."

11. On the other hand, learned counsel for the respondent submitted that the petitioner had appeared in the B.A. Final Year Examination for the Session 2015-16 with the Roll No. 14RBA64291 and in the Final Year, he obtained total 298 marks out of 600.

12. Learned counsel for the respondent further submitted that the petitioner sought improvement, but the same should have been in all the theory papers and practicals, but the petitioner had filled the form only for one Subject i.e. Political Science, which was contrary to Ordinance 114-A, and therefore, no relief can be granted to the petitioner.

13. After hearing learned counsel for the parties as well as perusing the record of the case, alongwith the precedent law cited at the Bar, this Court finds that the present controversy lies in a very narrow compass as the petitioner, who was a B.A. Final Year student with the respondent-Jai Narain Vyas University in the Session 2016 secured 298 marks out of 600. However thereafter, the petitioner filled a form for improvement and upon issuance of admit card and pursuant to the examination, he was given provisional mark sheet, whereby his marks in the Subject "Political Science" went higher to 114, thus taking him to overall 52% marks, which were necessary for qualifying the PTET Examination, that the petitioner undertook as his future education, so as to pursue his professional aspiration.

14. This Court also finds that the petitioner is already undergoing his B.Ed. Course on the basis of the provisional mark sheet at Deep Shikha TT College, Jaipur, and if the provisional result of the petitioner is reversed, then it is bound not only to reduce the percentage of the petitioner, but would also disqualify the petitioner from B.Ed. Course, which he is undergoing, as the minimum requirement of 50% marks in Graduation for appearing in the PTET Examination would not be fulfilled.

15. This Court on a careful perusal of Ordinance 114-A, as quoted hereinabove, finds that the University cannot be allowed to probate and reprobate, as they themselves have permitted the petitioner to appear in the percentage improvement programme by accepting his form/application. The examination fee was deposited by the petitioner and the same was accepted by the University. The petitioner was also issued an admit card with open eyes by the University and after taking his examination, a provisional mark sheet was issued, which entitled the petitioner to claim 52% marks, which enabled him to pursue the B.Ed. Course through Entrance Examination of PTET 2017.

16. This Court further finds that Ordinance 114-A lays down a broader scheme for improvement examination, but does not restrict the candidate from taking the improvement examination in one of the papers alone.

17. This Court also finds that it is an extremely arbitrary stipulation inasmuch as the student pursuing his graduation degree is saddled with a condition that he needs to make improvement in all the Subjects together. The said stipulation is

also contrary to the basic law that a student from any class for pursuing course can go ahead with improvement, if so provided, in a particular Subject, where he feels that justice has not been done to his merit and he could secure better marks. However, it is not necessary that every student needs to go in for complete improvement even when he is satisfied with his marks on the merit basis in some of the Subjects.

18. The very basic idea of providing an opportunity for improvement means the student's dissatisfaction for his performance and the marking pattern could be re-channelized into a fresh examination by giving him an opportunity to improve his marks.

19. It is not necessary that a student shall be required to give improvement exam in all the possible papers, even when he has complete satisfaction that such papers went on all and he could not secure better marks, than what he had already secured.

20. The very basis of the concept of improvement, which is an opportunity provided to the student to get his merit in order in case of any gross dissatisfaction with the marking pattern or his idea of merit in a particular examination, ought to be kept in a proper perspective. Thus, this is a fit case where the aforementioned Ordinance 114-A of the University needs to be read down by this Court by holding that the language that the student shall be permitted to take up the examination in Arts or Social Sciences, or Science, or Commerce of the respondent-University to repeat the same examination in degree course last passed by him/her in the immediately succeeding year only, according to the scheme and syllabus prescribed for the current year's examination in all the theory papers and practicals either as a regular student or without attending a regular course of study, shall mean that the student shall be able to appear in the improvement examination in any of the papers, that he chooses which may extend to all the theory papers and practicals. The words "repeat the same examination in degree course last passed" clearly envisages that Ordinance 114-A does not restrict a candidate or any student from appearing in one paper alone for improvement, if he chooses to do so.

21. Thus, while reading down Ordinance 114-A, as a law, which would permit the candidate to upgrade his result by repeating the examination in question in the degree course even when he had passed the same in the previous years, will begin with an opportunity to the student to participate in any of the theory papers and practicals, which may be one or may be all.

22. This Court is of the opinion that in the cases like the one at hand, which is pertaining to a student's claim in respect of consideration of his improved marks and issuance of amended/revised mark-sheet which will certainly affect his academic pursuits and future prospects, technicalities should not be permitted to defeat the ends of justice; rather the same have to be utilized to do complete and substantial justice so as to sustain the trust and confidence reposed by the

student community in the justice delivery system.

23. This Court thus finds that the University had initially understood the benevolent and purposeful meaning of Ordinance of 114-A in permitting the petitioner to make percentage improvement in the Subject of Political Science Part I and Part II as permitted in pursuance of his application dated 30.11.2016 and also by issuing admit card dated 12.2.2017, which later on culminated into the petitioner giving the examination and scoring 114 marks in the Political Science Paper, which enabled him to get percentage improvement and his overall percentage became 52%.

24. In view of the above and the fact that the petitioner is already undergoing his B.Ed. Course, this Court, while reading down the aforequoted Ordinance 114-A, allows the present writ petition and the order dated 11-13.11.2017 is quashed and set aside, and the provisional mark sheet issued on 05.07.2017 shall be treated as the final result of the petitioner by adding the marks improved by the petitioner in the Subject "Political Science" in B.A. Final Year, and the respondent No.3 is directed to treat the petitioner's marks as 52% while permitting him to continue his B.Ed. Course after qualifying the PTET Examination 2017 with Deep Shikha TT College at RIICO Industrial Area, Sitapura, Jaipur.