

(2003) 09 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

K.m. RADHA

APPELLANT

Vs

VICE-CHANCELLOR, CHHATRAPATI SHAHUJI MAHARAJ
UNIVERSITY

RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

Citation : 2004 4 CPJ 28

Hon'ble Judges : M.Katju , Umeshwar Pandey J.

Advocate : Jai Shanker Audichya , D.K.Singh , U.N.Sharma

Judgement

1. HEARD Mr. J.S. Audichya, learned Counsel for the appellant and Mr. U.N. Sharma, learned Counsel for the respondents 1, 2 and 3.

2. THE appellant is challenging the judgment of the learned Single Judge dated 26.8.2003. THE learned Single Judge has held that under the Rules of the Kanpur University only those students could appear in the back paper examination who had secured 33% marks in the aggregate. THE appellant had secured 32.67% marks and, therefore, she was not eligible to appear in the back paper. We fully agree with the view taken by the learned Single Judge. Since the appellant has not got 33% marks, she was obviously ineligible to appear in the back paper.

Learned Counsel for the appellant has relied on a decision of a learned Single Judge of this Court in Pravesh Kumar Dubey v. University of Kanpur, 1990 (2) UPLBEC 1053. The facts of that case were that the petitioner was declared passed in B.Sc. Part I examination and was permitted to join B.Sc. Part II. He, thereafter, also appeared in the B.Sc. Part II examination, but his result of B.Sc. Part II was not declared by the University on the ground that he had not passed B.Sc. Part I and was wrongly passed on account of a wrong mark sheet issued inadvertently by the University.

3. THE learned Single Judge on these facts held, that it will be too harsh for the petitioner and his career will be adversely affected, since his two years will be wasted as he will again have to join B.Sc. Part I, if the action of the University is

upheld. The learned Single Judge has relied on the decision of the Supreme Court in *Sanatam Gauda v. Berhampur University*, J.T. 1990 (2) SC 57. In that case, the facts were that the petitioner was admitted to the law college on the basis of the mark-sheet issued by the University and he was studying in the law college for two years. It was only at the stage of the declaration of his result of the law examination that the University raised the objection of his ineligibility to be admitted to the law course. The Supreme Court held that on the principle of estoppel the University is estopped from preventing the petitioner from appearing in the law examination, since the petitioner cannot be punished for the negligence of the University authorities.

4. THE learned Single Judge also relied on the decision of the Division Bench of this Court in *Raj Nath Singh Yadav v. Secretary, Madhyamik Shiksha Parishad*, 1987 ALJ 381, and the decision of the learned Single Judge in *Bundelkhand University v. Luxmi Narain Yadav*, 1983 UPLBEC 226. Learned Counsel for the appellant has also relied on the decision of the Division Bench in *Ved Pal Singh v. Madhyamik Shiksha Parishad*, 1987 UPLBEC 298, in which, it was held that once having declared the result the Board was estopped from recalling that result and thereafter declaring the petitioner as failed almost after two years. This cannot be done as it will adversely affect the career of the petitioner who had already studied for two years by attending the intermediate classes. In our opinion, the above decisions are all distinguishable as it is well settled that there is no estoppel against the statute vide *Risabh Kumar v. State of U.P.*, AIR 1987 SC 1576, *A.C. Jose v. Sivan Pillai*, AIR 1984 SC 921, *Air India v. Nergesh Meerza*, AIR 1981 SC 1829. In the present case the University Rules have clearly provided that only a student who has obtained at least 33% marks, can appear in the back paper. The appellant obtained only 32.67% in the aggregate marks. This was less than 33%.

5. LEARNED Counsel for the appellant submitted that the difference between 33% marks and 32.67% marks is very small. In our opinion, the law is exact. Either the law is complied with or it is not complied with, and one cannot blow hot and cold together. For instance, if the age for appearing in a competitive examination is 21 years, and a person says that he is 20 years 11 months and 29 days old and hence, he should be allowed to appear in the examination, his claim cannot be accepted.

6. AS is said "*Dura lex sed lex*", which means "the law is hard but it is the law". For the reasons given above, we are in agreement with the view taken by the learned Single Judge.

The special appeal is dismissed. Special Appeal dismissed.