**(2009) 09 CHH CK 0029**

**In the Chhattisgarh High Court**

**Case No :** Writ Petition (C) No. 4154 of 2008

Ku. Sapna Mittal APPELLANT

Vs

Guru Ghasidas University and Others RESPONDENT

**Date of Decision :** 02-09-2009

**Acts Referred:**

**Citation :** (2010) 1 CGLJ 111

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Amit Sharma, for the Appellant; Ashish Shrivastava, for Respondent Nos. 1 to 3 and Arvind Dubey, Panel Lawyer for State, for the Respondent

**Final Decision :** Allowed

## Judgement

Satish K. Agnihotri, J.—By this petition, the Petitioner seeks a writ of mandamus directing the Respondent-University to issue a fresh mark-sheet as per the previous prospectus and declare the Petitioner pass in the M.Com (Previous) examination held in March-April, 2007.

2. The facts, in nutshell, as projected by the Petitioner, are that the Petitioner was the regular student of M.Com (Previous) of the college-Respondent No. 4. The Petitioner submitted her examination form and the internal assessment was held as per the schedule of the University in the month of February, 2007. The time table of M.Com (Previous) for the academic session 2006-2007 (Annexure P/2) was declared and the examination started from 13th of March, 2007, and ended on the 17th April, 2007. Thereafter, the result was declared on the 16th June, 2007 (Annexure P/3), wherein the Petitioner found that she had failed in the internal assessment of the subject Corporate Financial Accounting securing 9 marks out of 3 0. The Petitioner wrote a letter to the Respondent-University for correction of her mark-sheet and declaring her as ''pass''. The said letter was replied vide communication dated 5th July, 2008 (Annexure P/1) by the Respondent-University denying any corrections in the mark-sheet.

 

3. Shri Arriit Sharma, learned Counsel appearing for the Petitioner would submit that since the Petitioner has secured 9 marks out of 30, the Respondent-University ought to have declared the Petitioner as passed, as she had secured more than 20% of the maximum marks. Shri Sharma would further submit that when the Petitioner was admitted to M.Com (Previous) course, the prospectus clearly provided that in internal assessment, the minimum qualifying marks would be 20%, but for qualifying M.Com (Previous) examination, the total minimum marks should be 36%. During the academic session, the minimum qualifying marks in internal assessment was changed from 20% to 36%, pursuant to the order dated 15th March, 2007 (Annexure R/1-3). The Petitioner has obtained 48 marks in total out of 100 marks but in internal assessment, the Petitioner was awarded 9 marks, which according to the earlier prospectus was more than 20% and accordingly, the Petitioner ought to have been declared as "pass".

4. Per contra, Shri Ashish Shrivastava, learned Counsel appearing for the Respondents 1 to 3, would submit that the petition deserves to be dismissed on the ground that it has been filed with an inordinate and unexplained delay, as the amendment with regard to minimum qualifying marks in every paper of every subject including the internal assessment from 20% to 36% was notified on 15th March, 2007 by the University and was communicated to all the concerned affiliated colleges.

5. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

6. The question involved in this petition is as to whether the minimum qualifying marks as prescribed at the time of admission to the M.Com (Previous) course can be modified or changed after the internal assessment had been conducted by the University. It is indisputable that at the time of admission to M.Com (Previous) course, the minimum qualifying marks in the internal assessment was 20%. The internal assessment was completed in February, 2007. The University decided to increase the minimum qualifying marks from 20% to 36% by order dated 15th March, 2007, in the internal assessment. Contention of Shri Sharma that once the minimum qualifying marks for assessment has been prescribed at the time of admission to the course, the authorities cannot change the same, except prospectively in the subsequent academic session, merits acceptance.

7. The Hon''ble Supreme Court, in Durgacharan Misra Vs. State of Orissa and Others, , observed that once the rules have been prescribed for selection, the selecting authority i.e. the State Service Commission cannot prescribe additional requirement for selection either as to the eligibility or as to the suitability. The decision of the Commission to prescribe minimum marks to be secured at the viva voce test, was held to be illegal and without authority.

8. Further, in Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, , the Hon''ble Supreme Court observed as

 

under:

5...It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced....

9. The above cited decisions are in case of selection for appointment, however, the principle as observed in Maharashtra State Road Transport (supra), is applicable to all the cases whether it is academic examination or selection for employment. Applying the well-settled law to the facts of the case on hand, wherein the Petitioner was informed at the time of admission to the M.Com (Previous) course that the minimum qualifying marks in internal assessment would be 20% and as such, rules cannot be changed during the academic session particularly when the internal assessment was held in February. 2007, by order dated 15th March. 2007. The Petitioner would be governed by the terms and conditions of the prospectus as was applicable to the Petitioner at the time of admission to the M.Com (Previous) course. However, this may not be construed, that the University has no jurisdiction or authority to change the minimum qualifying marks, but the same would be applicable only for the next academic session, not for the academic session wherein it was given out at the time of admission that the minimum qualifying marks in the internal assessment would be 20%. In the present case, 20% of 30 would be 6, and the Petitioner has obtained 9 marks, and in total, in the subject Corporate Financial Accounting, the Petitioner has obtained 48 marks out of 100 which is more than 36% as required in the prospectus given out at the time of admission to the M.Com (Previous) course.

10. Contention of Shri Shrivastava that the Petitioner has filed this petition belatedly without explaining the inordinate delay, deserves to be rejected as the Petitioner immediately made a representation to the Respondent No. 3 on 27 June, 2006 and no response to the representation was received by the Petitioner and thereafter, the Petitioner approached the Respondents also which was replied on 2nd July, 2008. The present petition was filed on 28th July, 2008. Thus, there is no delay in filing this petition.

11. For the reasons mentioned hereinabove, the petition is allowed. The Petitioner is entitled to consequential reliefs flowing from this order. No order as to costs.