
(2015) 01 AHC CK 0084
In the Allahabad High Court
Case No : Special Appeal No. 29 of 2015

Kumari Renu Pal	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Citation : (2015) 1 ADJ 602 : (2015) 3 ALJ 553 : (2015) 109 ALR 499 : (2015) 2 AWC 1488 : (2015) 2 UPLBEC 1118

Hon'ble Judges : Akhtar Husain Khan, J.; Rakesh Tiwari, J.

Bench : Division Bench

Advocate : Pramod Kumar Srivastava and Sanjeev Singh, for the Appellant;
Neeraj Tiwari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant learned Standing Counsel and Sri Neeraj Tiwari for the respondents. The appellant challenges the order dated 2.12.2014 passed in Civil Misc. Writ Petition No. 18497 of 2014 (Kumari Renu Pal v. State of U.P. and 4 others) on the ground that the learned Single Judge has failed to consider that the order dated 8.5.2012 passed in Special Appeal No. 84 of 2011 by a Division Bench had become final and was binding on the Single Judge therefore no question arose for determination, and that rejection on the part academic council would amount to sitting over an appeal by the Single Judge over the judgment and order dated 8.5.2012 passed in the aforesaid Appeal No. 84 of 20" by which findings had already been upheld in favour of the appellant.

2. The judgment impugned is further assailed on the ground

"(a) that the interim orders dated 23.12.2010 the appellant had appeared in 3 papers of 5th semester and was allowed to appear in 6th semester which were duly complied by the respondent university as such holding that the said interim orders under which she had appeared in the said exams hold no significance at

this juncture is unsustainable and unjustified,

(b) and that the facts on which the earlier writ petition No. 56954 of 2007 was dismissed vide order dated 7.4.2008 which order had merged in the order dated 8.5.2012 passed in her Special Appeal No. 84 of 2011 and had also attained finality too as such the dismissal of the writ petition on the same grounds was not at all open,

(c) and that the observations issued by the Hon'ble Division Bench were completely ignored in the judgment impugned in the writ petition,

(d) and that the college and university were held responsible for the delay as such the appellants case ought to have been treated as an isolated one for the reasons also that the Hon'ble Division Bench order passed in her Special Appeal on 8.5.2012 was only complied in the month of January, 2014 and that to after filing two contempt petitions i.e. Contempt Application (Civil) No. 2721 of 2013 and Contempt Application (Civil) No. 5957 of 2013,

(e) and that the writ petition was not subsequently amended challenging the vires of the Ordinance 4.3 which was also the initial challenge alongwith other prayers though the fact remained was the prayer of "certiorari" was amended to the extent of "mamdamus" which was allowed on 3.4.2014 and carried on 7.4.2014."

3. Learned counsel for the respondents has placed before us the impugned judgment passed by the learned Single Judge dated 2.12.2014.

4. From the record it is apparent that the appellant was admitted to B.B.S. Engineering College, Phaphamau, Allahabad for B.Tech. Course of Session 2004-05 after clearing the entrance examination held by the U.P. Technical University, Lucknow (referred to as University). The B.Tech. Course consists of eight semesters of six months each and the candidate had to clear five papers in each of the semesters. The appellant appeared in the first semester examination in December 2004 and passed in 1st semester with three carry over papers thereafter in 2nd semester examination held in May 2005 she appeared in all the five papers with two carry over papers of 1st semester (TIT 201 and TME-201). When the result was declared the appellant was shown to have passed only three papers of 2nd semester and did not pass the carry over papers as such she was shown as failed under the rules and was required to reappear in the 1st semester examination as ex-student since it is must to clear 6 out of total 10 papers of 1st year as per the respondents she had cleared only 5.

5. The appellant also appeared to have enquired about the exact position of her result on 17.11.2005 and on the basis of enquiry she was informed that she had cleared one back paper of 1st semester (i.e. TIT-201) it is therefore claimed that she had cleared 3 papers of 1st semester and three papers of 2nd semester altogether 6 out of 10 papers in 1st year and was eligible to appear in 2nd year (i.e. 3rd semester).

6. The contention of learned counsel for the appellant is that under the pressure of the University, the college has supplied her original mark sheet dated 30.7.2005 which she has received only in the month of December 2005, as such she has been made a scapegoat and unnecessarily harassed by the respondents wrongly withholding grant of promotion to her for 3rd semester and was promoted to the 3rd semester only in the month of December 2005 i.e. after 17.11.2005 when she was able to obtain her correct marks from the University.

7. In the 3rd semester the appellant again appeared in total five papers of the 3rd semester with two carry over papers of 1st semester and passed the examination with one carry over paper of 2nd semester but her result was declared as incomplete and was not uploaded on the website whereas the result of the other students was declared in March, 2006 in which she was orally informed that she had cleared only two papers of 3rd semester.

8. Learned counsel for the appellant however contends that the appellant was allowed to attend the 4th semester classes alongwith other students. In the 4th semester she appeared in five papers of 4th semester and two back papers of 2nd semester. Again her result for the 4th semester was shown to be incomplete on the website, rather she was shown that the back paper of 2nd semester in TEE-201 she had cleared by securing 31 marks and in TAS-201 she was shown fail by securing 23 marks which was later corrected being the mistake on the part of the respondent university. Thus she was continuously being made to suffer on account of mistake on the part of the respondents. She moved applications and reminders before the University for correction of the mistakes upon which her marks were corrected in the TME-101 in which she had been declared unsuccessful.

9. According to learned counsel, the appellant cleared all the papers of 1st semester but she was not promoted nor allowed to sit in the 5th semester for the alleged reason and she had not fully cleared 1st year and in 2nd year out of 10 papers she had not cleared 6 papers as required. Thus she is being harassed for completion of semesters by the respondent university and college for which she was of no fault.

10. Per contra Sri Neeraj Tiwari has submitted that the appellant was aware of this position and that she had had not cleared 1st year and 2nd year and was orally informed that if she does not clear 5 papers of 3rd semester she will not be promoted and disputed the fact that she had appeared in the 3rd semester for which result has also been declared. It is further averred that there is no illegality or infirmity in the order dated 7.2.2014 passed by the Registrar, U.P. Technical University intimating the appellant thereby the decision dated 7.2.2014 by refusing to extend sever years period for which she was required to complete B.Tech. Course. It is vehemently argued by the respondents that the action of the university was fair and uniform. He submits that the petitioner had joined the B. Tech four year course in the year 2004-05. Under Ordinance 4.3 of Chapter-IV of the U.P. Technical University, maximum duration within which a candidate is

required to complete the B. Tech Course is seven years. The relaxation, if any, is permitted under Ordinance 23, only by the Academic Council for Bachelor of Technology Programmes to be approved by the Executive Council. Ordinances 4.3 and Ordinance 23 are quoted:

"4.3 The maximum time allowed for a candidate admitted in 1st/IIIrd Semester (for diploma holders) for completing the B. Tec Course shall be 7 (Seven)/5 (Five) years respectively, failing which he/she shall not be allowed to continue for his/her B. Tec. Degree. X x x x x x" 11. We have perused the judgment and order of the Court and find that the Court has noted at many places that the appellant could not complete her B.Tech course within seven years. Therefore, it is not a case where the appellant would have completed her studies within seven years the maximum time prescribed for completing the four year technical course not attributable to her.

12. The judgment of Hon"ble Apex Court in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , would not be applicable in these circumstances stated above. As the statute itself provides for extension of time by the academic council in appropriate or exceptional cases and such extension would normally be a transgression of the statute.

13. Though we feel that sometime may have been granted by the academic council looking into the facts and circumstances as the Academic Council has the power to relax any provision provided in the ordinance in any specific matter/ situation subject to the approval of Executive Council of the University and such decision (s) shall be reported to the Chancellor of the University.

14. However only the respondents are not to be blamed as the petitioner knew from the time of admission in the university that she had to clear her final examination with carry over back paper within seven year.

15. The reason recorded in the impugned judgment in paragraphs 15, 16 to 18 appears to be cogent which refers herein as under:

"12. She has by this time completed only the 1st and 2nd Semester and though she has appeared in the 5th and 6th Semester, she had not complete all her papers of 3rd and 4th Semester in the process and thus under the Ordinances of the University she cannot be permitted to continue and to complete the course.

15. The maximum time allowed for the candidate to complete the B. Tech course has since expired. Now it is only the Academic Council with the approval of the Executive Council and intimation to Hon"ble Chancellor, the petitioner can be allowed to complete the course.

16. The State has all along encouraged and adopted measures to allow the girls to take up technical courses and has offered various concessions and facilities to remove gender bias. A quota is prescribed for girl students for admissions and all efforts are made so that the girls, are able to stand up in life and achieve

independence.

18. The petitioner comes from a humble background. She passed 1st and 2nd Semesters examination and has also completed carry over papers. In the 3rd and 4th Semesters, she has still a few papers to clear. She also appeared in 5th and 6th Semesters."

16. Though it is a hard case but in the facts and circumstances of the case the appellant who had appeared in the year 2004 was not able to complete her course in seven years cannot now be permitted to complete her course in 2015 particularly as this would be infeasible when the course has changed twice.

17. The counsel for the appellant could not show any illegality in the judgment. He has rather harped upon the fact that the appellant may be permitted to complete her course on ground of sympathy altogether ignoring the fact that in seven years the appellant could only clear 1st year course and has to undertake studies of 2nd year and 3rd year and 4th year all over again as noted by the writ Court in para 13 of the judgment. In view of the aforesaid circumstances we are of the considered view that it is not possible for us to allow the applicant to complete her course after 14 years which have been changed twice in the meantime.

The appeal stands dismissed.