

(1988) 03 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23001 of 1987

Kumari Safina Rani

APPELLANT

Vs

Vice-Chancellor, Rohilkhand University, Bareilly and Others

RESPONDENT

Date of Decision : 24-03-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1988 All 234

Hon'ble Judges : M.M. Lal, J;A.N. Verma, J

Bench : Division Bench

Advocate : V.M. Zaidi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Lal, J.—This is a writ petition seeking a direction to the respondents Nos. 1 and 2 to declare the petitioner as having passed her B.A. I examination and also that she may be permitted to attend the classes of B.A. II in the College and to appear in the examination of B.A. II in 1987-88.

2. The facts of the case, as may be briefly stated, are that the petitioner appeared in the examination of B.A. I held in the year 1986-87. In the result of the said examination announced in the month of June, 1987, the petitioner was declared to have passed the said examination. She was also issued a marksheet on 1st July, 1987. On the basis of the said result and marksheet, the petitioner obtained admission in B.A. II classes in R. B/D O. College, Bijnor and started attending the classes as a regular student. In October, 1987 the petitioner also filed the examination form and submitted the requisite examination fee for the examination of B.A. II for the year 1987-88. However in the month of November, 1987 the respondents Nos. 1 and 2 informed the petitioner that her result for B.A. I examination 1987 has been cancelled. Revised marksheet (Annexure No. 3) was also issued to the petitioner in the said respect.

3. The present writ petition has been contested by the respondents Nos. 1 and 2 who have stated that because the petitioner had failed to secure minimum 33% marks in each of the paper in Drawing and Home Science, hence she had failed in B.A. I examination and that because the earlier marksheet was issued to the petitioner by mistake, hence the said marksheet and result of the petitioner were cancelled.

4. There is no manner of doubt that the petitioner has actually failed in B.A. I examination 1987 inasmuch as she had not secured 33% marks in each paper in Drawing and Home Science. It may be noted that in the second paper of Drawing, the petitioner has merely secured 8 marks out of 40 marks and in Home Science theory paper she had secured 20 marks out of 70 marks. Thus it is clear that the petitioner having not secured minimum 33% marks in each paper of Drawing and Home Science had failed in B.A. I examination.

5. Learned counsel for the petitioner has urged before us that had the petitioner been given grace marks, as was done earlier, she could have passed the said examination. In our opinion the said argument is devoid of force because according to the rules of University grace marks can be given only in one subject. In this case, as already observed, the petitioner had failed in two subjects. Therefore, the petitioner could not be given grace marks in both of the said subjects. In result, therefore, it is clear that the petitioner has actually failed in B.A. Part I examination.

6. Learned counsel for the petitioner has urged before us that before cancelling the earlier marksheet issued to the petitioner, the University should have given a show cause notice to the petitioner. Learned counsel for the petitioner was, however, not in a position to show us as to how when the petitioner had actually not passed B.A. Part I examination, giving of any show cause notice to the petitioner could have helped her in any way. At the risk of repetition it may be stated that the petitioner had failed in two subjects and under the rules grace marks could not be given to her in more than one subject. Therefore, no equity is created in favour of the petitioner if in the said circumstances an opportunity of hearing was not given to the petitioner by the University before cancelling the earlier marksheet issued to her.

7. Learned counsel for the petitioner has further urged before us that the respondents Nos. 1 and 2 could not deny the fact that the petitioner had passed the B.A. Part I examination of the year 1986-87 on the principle of estoppel. In support of his argument learned counsel for the petitioner has referred to us 1987 All LJ 388, Raj Nath Singh Yadav v. Secretary, Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad and AIR 1973 All 442, Anil Kumar Srivastava v. University of Allahabad. In our opinion the aforesaid argument advanced by the learned counsel for the petitioner has got no force and the said ruling do not help him in this matter. In 1987 All LJ 388 there was a delay of two years in cancelling the result of the petitioner with the result that the petitioner had not only lost the year 1985 but due to late communication he was prevented from

appearing in High School Examination of 1986, as well. In this context it was observed that if there was delay in cancelling the result, the petitioner should have been permitted to appear in next examination and relaxation or exemption should have been granted from sending form by the date fixed by the Board. This is not the case here. In this case there is no question of the petitioner having lost two years by the cancellation of her earlier marksheet. In this case, as already observed, the result of the petitioner was cancelled vide an order dated 17-11-1987 when the petitioner had enough time to prepare for and appear in the B.A. Part I examination. Besides, it may be observed that by passing an interim order we have already permitted the petitioner to appear in B.A. Part I examination.

8. In *Anil Kumar Srivastava Vs. University of Allahabad and Another*, the petitioner Anil Kumar Srivastava wanted to appear at the 1972 M.Sc. Final (Mathematics) examination conducted by the Allahabad University which was due to commence on 15th April, 1972. On 13th of April, 1972 the Registrar of University informed him that he could not appear in the examination as he had failed in the M.Sc. (Previous) examination held in the year 1971. It is clear that by the time the petitioner in that case was told that he had failed in M.Sc. (previous) examination for the year 1971 he had already been placed in a situation where he could not possibly appear in the M.Sc. (Previous) examination for the year 1972. It was neither possible for him to make an application for appearing in 1972 M.Sc. (Previous) examination nor to prepare the papers of that examination in such a short time. This is not the position here. In this case when the result of the petitioner for B.A. Part I examination was cancelled in November, 1987 there was enough time for her to prepare the papers of that examination. It could not be said in November, 1987 that the time at the disposal of the petitioner was so short that she would not possibly prepare for her B.A. Part I examination. At that time the petitioner had not been placed in a situation where she could not possibly appear in B.A. Part I examination for the current session. The principle of estoppel does not apply to the instant case.

9. In result, therefore, the petitioner is not entitled to get the relief claimed. However it may be observed that because this writ petition was being disposed of at a time when the date for submitting the admission form had expired, hence by way of equity we have already granted an interim relief to the petitioner, vide an order dated 11-3-1988, by which it was directed that the petitioner shall be permitted to appear in B.A. Part I examination 1988 subject to her submitting the necessary form and on depositing the examination fees. Subject to the said relief, this writ petition is liable to be dismissed.

10. Except for the aforesaid relief granted to the petitioner, vide order dated 11-3-1988, that she shall be permitted to appear in B.A. Part I examination of the year 1988 on her submitting the necessary forms and depositing the examination fee, this writ petition is dismissed. Parties shall, however, bear their own costs.