

(2011) 01 AHC CK 0259

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44562 of 2010

Laxmi Sharma (Dr) and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Constitution of India, 1950 — Article 142, 226

Citation : (2011) 01 AHC CK 0259

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The Petitioners have made a prayer that the results of the Petitioners as modified under the impugned notification dated 21st April, 2010 and communicated through the impugned communication dated 22nd April, 2010 be quashed.

2. All the Petitioners sought admission in Himalaya Ayurvedic Maha Vidyalaya, Bareilly to receive education in the course of BAMS (Ayurvedacharya). The said institution admittedly had temporary affiliation for the Session 1996-97 & 1997-98. It has not been granted any affiliation thereafter. The institution came before this Court along with another similarly situated institution by filing Civil Misc. Writ Petition No. 12643 of 2000 contending that temporary affiliations had been granted earlier but the State Government had been denying permanent affiliations. The following order was passed on 11th September, 2002:

Heard the learned Counsel for the parties.

Until further orders we direct that the students of Petitioner No. 1 shall be permitted to appears in B.A.M.S. examination, and the results of these who have passed shall be declared, but this shall be subject to final decisions of the writ petition.

3. The writ petition came up for final hearing and was admittedly dismissed vide judgment dated 13th May, 2003. The matter was taken up to the Apex Court and the Apex Court affirmed the judgment of the High Court but allowed the civil appeals that had been filed by 23 students of the 4th year whose names had been referred to and indicated in the inspection report dated 12th August, 1995. The Apex Court further directed that in such special circumstances, the University shall declare the results of 23 candidates as referred to therein and the same shall not be treated as a precedent in future case.

4. The judgment of the Apex Court was delivered on 23rd June, 2006 and it appears that the results were declared on 20th of August 2006. While declaring the results, the names of the Petitioners, who are 16 in number, were also included in spite of the fact that they did not fall within the 23 students whose results had been directed to be declared by the Apex Court.

5. An interim application was filed before the Supreme Court alleging contempt of the said judgment that the results have not been declared in accordance with the directions. The said application came up for consideration before the Apex Court on 3rd May, 2010 and the following order was passed:

1. The contempt petition has become infructuous since the results have already been declared. The same is, accordingly, disposed of, as such.

2. As far as the Appellants 1, 3 and 4 are concerned, the judgment in the appeal was delivered with certain parameters and as far as the applicants are concerned, they may, if so advised, seek appropriate orders before the appropriate Forum.

3. The I As, are, disposed of, accordingly.

6. It appears that the Petitioner No. 1-Laxmi Sharma had also joined in that application and it was observed that the Appellant Nos. 1, 3 and 4 and the other applicants concerned may if so advised seek appropriate orders before the appropriate forum. The reason appears to be that the order impugned herein dated 22nd April, 2010 cancelling the results of the Petitioners had already been passed.

7. Consequently, the Petitioners have now challenged the said order dated 22.04.2010 through this writ petition. Sri Shashi Nandan, learned Senior Counsel contends that once the University had declared the results and there being no fault on the part of the Petitioners, the University could not have cancelled the same on the ground that an error had been committed by it earlier. He submits that the University is estopped from doing so and he relies on the following judgments to support his submissions:

1.M.A. Salam (II) v. Principal Secretary, Govt. of A.P. and others [(2005) 13 SCC 677].

2. Vijay Soren v. State of U.P. and others [2007 (10) ADJ 68] and

7. Sri Neeraj Tiwari, learned Counsel for the University submits that the error appears to be apparent, inasmuch as, the direction of the Supreme Court was to declare the results of only 23 students, who were referred to in the inspection report dated 12th August, 2005. The Petitioners admittedly do not belong to that category and, therefore, their results had been wrongly declared. He further submits that in the absence of any affiliation, the Petitioners, in law, would neither be entitled to pursue any course or to receive any degree and, therefore, even otherwise the relief prayed for cannot be granted.

8. Having heard learned Counsel for the parties, it is evident that the interim order by virtue whereof the Petitioners were allowed to appear in the examinations stood dissolved with the final judgment of this Court which stood affirmed by the Apex Court. The Petitioners were not granted any relief. Apart from this even the interim application which was moved before the Apex Court did not extend any benefit to such students as the Petitioners. The Petitioners admittedly were not amongst those 23 students whose results were declared by the orders of the Supreme Court. The sum and substance of the judgment of the Supreme Court was to protect the interest of those 4th year students, who were only 23 in number in exercise of its powers vested under Article 142 of the Constitution of India. The judgment itself recites that it is not to be treated as a precedent.

9. In such a situation, the Petitioners cannot claim any benefit out of any such observations made by the Supreme Court. Coming to the second limb of the submission that there is an estoppel operating against the University, suffice it to say that in the absence of affiliation, the institution is neither entitled to admit any students or allow them to pursue any such studies and the University is not bound to award any degree to such students. In the absence of any such binding obligation, allowing the Petitioners to appear in the examinations was only an exercise on account of the interim order of this Court dated 11.09.2002 which stood dissolved. The Petitioners, therefore, cannot plead estoppel against the University, inasmuch as, the University had acted only under the interim orders of this Court and not otherwise. The declaration of results by the University was obviously, therefore, a manifest error which has been simply communicated in the impugned notification. The rectification of the said error, therefore, cannot be barred by any principle of estoppel. The decisions which have been relied upon by the learned Counsel for the Petitioners are clearly distinguishable on facts and even in law. The judgment in the case of M.A. Salam (II) (supra) is also a direction of the Supreme Court and no ratio has been expressed therein so as to aid the arguments of the Petitioners. The decision in the case of Guru Nanak University (supra) paragraphs 18 to 22 also indicates that on the peculiar facts of that case, the students were extended the benefit of getting their results declared and appear in the examinations.

10. In the instant case as pointed out hereinabove, there was a complete

absence of affiliation and in view of the judgment of the High Court as affirmed by the Apex Court no relief can be granted in exercise of jurisdiction under Article 226 of the Constitution of India.

11. The writ petition is, accordingly, dismissed.