

(2000) 06 AHC CK 0001
In the Allahabad High Court
Case No : Special Appeal No. 240 of 2000

Mahendra Prasad Tripathi

APPELLANT

Vs

Vice-Chancellor, Allahabad University and others

RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Citation : (2000) 3 AWC 2276 : (2000) AWC 2276 : (2000) 3 UPLBEC 2081

Hon'ble Judges : Shitla Pd. Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Prabha Shankar Pandey, for the Appellant; A.B.L. Gaur, for the Respondent

Judgement

G. P. Mathur, J.—The special appeal is directed against the Judgment and order dated 8.3.2000 of a learned single Judge by which Writ Petition No. 51130 of 1999 filed by the appellant was disposed of with certain directions.

2. The case of the appellant in the writ petition was that he passed M.A. (Previous) examination in English subject from Allahabad University and in the mark-sheet Issued to him on 24.10.1997 he was shown to have secured 257 marks out of 600 marks. Thereafter, he took admission in M.A. (Final) class and deposited the fee. etc. He filled in the form for M.A. (Final) examination and the university issued him an admit card bearing roll No. 2537. He appeared in the back-paper examination of Ist paper of M.A. (Final) examination on 22.2.1999 after depositing the fee of Rs. 153. The result of M.A. (Final) was declared in first week of June, 1999. but the appellant's result was not declared. He moved several applications for declaration of result and issuing him the mark-sheet but no action was taken. Consequently, he filed Writ Petition No. 39920 of 1999 praying that a writ of mandamus be issued directing the university to declare his result and Issue him the mark-sheet of M.A. (Final) examination. The writ petition was disposed of on 20.9.1999 with a direction to the Controller of Examination of Allahabad University, to consider the appellant's representation and communicate the decision by a reasoned order. The Controller of

Examination thereafter communicated the decision of 11.11.1999 of the Examination Committee of the University that his result of M.A. (Final) examination cannot be declared as he had failed in M.A. (Previous) examination. It was further mentioned that on account of mistake, a wrong mark-sheet of M.A. (Previous) had been Issued to him and subsequently he was informed by registered post to return the said mark-sheet. It was also mentioned that on sympathetic consideration, he was allowed to appear in M.A. (Final) examination but as he did not return the mark-sheet, his examination of M.A. (Previous) had been cancelled.

3. The appellant then filed Writ Petition No. 51130 of 1999, which has given rise to the present appeal, praying that the order dated 11.11.1999 be quashed and a writ of mandamus be Issued commanding the respondents to Issue the mark-sheet of M.A. (Final) examination and declare the result. The writ petition was disposed of by the learned single Judge on 8.3.2000 with the following directions :

".....In the circumstances relying upon uncontroverted averments of the petitioner that he was not informed any time for appearing in the back paper of M.A. Previous, this writ petition is finally disposed of with a direction that the university will permit the petitioner to appear in back paper of M.A. Previous in English, in respect of only those papers in which the petitioner had failed and if the petitioner passes in those papers, his result of M.A. Previous In English and M.A. Final examination will be declared.

It Is clarified that this order does not mean that the university will arrange for special paper for the petitioner. The order only means that when the examinations are held In M.A. Previous in English, the university will allow the petitioner to appear tn the said paper."

4. The appellant feeling dissatisfied with the aforesaid direction of the learned single Judge has preferred this special appeal and has contended that in the facts and Circumstances of the case, the university was bound to proceed on the footing that the mark-sheet Issued to him of M.A. (Previous) examination Is correct and, therefore, his result of M.A. (Final) examination cannot be withheld.

5. The university had not filed any counter-affidavit in the writ petition. However, in order to ascertain complete facts and to do justice between the parties, we permitted the university to file a counter-affidavit in the appeal. Thereafter, two counter-affidavits, one sworn on 10.5.2000 and the other sworn on 18.5.2000 were filed on behalf of the university. The appellant filed rejoinder-affidavit on 22.5.2000.

6. The case of the university as disclosed in the counter-affidavit filed by it is as follows. The appellant Mahendra Pratap Tripathi appeared In M.A. (Previous] examination with roll No. 1558. A photocopy of the examination form filled in by the appellant wherein, this roll number was assigned to him has been filed as Annexure-1 to the counter-affidavit. A girl candidate namely. Km. Maneesha

Upadhaya of the same class had been assigned roll No. 1559. After the examination was over, the mark-sheet of all the students of M.A. (Previous) of English subject was prepared in the Computer Section on 24.10.1997. On account of some mistake in the mark-sheet, roll No. 1558 was shown against Km. Maneesha Upadhya and she was shown to have secured 183 marks and was declared to have failed. The name of the appellant Mahendra Pratap Tripathi was shown against roll No. 1559 and he was shown to have secured 357 marks and was declared to have passed the examination. A photocopy of the mark-sheet has been filed as Annexure-2 to the counter-affidavit. After declaration of result. Km. Maneesha Upadhaya immediately contacted the university authorities and on secutiny, the mistake was discovered. Thereafter, a correct mark-sheet was prepared on 8.1.1998 in which against the roll No. 1558, the name of the appellant was shown and it was mentioned that he had secured 183 marks and had failed while against roll No. 1559. the name of Km. Maneesha Upadhaya was shown and she was shown to have passed. A copy of the corrected mark-sheet has been filed as Annexure-3 to the counter-affidavit. It is specifically averred in para 7 of the counter-affidavit that immediately after the mistake had been discovered, letters were sent to the appellant on 8.11.1997 both at his local address and at home address and a notice was also pasted on the notice board of the English Department. The case of the university further is that the appellant misbehaved with the Head of the English Department and also the Controller of Examination on the ground that he had been Issued a wrong mark-sheet and, consequently, he was suspended from the English Department. However, on his tendering apology, the suspension order was revoked and a true copy of the said order has been filed as Annexure-4. This incident occurred when the appellant was studying in M.A. (Final) examination. An order was also passed on 19.8.1998 that the appellant may be provisionally permitted to appear in M.A. (Final) examination but the result shall not be declared till he was cleared of the charge of indiscipline for which he had been placed under suspension.

7. During the course of the hearing of the appeal, the appellant was asked to produce the original mark-sheet of M. A. (Previous) examination which he did on 23.5.2000. The mark-sheet mentions his name but the roll number mentioned thereon is 1559. In the said mark-sheet, he is shown to have secured 60. 53, 61. 60 and 63 marks in I, II, III, IV and V paper respectively and 60 marks in Viva Voce. The total shown is 357 out of 600. The university also produced before us the copies of the appellant of 1. III, IV and V paper wherein, he has secured 36. 20. 31 and 22 marks. The copy of IInd paper, however, was not produced. These copies bear the roll No. 1558 on the first page. We have been informed by the counsel for the university that the appellant secured 29 marks in IInd paper and 45 in Viva Voce which is also mentioned in the corrected copy of the mark-sheet of the university dated 8.1.1998 (Annexure-3 to the IInd counter-affidavit). The copies were shown to the appellant who admitted that the same were his copies. He also admitted that his roll number in M. A. (Previous) examination was 1558 and not 1559.

8. The facts, which emerge out from the affidavits filed by the parties are that the roll number of the appellant in M. A. (Previous) examination was 1558 and he had actually secured only 183 marks out of 600 and had failed in the examination. Km. Maneesha Upadhaya, who had been assigned roll No. 1559 had secured 357 marks and had passed in M. A. (Previous) examination. The main ground urged by the appellant, who appeared in person, is that after declaration of M. A. (Previous) examination, he took admission in M.A. (Final) class and deposited the necessary fee, etc. He studied in the said class and thereafter filled in the form for M.A. (Final) examination and in fact appeared in the said examination. In these circumstances, the university was estopped from contending that he had failed in M. A. (Previous) examination and, therefore, his result of M.A. (Final) examination cannot be declared. Though not argued in so many words but the contention of the appellant is based upon the principle of estoppel.

9. Assuming that the principle of estoppel is applicable in matters relating to examination of a student In an academic institution, it has to" be determined whether the facts are such which conclusively establish that the appellant believed the representation made by the university namely, that he had passed the M. A. (Previous) examination and altered his position to his detriment. The very first act attributed to the university by the appellant is that in the mark-sheet issued to him, he was shown to have secured 357 marks and to have passed the M. A. (Previous) examination. But as mentioned earlier, the mark-sheet though mentioned his name but mentioned roll number of another student. This should have Immediately aroused a suspicion in the mind of the appellant that there was some mistake. The roll number of a student Is an important feature in the examination. In all probability, the appellant must be knowing that 1559 was the roll number of Km. Maneesha Upadhaya. who was a much better student. This is evident from the fact that she has secured almost double marks than that of the appellant. The appellant may have thought to retain the said mark-sheet and take advantage of the same. According to the university, letters were sent to him on 8.11.1997 that is within two weeks of the preparation of the original mark-sheet asking him to return the mark-sheet issued to him as there was some mistake in the same. A notice to the same effect was also pasted on the notice board of English Department of University. In the rejoinder-affidavit, the appellant has denied the aforesaid fact and has pleaded that he gave several applications between 7.7.1999 and 17.8.1999 praying for declaration of his result. The second counter-affidavit has been sworn by the Legal Assistant of the university and we have no reason to doubt its correctness. The appellant has not made any allegations of mala fide. There is no reason as to why the assertion of the university that letters were sent to the appellant both at his local address and also at his home address asking him to return the mark-sheet as there was a mistake should not be accepted. It clearly shows that within two weeks of the declaration of result, the appellant had been informed about the mistake in the mark-sheet of M. A. (Previous) examination which had been issued to him. The

university has further pleaded that the appellant had been suspended as he had misbehaved with the Controller of Examination and Head of English Department but later on the said order was withdrawn. It is no doubt true that the appellant was admitted in M.A. (Final) class and was also allowed to appear In the examination. This was certainly a mistake on the part of the university. It appears that at the time when the appellant took admission in the M.A. (Final) class or filled in the form for the said class, the mistake was not brought to the notice of concerned person dealing with the matter. However, what we are concerned here is whether the appellant bona fidely and honestly believed the mark-sheet initially issued to him as correct and altered his position to his detriment acting upon such a representation. The facts of the present case do not show that the appellant was completely Ignorant of the mistake in the mark sheet Issued to him and that he bona fidely believed that he had secured 357 marks in the M. A. (Previous) examination and acting upon such a belief, he took admission and appeared in M.A. (Final) examination. It appears that the appellant consciously took advantage of the wrong mark-sheet issued to him and pursued the course of study in M.A. (Final) class and also appeared in the said examination. We are, therefore, of the opinion that on the facts of the present case, the appellant cannot contend that on the principle of estoppel, the university is debarred from proceeding on the basis of the marks which he had actually secured in M. A. (Previous) examination. Consequently, we have no option but to dismiss the appeal.

10. In normal course of events, the appellant having failed in M. A. (Previous) examination, has to read in the said class all over again and to appear in the said examination. In such an event, the result of M.A. (Final) examination also cannot be taken Into consideration. However, the learned single Judge has issued a direction that the university will permit the appellant to appear In such back papers of M. A. (Previous) examination in which he has failed and in ease he passes the previous examination, his result of M.A. class (both Previous and Final) will be declared. Sri A. B. L. Gaur, learned counsel for the university has also made a statement that though under the rules, the appellant was not entitled to appear in back papers as he has secured less than 36 per cent marks in 4 out of 5 papers but as a special case and in order to mitigate the hardship caused to the appellant, the university will permit him to appear in the back papers of M. A. (Previous) examination.

11. In view of the discussion made above, the special appeal is dismissed and the judgment and order of the learned single Judge is affirmed.