
(2008) 09 MP CK 0041
In the Madhya Pradesh High Court

Narayan Prasad Pandey

APPELLANT

Vs

Dr. Hari Singh Gour Vishwavidyalaya and Another

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 37

Citation : (2009) 1 MPHT 25 : (2008) 4 MPLJ 629

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

This petition has been preferred for commanding the respondents to declare the result of the petitioner of examination of B. A. Part I of the year 2007. Issuance of mark-sheet has also been prayed for.

Facts involved in the petition are that the petitioner passed the Higher Secondary School Certificate Examination in the year 1980 with Roll No. 324778, which was conducted by the Board of Secondary Education, M.P. Bhopal. He got admitted in B.Sc. Part-I. He appeared in the examination of B.Sc. Part-I in the year 1982 held by the University of Sagar. He failed to succeed and left the studies. Thereafter, he applied for appearing in the main examination of B. A. Part-I of the year 2007 as a private candidate on the basis of mark-sheet of Higher Secondary School Certificate Examination of the year 1980 which is on record as Annexure P-I. Admit card was issued vide Annexure P-4 bearing No. 107760 and Enrollment No. NA/07/14076. He appeared in the examination Center at Post Graduate College, Damoh. Examination was conducted in March-April, 2007. However, the result of the petitioner was not declared at all and his mark-sheet as well was not issued. This compelled the petitioner to submit the present writ petition mainly with the allegation that he having been permitted to appear in the examination of B. A. Part-I, his result is liable to be declared and mark-sheet

is also equally liable to be issued to him. It is contended that after issuance of the admit card and after allowing him to appear in the examination, respondent University has no power to withhold the result and the mark-sheet as well.

The petition has been opposed by the respondent University mainly on the ground that the petitioner in the absence of having passed the Higher Secondary School Certificate Examination under 10+2 system, was not entitled to appear in the examination of B. A. Part-I in the year 2007. Although, the admit card was, erroneously, issued to the petitioner, he on scrutiny was not found entitled to appear in the examination of B.A. Part-I of the year 2007; since he had not passed the qualifying examination of Higher Secondary School Certificate Examination under 10+2 system.

Shri Mahendra Pateria, learned Counsel appearing for the petitioner, mainly contended that the respondent University after once having issued the admit card has no power to withhold the result of the petitioner and the mark-sheet. Placing reliance on the decision of the Apex Court in the case of C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , it is contended that once a candidate is allowed to give the examination rightly or wrongly, his result is liable to be declared and his mark-sheet is further liable to be issued. He has also relied upon a latter decision of the Apex Court in the case of Sanatan Gauda Vs. Berhampur University and others, .

Finally, he placed reliance on the decision of this Court dated 10-1-2003 passed in Writ Petition No. 4138/2002 to contend that the petitioner had applied for appearing in B.A. Part-I examination as a private student along with the mark-sheet of Higher Secondary School Certificate Examination and B.Sc. Part-I. It was the duty of the respondent University to make a scrutiny of his entitlement to appear in the examination of B.A. Part I of the year 2007. Respondent University having failed to examine the documents and further having allowed the petitioner to appear in such examination is now precluded from withholding the result and the mark-sheet.

Per contra, Shri K.P. Mishra, learned Senior Counsel for the respondent University contended that a student in order to make him/her eligible to admit in the examination of B.A. Part-I of the year 2007, it is necessary for a student to have passed Higher Secondary School Certificate Examination under 10+2 system.

Accordingly, it is contended that the petitioner having been found not entitled to admission for the examination of B.A. Part-I of the year 2007, he was not entitled to appear in the examination of B.A. Part-I and his result as well as mark-sheet are rightly withheld.

I have considered the submissions made by the learned Counsel for the parties in the light of relevant provisions of law.

Admission to various courses in the respondent University and Colleges are governed by Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. Section 37 of

the said Act empowers for issuance of Ordinance which may provide for admission of students of colleges. Ordinance No. 14 makes it clear that a Non-Collegiate Candidate (Private Candidate) may be admitted in the examination of B.A. Part-I only after passing the Higher Secondary School Certificate (10+2) Examination of M.P. Board of Secondary Education or an examination recognised as equivalent thereto. Earlier, the Higher Secondary School Certificate Examination was conducted by the Board of Secondary Education, M.P., Bhopal under 10+1 system. Subsequently, it was converted into 10+2 system and the Higher Secondary School Certificate Examination was held under 10+2 system. Due to this change, Coordination Committee of the respondent University in its meeting on 28th, 29th and 30th May, 1988, vide Document D-1 (1 and 3) took a decision that Universities must amend their Ordinances relating to admission in the 1st year degree classes so that from July, 1988 only such students as have passed 10+2 or an equivalent examination can be admitted to the 1st year class.

Accordingly, Ordinance No. 14 was issued which provided that a Non-Collegiate Candidate may be admitted to an examination of the University of B.A. Part-I after a period of not less than one academic year since his/her passing the Higher Secondary School Certificate (10+2) Examination or an Examination recognized as equivalent thereto. Copy of Ordinance No. 14 is partly on record as Document No. D-2 (i). However, during arguments the booklet of respondent/University was made available which contained the complete Ordinance No. 14. Petitioner who passed the Higher Secondary School Certificate Examination under 10+1 system in the year 1980, is not shown to have passed Higher Secondary School Certificate Examination under 10+2 system or any other examination equivalent thereto. Thus, he was not entitled to be admitted to the examination of B.A. Part-I of the year 2007, under the said Ordinance.

Much reliance has been placed by Shri Mahendra Pateria, learned Counsel for the petitioner on the decision of the Apex Court as well as of this Court which are being considered in the following paragraphs.

In the case of *Shri Krishan v. Kurukshetra University* (supra), it is held by the Apex Court that once the candidate is allowed to take the examination, rightly or wrongly, there is no statute empowering the University to withdraw the candidature of the applicant.

In this case, the admission card was issued despite shortage of attendance and it was held that it was for the Head of the Department to examine the attendance before issuing the admission card. In the case of *Sanatan Gauda* (supra), the student was admitted without permission from his employer which was required before issuing the admit card. Similarly in *Writ Petition No. 4138/08 (Pranod Kumar Shukla and Ors. v. M.P. State Board of Secondary Education and Anr.)*, the admit card was issued despite shortage of attendance.

In all the aforesaid three cases, the petitioners were not disqualified from appearing in the examination on account of lack of academic qualification. They

were being prevented due to procedural shortcomings.

In the present case, petitioner due to want of academic qualification of having passed the Higher Secondary School Certificate Examination under 10+2 system is not qualified to get admitted for the examination of B.A. Part-I. Hon'ble Supreme Court of India in the case of Thapar Institute of Engineering and Technology and Another Vs. Gagandeep Sharma and Another, , has clearly held that a student cannot be admitted to appear in the examination if he is not entitled to appear in it due to non-fulfillment of academic qualification. This according to the Apex Court would lower down the standard of education and would, obviously, damage the education system. It has been clearly observed by the Apex Court:

The Court would normally not interfere with such prescribed standards and especially when they are intended to improve the academic standards in their respective institutes. The scope of judicial review in such matters would be very limited.

In the present case, onwards the year 1988, a student having passed Higher Secondary School Certificate Examination under 10+2 system or any other examination equivalent thereto alone was and is entitled to be admitted in B.A. Part-I. Petitioner has been unable to establish that he has passed the Higher Secondary School Certificate Examination under 10+2 system or any other examination equivalent thereto.

Therefore, he is not found entitled to appear in the examination, even if, he has been erroneously permitted to appear in the examination. The respondent University is under no obligation by virtue of Ordinance No. 14 to declare his result and to issue the mark-sheet. However, it is true that the authorities of respondent University ought to have scrutinised the mark-sheet of Higher Secondary School Certificate Examination under 10+1 system and not permitted to appear in the examination. Admit card, if, found to have been issued negligently or without making scrutiny of the mark-sheet of Higher Secondary School Certificate Examination (under 10+1 system), would not make the petitioner eligible for B.A. Part-I despite ineligibility under Ordinance No. 14. Petitioner would, obviously, be at liberty to claim damages from the respondent University by approaching appropriate forum in a duly constituted proceedings.

In the result, petition being devoid of merits is, hereby, dismissed, however, with liberty to the petitioner to claim damages in suitable proceedings.

No order as to costs.