

(2020) 08 MP CK 0169

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9094 Of 2020

Nazaneen Sheikh S/o Mansoor Sheikh

APPELLANT

Vs

Devi Ahilya Vishwavidyalaya, Indore & Anr.

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Citation : (2020) 08 MP CK 0169

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Yashpal Rathore, Aakash Sharma

Final Decision : Dismissed

Judgement

Facts of the case, in short, are as under :-

1. The petitioner being a permanent resident of distt. Barwani (M.P.) is a citizen of India. The petitioner appeared in the M.A. Final (Political Science) Examination in the year 2012-13 conducted by Devi Ahilya Vishwavidyalaya, Indore and passed in the third division by securing 47.8%. The petitioner submitted a representation to the respondents that by rounding of the percentage from 47.8% to 48% a mark sheet and Degree with Second Division passed may kindly be issued. According to the petitioner, since he has secured 47.8% which is above 0.5%, therefore, same is to be treated as one and by giving the benefit of rounding off he is entitled to be declared as passed in Second Division with 48% marks. Petitioner has applied for the post of Middle School Teacher for which the minimum qualification is that the candidate must have passed in the Second Division in Post Graduate. Since the petitioner secured Third Division marks, therefore, he could not apply. Hence, he approached this Court by way of Writ Petition.

2. Respondents have filed the return by submitting that as per Clause 33 of Ordinance VI of the University, the Kulpati may award one grace marks in case the candidate is failing by one mark or missing a division by one mark. Since the

petitioner is short by two marks to secure 48%, therefore, he is not entitled to the benefit of the aforesaid ordinance and apart from that ordinance, there is no provision in the Ordinance to give the facility of rounding off. In support of their contention respondents have also placed reliance over the judgment passed by the Division Bench of this Court in the case of Abhash Anand V/s. State of M.P. and others passed in W.P. No.3990/2018 decided on 09.07.2018, in which the University was not directed to round off his marks obtained by the petitioner in the Graduation to make him eligible for admission in M.B.A. Course. Hence, prayed for dismissal of the Writ Petition.

3. Shri Yashpal Rathore, learned counsel for the petitioner submits that since the petitioner had secured 47.8% which is nearer to 48%, hence, he is entitled to get the facility of rounding off in view of the judgment passed by the Single Bench in the case of Dharmendra Kumar Shrivastava V/s. Jiwaji University, Gwalior reported in 2002 (2) M.P.L.J. Page 619 in which the facility of rounding off was given in order to secure the admission.

4. I have heard learned counsel for the petitioner Shri Yashpal Rathore and Shri Aksh Sharma learned counsel appearing for the respondents.

5. The petitioner had passed the examination of M.A. In Political Science in the year 2012-13 by securing 47.8% marks but filing the present petition after the lapse of 8 years because he could not apply for the post of Middle School Teacher, where the minimum qualification is Second Division pass in the Post Graduation. By way of this Petition, the writ petitioner is seeking the direction of rounding off the marks from 47.8% to 48% and declaration of passing the M.A. examination in Second Division. The respondent no. 1 University is governed by the Ordinance which has a statutory force. The respondents have filed a copy of Ordinance No.6 in which there is only one provision for giving one grace mark by the Kulpati to a candidate, who is failing or missing the division by one mark. Since the petitioner is short by two marks to secure 48%, therefore, he is not entitled to the benefit of Clause 33 of the Ordinance No.6. Apart from this, there is no provision in the ordinance to issue a fresh mark-sheet of higher Division by rounding off the percentage. In absence of any provision of the Ordinance, no direction can be given to the respondents to issue a fresh mark-sheet to the petitioner by upgrading from Third Division to Second Division.

6. So far the judgment relied on by the petitioner i.e. Dharmendra Kumar Shrivastava (supra) is concerned, the petitioner therein was denied the admission in Bachelor of Pharmacy by the Jiwaji University, Gwalior as he secured 49.77% marks in the 10+2 examination. This Court has allowed the Writ Petition by directing the University to give the benefit of rounding off the marks of Higher Secondary because he was having a higher degree of B.Sc. with 53.99%. The petitioner therein was seeking direction to the University to give admission by giving the benefit of rounding of the marks by 49.77% to 50% because he was unable to secure admission in the Bachelor of Pharmacy Course. In the present petition, the petitioner is not seeking direction against the

examining authority who is conducting the recruitment for Assistant Teacher (Middle School Teacher) nevertheless he is seeking direction to the University to issue a fresh mark-sheet by rounding off the marks and upgrade his grade from Third Division to Second Division. In absence of any provision in the statute and rules or the ordinance made thereunder, no such writ/ order /direction can be given to the University to upgrade the percentage and issue a fresh mark-sheet.

7. The Division Bench of this Court in the case of Abhash Anand (supra) has already dismissed the Writ Petition by placing reliance over the judgment passed by the Apex Court in the case of Orissa Public Service Commission and Another V/ s. Rupashree Chowdhary and Another reported in (2011) 8 SCC 108 by holding that in absence of statute or any rules framed thereunder which permit rounding off the eligibility criteria prescribed for the qualifying for admission to the Post Graduation Course no direction can be given by the High Court. The operative part of the order is reproduced below :-

"The issue as to whether in absence of statutory stipulations, marks can be rounded off for making an incumbent eligible for admission came up for consideration before the Hon'ble Supreme Court in Orissa Public Service Commission and another Vs. Rupashree Chowdhary and another [(2011) 8 SCC 108], wherein it is held:-

"10. A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation. We may also draw support in this connection from a decision of this Court in Vizianagaram Social Welfare Residential School Society Vs. M. Tripura Sundari Devi (1990) 3 SCC 655. In the said judgment this Court has laid down that: (SCC p. 658, para 6)

"6. ...when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, [then] it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

13. When the words of a statute are clear, plain or unambiguous i.e. they are

reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration.

14. The High Court, in our considered opinion, has also committed an error apparent on the face of the records by allowing two more persons, who secured marks between 44.5% and 45%, to be called for the interview who were not even parties before it and who had not even shown interest subsequently to be appointed subsequent to the declaration of the results of the examination but despite the said fact the High Court directed them also to be called for the interview only on the ground that they have secured more than 44.5% of marks but less than 45% marks in the main written examination in aggregate. "

Similarly in Registrar, Rajiv Gandhi University of Health Sciences, Bangalore Vs. G. Hemlatha and others [(2012) 8 SCC 568], it is observed by their Lordships:-

"11. In our opinion, the ratio of this judgment is clearly applicable to the facts of this case. The judgment of the Full Bench of the Allahabad High Court in Vani Pati Tripathi vs. DG, Medical Education and Training and Others (AIR 2003 All 164) and the judgment of the Full Bench of the Punjab and Haryana High Court in Kuldeep Singh vs. State of Punjab and Others (1997) 117 PLR 1, were cited before us because they take the same view. However, in view of the authoritative pronouncement of this Court in Orissa Public Service Commission vs. Rupashree Chowdhary (2011) 8 SCC 108, it is not necessary for us to discuss the said decisions.

12. No provision of any statute or any rules framed thereunder have been shown to us, which permit rounding-off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in MSC (Nursing). When the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that the learned Single Judge was right in rounding- off of 54.71% to 55% so as to make Respondent 1 eligible for admission to PG course. Such rounding-off is impermissible."

In view whereof, we find no merit in the claim put forth by the petitioner for direction to the respondent - University to round up the marks obtained by the petitioner in graduation to make him eligible for admission to MBA course.

As no relief can be granted, petition fails and is dismissed. No costs."

8. In view of the above, I do not find any substance in the Writ Petition. Accordingly, the present Writ Petition is hereby dismissed.

No order as to cost.