

(1996) 11 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 9011 of 1996

Praveen Kumar Rai

APPELLANT

Vs

Versus Registrar, Shri Sahuji Kanpur University and Another

RESPONDENT

Date of Decision : 30-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 11 AHC CK 0001

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Sanjay Sharma, for the Appellant; J.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—By means of this petition under Article 226 of the Constitution of India, Petitioner prays for issuance of a writ, order or direction in the nature of mandamus commanding the Respondents to declare his result of M.A. (previous) Philosophy examination for the year 1995 after giving average mark in third paper of the said examination and permit him to appear in the examination of M.A. (final) provisionally.

2. The facts giving rise to the present case, in brief, are that the Petitioner appeared in M. A. (previous) philosophy examination for the year 1995 from Nari Shiksha Niketan Inter College, Kaisar Bagh. Lucknow, after submission of the Examination Form to the Vidyan Hindu Degree College, Lucknow, a college affiliated to the Kanpur University, Kanpur and allotment of Roll No. 42624, in all the papers of the said subject, i.e., philosophy. The result of the said examination was declared in which the Petitioner was declared to have failed. Since the marksheet was not supplied to him he applied for a copy of the mark sheet. On receipt of the marksheet, he came to know that in third paper of M.A. (PRF) (Philosophy) he was awarded zero mark. Therefore, he applied for re-evaluation of the answer book of the said paper. On the application filed by the Petitioner, it was reported that the answer book was not received from the Examiner in the

University, therefore, there was no question of re-evaluation. Petitioner, thereafter filed the present petition for the abovementioned reliefs.

3. I have heard learned Counsel for the Petitioner and learned standing counsel.

4. Learned Counsel appearing for the Petitioner has vehemently submitted that in view of the fact the answer book of the Petitioner of M. A. (previous) third paper (Philosophy) was lost by Respondents, the Respondents ought to have given the Petitioner average marks. It was not open to them to award zero mark to the Petitioner in the said paper and to declare him to have failed in the said examination.

5. On the other hand, learned Counsel for the Respondents submitted that matter regarding loss of answer book was under investigation and in case the answer book is found to have been lost on the ground of mistake or negligence of the University authorities, the Petitioner shall be given an opportunity to appear in the said paper, in which he was given zero mark.

6. In the counter-affidavit, it has specifically been admitted that the Petitioner has appeared in all papers of the said examination. After declaration of the result, more than one year has already elapsed. This Court vide order dated 18.7.96 directed the Respondents to produce the answer book of the said paper bearing Roll No. 42624 of M. A. previous Examination for the year 1995 (Philosophy) third paper and directed the case to be listed positively on 26.7.96. In spite of the said order, the answer book in question was not produced. Under the facts and circumstances stated above, I have got no hesitation in coming to the conclusion that the answer book of the Petitioner has been lost, while the same was in possession and custody of the Respondents. The Petitioner, therefore, cannot be penalised for the mistake and fault committed by the Respondents.

7. It is well-settled in law that in case of loss of the answer books, the student is entitled to receive average marks. A reference in this regard may be made to the decision of Kumari Renu Sharma v. Madhyamic Shiksha Parishad and Anr. 1985 UPLBEC 734, wherein it has been held as under:

In the instant case, Ist paper of Indian History carried 50 maximum marks. The question that arises for consideration is with regard to the manner in which the average marks obtained by a candidate for being awarded in respect of missing paper are to be worked out. There is nothing in the said resolution of the Examination Committee to show that while working out such average marks, only the marks obtained in the concerned subject is to be taken into account. We find absolutely no justification for so limiting the working of the average. It is not disputed that in most subjects only two papers are set for examining the candidates. Accordingly, in a case where the answer book of a candidate in one paper of the main examination is missing, no question of working out of the average on the basis of the remaining paper in that subject alone can possibly arise. In our opinion, the resolution of the Examination Committee clearly implies

that in such cases, the average of the marks obtained by the candidate has to be worked out on the basis of available marks obtained by him In all the papers in which he has appeared in connection with the said examination. The Petitioner has secured 185 marks out of 500 marks in all the papers in which she appeared in the main examination of the year 1983. She secured 29 out of 100 marks in the two papers of History in which she appeared in the first supplementary examination. Likewise, she secured 13 out of 50 marks in the second paper of the Indian History in the second supplementary examination. The available marks obtained by the Petitioner in various papers, thus work out to 227 marks out of 650 marks. The average marks secured by her in each paper of 50 marks thus works out to little more than 17 marks. Increasing the said marks by 3 grace marks, as per Examination Committee's resolution the Petitioner becomes entitled for being awarded 20 out of 50 marks in the missing History Ist paper of the second supplementary examination. The total marks secured by her in the two papers thus come to $20 + 13 = 33$ out of 100 marks. Having secured 33% marks in her second supplementary examination, Petitioner is entitled to declaration of her Intermediate Examination result on that basis.

8. It is also well-settled in law that a student cannot be made to suffer the mistake committed by the University authorities or its officers and employees. A reference in this regard may be made to the decision in *Paravesh Kumar Dubey v. University of Kanpur* 1990 (2) UPLBEC 1053, wherein it has been held as under:

In *Sanatan Cauda v. Bcrhampur University and Ors.* JT 1990 (2) 57, University withheld the result of a student of pre-law and Inter Law examinations on the ground that he secured less than minimum marks in MA and was, as such not eligible for admission to the law course, Hon'ble Supreme Court held that student was admitted to Law College on the basis of the marksheet issued by the University and the student cannot be punished for the negligence of the University authorities. The relevant extract from the judgment is quoted below:

This is apart from the fact that I find that in the present case the Appellant while securing his admission in the Law College had admittedly submitted his marksheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the pre-law and intermediate law examinations. He was permitted to appear in the said examination. He was also admitted to the Final year of the course. It is only at the stage of the declaration of his results of the pre-law and Inter Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the law course. The University is, therefore, clearly estopped from refusing to declare the result of the Appellant's examination or from preventing him from pursuing his final year course." It was further observed that a student cannot be punished for the negligence of the University authorities and it was the undue duty of the University to have scrutinised the matter thoroughly before permitting the

Appellant to appear at the examination and not having done so it cannot refuse to publish his result.

9. In view of the law laid down by this Court in the aforesaid decisions and in view of the aforesaid discussions, the writ petition is liable to be allowed.

10. The writ petition succeeds and is allowed with costs, which is assessed at Rs. 5,000, Respondents are directed to award average mark to the Petitioner in M.A. (previous) Examination for the year 1995 of Philosophy third paper and to declare his result within a period of two weeks from the date a certified copy of this order is communicated to Respondent No. 2. It is further directed that the Petitioner will be permitted to appear in M.A. Final Examination if he is declared to have passed in M.A. (previous) Examination for the year 1995.