(2014) 05 P&H CK 0690

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1752 of 2013 (O&M)

Puja Aggarwal APPELLANT

Vs

Thapar University RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2014 P&H 98

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Arun Palli, J

Bench : Division Bench

Advocate : Rahul Gautam, Advocate for the Appellant; Vikas Mohan Gupta and Ashok Kumar Sharma, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The appellant not only obtained a degree in M.Com. but even completed her course in Chartered Accountancy in the year 2002. The appellant was desirous of pursuing Ph.D. Programme (part time) in Finance in LMT School of Management. The appellant qualified for the programme after the written examination and interview and pursuant thereto she deposited her fee on 02.09.2011 and Ph.D. Guide was also appointed. The appellant pursued the course by attending classes for 1st Semester of Ph.D. Programme and even deposited the fee towards 2nd Semester and 3rd Semester. However, the appellant was shocked to receive letter dated 12.09.2012 cancelling her admission on the alleged ground of non-qualification for admission in Ph.D. Programme. It is this communication which was assailed by the appellant by filing writ petition under Article 226 of the Constitution of India.

2. The University/respondent No. 1 appeared and contested the writ petition alleging that the admission of the appellant was provisional in view of Clause 11.2.5 of the Prospectus. The infirmity in the application of the appellant was stated to be absence of minimum qualifying marks for Ph.D. programme which was stated to be 55%. It was claimed that the appellant was granted admission

on the basis of M.Com. degree. The appellant is stated to have obtained below 55% marks in M.Com. and for that matter even in C.A. she had obtained below the cut-off marks. It was pleaded on behalf of the appellant that it was too late in the day for the University to cancel the admission of the appellant after having checked the documents itself. However, the writ petition was dismissed vide order dated 23.07.2013 on the aforesaid basis of having less than 55% qualifying marks against which the present Letters Patent Appeal has been preferred.

3. We have heard learned counsels for the parties and perused the record of the proceedings before the learned single Judge.

4. The relevant clause dealing with this requirement of 55% marks in aggregate reads as under:

7. Ph.D. Programme

(i) A candidate seeking admission to the degree of Doctor of Philosophy must have obtained ME/M.Tech/M.Phil./MCA/MSc./MA/MBA or equivalent degree in relevant discipline with minimum CGPA of 6.00 on a 10 point scale of 55% marks in aggregate where marks are awarded or NET qualified.

5. The aforesaid shows that there is no mention of any Chartered Accountant course. On the other hand, learned counsel for the appellant seeks to canvass Clause 7(iii) which according to him would be applicable and reads as under:

7. Ph.D. Programme

(iii) Part-time studies leading to Ph.D. degree are permitted for professionally employed personnel such as working Engineers, Scientists and Teachers. Part time studies leading to Ph.D. shall also be permitted to persons working in institutions with which a Memorandum of Understanding has been signed for research purpose. Such a candidate must be in employment at the time of admission and be engaged in professional work in the area to which admission is sought.

6. Learned counsel for the respondent-University, however, submits that various clauses of clause (7) operate in their respective fields and are not materially exclusive. It is further submitted that from the years 2012-13 there have been amendments to provide for the minimum benchmarks of 55%, even for the C.A. course, as per the guidelines of the Association of Indian Universities, New Delhi.

7. The controversy is stated to have arisen vide e-mail dated 23.02.2011 raising a query about the eligibility for admission to Ph.D. Programme and then the response to the same acknowledging that it was so permissible.

8. UGC/respondent No. 3 has also clarified that it does not prescribe any eligibility criteria of 55% marks for Chartered Accountants. The noting(s) on the office copy of the letter dated 23.07.2012 (Annexure P-13) are also material. It has been specifically clarified that there is no bench mark of 55% eligibility

criteria for Chartered Accountants. The opinion was sought for issuance of clearance certificate. However, once again the same issue of absence of bench mark of 55% was raised. Since Thapar University did not recognize the Chartered Accountant as the qualifying degree for admission in Ph.D. programme, this action is stated to have been taken.

9. One other factor which has been pointed out by learned counsel for the respondent-university, which is germane, is that in the subsequent academic year a clause qua Chartered Accountants with provision for the bench mark of 55% was included.

10. In our view, the first material aspect is that the appellant had already taken admission and had carried out the course for a year which was sought to be cancelled. It was not cancelled on any discrepancy or misstatement on the part of the appellant. It would be complete wastage of the year of the appellant merely because the office of respondent No. 1 may have been negligent. The appellant even appeared in the examination of the 1st Semester and qualified the same.

The second aspect is that while prescribing the minimum bench marks of 55%, it is so for certain subjects which include M.Com. There is no such restriction provided for a Chartered Accountant possibly because the Chartered Accountant course is recognized as extensive one, it is a professional degree and undisputedly a difficult course to clear. The fact that for the subsequent academic year such a minimum bench mark has been provided does not go against the appellant, for it implies that a conscious decision was taken to include the minimum bench mark in case an application is based on C.A. degree for the subsequent year which was not so for the relevant year. The absence of such a norm in the previous year itself shows that it was not applicable for that academic year in question.

We are thus of the view that the appellant is entitled to continue to pursue her course for Ph.D. Programme (part time) in Finance. The impugned decision of the University dated 12.09.2012 (Annexure P-7) is set-aside as also the impugned order dated 23.07.2012 declining the relief to the appellant. This is a stand alone case as for subsequent year the bench mark was provided and this does not affect any other candidate.

The appeal is accordingly allowed leaving the parties to bear their own costs.

