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(1992) 12 PAT CK 0026

In the Patna High Court

Case No : C.W.J.C. No. 11050 of 1992

Punam Kumari — APPELLANT

Vs

Lalit Narain Mithila University and Others — RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Citation : (1992) 12 PAT CK 0026

Final Decision : Allowed

Judgement

Gopi Chand Bharuka, J.—The present writ application has been filed by the petitioner for issuance of a writ of mandamus directing the respondent University to publish her result of B. A. (Hons) Sociology of the session 1988-89.

2. According to the petitioner, She had secured 44, 33 per cent marks in B. A. pass course examination. She was admitted to Honours course by respondent No. 5 Principal of M. J. J. College, Mabarakpur as per the recommendation of the Head of the Department of Sociology. After completion of her course in the college, pursuant to the admit card, she appeard at the examination but the result of the said examination has been detained on the ground that her very admission to the Honours course was contrary to the regulations of the University, since no student securing less than 45% in a particular subject could be admitted to Honours course in that subject. The Regulation 2 (ii) relating to admission in Honours course reads as under:

No candidate shall be allowed to offer Honours course in any subject unless he/ she obtained at least 45 per cent marks in that subject at the Bachelor Pass Examination.

3. It may be relevant to state here that since the result of the petitioner has not been published without communicating any reason therefore to the petitioner, she had earlier filed another writ application being CWJC No. 6419/ 92 which was disposed of on 10-3-1992 with a direction to the University to take a final decision with regard to publication of result of the petitioner. Pursuant to the said

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direction the University referred the matter to the examination Board which decided not to publish the result of the petitioner on the ground that the authorities had taken the admission of the petitioner in Hons. course in violation of the aforesaid Regulation. The said decision has been filed as Annexure ''A'' to the counter affidavit. The material part thereof is being quoted hereunder:

The petitioner has secured two marks less than 45% in B. A. (pass) Examination.... It is true that the petitioner attended his Honours classes in Sociology during 1988-89 and was permitted to go for honours Examination after filling up the Examination Form.... Right at the time of admission itself the College Principal or its admission incharge should have thoroughly checked up the marks obtained in Sociology at B. A. pass course. The very fact that the Examination was taken without checking up the marks obtained or without carrying for the fact that the regulation was being flouted establishes the apprehension that this was done deliberately by some ulterior motive....

The college authority even at the time of forwarding the Examination Form simply choose to ignore this violation possibly under the false impression that once forwarded by the college, the University will not have means of detecting this violation till its last stage.

It has been further noticed in the said decision that:

The college in question is an affiliated one managed by a governing body and the University has not any disciplinary control either ever the Principal or the office of the Principal.

Only punitive measure that the University can take against such affiliated colleges is to recommend the State Government for withdrawal of affiliation.

4. From the aforesaid decision of the Examination Board of the University it is quite clear that the Regulation in question has in fact been violated by the authorities of the college and for the said mistake of the college authorities, the petitioner is being subjected to punishment by withholding of her result. In my opinion, it is contrary to all canons of justice and equity. The provision under the Regulation is with respect to taking of admission in the Honours course. The Regulation in question does not anywhere provide that if a student has been admitted to a particular course contrary to the Regulation, then even if he is allowed to appear at the examination his/her result cannot be published. No Regulation has been placed before us to show that a student securing less than 4s% marks in pass course cannot appear at the examination of Honours course.

5. My above view is also substantiated from Section 39(b) of the Bihar Universities Act, 1976 which reads as under:

Section 39. Subject to the provisions of this Act the statutes and the ordinance, the regulations may be made to provide for all or any of the following matter, namely:

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(a)...

(b) The conditions under which students shall be admitted to the degree or diploma courses and to the examinations of the University and shall be eligible for such degrees and diplomas,

Therefore, the conditions laid down for admitting to different courses and the conditions subject to which the students can be admitted to the examinations of the University and shall be eligible for the degree or diploma may differ, if a student not fulfilling the condition for admission is admitted to a degree course but if he otherwise fulfils the conditions for admitting him to the Examination and is found eligible for the degrees and diplomas then, in my opinion, the result of the examination and grant of degrees or diplomas to such students cannot be dented only because there was some infirmity at the time he was admitted to degree or diploma course. If a student is allowed to appear at the Bachelor Examination though he does not hold the minimum qualification for appearing at such examination because of some mistake at some stage, the University will be justified in not publishing his results, but then if he was eligible for appearing at the Examination but he was admitted to the course in violation of some directive of the University touching upon the admission like reservation policy or in absence of minimum eligible marks even above the pass marks then grant of admission of the students i.e the course by the appropriate authorities may not justify the withholding of result which such students become entitled to on completion of course and appearance at the University Examination.

6. The learned Counsel appearing for the respondents have placed reliance on an unreported Bench decision of this Court in the case of Mriduia Prasad v. the Vice-Chancellor in CWJC No. 8292 of 1992 disposed of on 30th September, 1992 But in my opinion the said decision has no bearing on the facts of the present case because in the said case the relief was denied to the petitioner primarily because there was no provision under the Regulation by which the marks obtained by the petitioner in eight papers in pass course in North Bengal University could have been added by any mode of averaging in five papers in Honours course for the publication of the result of the petitioner of that case and therefore, it was said that no relief can be granted to her even on equitable considerations. It was taken note of the fact that the result of B. Sc. Honours can be declared only by adding the marks obtained by the candidates in three papers of Botany while passing B. Sc. pass course in the University of Bihar but the same was not done in the said case.

7. At this stage, I may observe that if the University feels that the affiliated Colleges like one in the present case are deliberately engaged in flouting the Regulations of the University which is detrimental to the educational atmosphere and University discipline, then it is high time that they stood resort to their statutory powers of cancelling/withdrawing the affiliation granted to such colleges after giving due notice in this regard to the colleges concerned and take effective steps for seeking approval of the Government as per the provisions of

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the Bihar Universities Act. It is no use just putting the careers of the students at peril without taking stern punative measures against the erring institutions and their officials.

8. In the present case the petitioner, who is a college going student, is sought to be penalised by non-publication of her result on a presumption that she knew about the provisions contained in the Regulations noticed above. Nothing has been placed before us to show that the said Regulations had been published and made known to all concerned persons by any recognised mode of publication. Moreover it is fallacious to presume that every person knows the law. In this connection I may refer to the decision of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , wherein it has been held that:

Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that every one is presumed to know the law, but that is not a correct statement : there is no such maxim known to the law. Over a hundred and thirty years ago, Maule J., pointed out in Martindale v. Flikner (1846) 2 CB 709 ''There is no presumption in this country that every person knows the law : it would be contrary common sense and reason if it were so''. Scrutton, L. J., also once said : ''It is impossible to know all the statutory law, and not very possible to know all the common law.'' But it was Lord Atkins who, as in so many other spheres, put the point in its proper context when he said in Evans v. Bartlam 1937 AC 473''...the fact is that there is not and never has been a presumption that every one knows the law, There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.

Moreover application of any such presumption to the detriment of the students will be unjustified particularly when they are expected to take the words of the teachers and the Principal of the institution as the last words regarding the rules and regulations pertaining to admission and examination or other institutional matters. If the students act on the representation of the authorities of the College then unless the violation is of a nature, which cannot be ignored by exercise of permissible discretion, the careers of innocent students should not be put to hazard.

9. Keeping in view the aforesaid facts and circumstances of the case, I allow this writ application with a direction to the Respondents to publish the result of the petitioner forthwith. Anyhow there will be no order a< to costs.

Narayan Roy, J.

10. I agree.

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