

(2009) 10 AHC CK 0168

In the Allahabad High Court

Case No : Writ Petition Nos. 5601 (M/S) of 2005 and 3196 (M/S) of 2008

Samiksha Verma

APPELLANT

Vs

University of Lucknow and Others

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Citation : (2009) 10 AHC CK 0168

Hon'ble Judges : S.N.Shukla, J

Final Decision : Dismissed

Judgement

Shri Narayan Shukla,J.

1. Since in both the writ petitions common question of facts and law are involved, the same are being disposed of by following common judgment.

2. Heard Ms.Samiskha Verma, petitioner (in person) and Mr.Upendra Nath Mishra, learned counsel for the Lucknow University, Lucknow.

3. Through writ petition no. 5601 (M/S) of 2005 the petitioner has sought the following relief:

"(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 20.10.2005 passed by the respondent no.2 as contained in Annexure no.2 to this writ petition.

(b) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to give her admission for the LLB. three years academic course after being holding proper procedure either by counseling or any other procedure, which is legal and just.

(c) Issue any other order or direction, which this Hon''ble Court may deem fit and proper in the circumstances of the case.

(d) Allow the writ petition with costs.

Through writ petition no. 3196 (M/S) of 2008 the petitioner has sought the following relief:

"(a) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to admit the petitioner in the LL.M. academic course 2008.

(b) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to admit the petitioner LL.M. entrance form without LL.B. Marksheet.

(c) Issue any other order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(d) Allow the writ petition."

4. Firstly through writ petition no. 5601 (M/S) of 2005 the petitioner has challenged the order dated 20th October, 2005 passed by the Vice Chancellor, Lucknow University Lucknow, whereby the petitioner was denied from giving admission in LL.B. course by rejecting her representation on the ground that the petitioner's position in the merit list was quite below to the candidate last admitted as she was placed at the rank of 502; whereas the last candidate admitted belongs to general category was at the rank of 135.

5. The order dated 20th October, 2005 passed by the Vice Chancellor, Lucknow University Lucknow, reveals that the petitioner had filed writ petition bearing no. 5051(M/S) of 2005 with the submission that she had applied three years LL.B course but instead of existing several vacancies the petitioner's candidature had not been considered by the opposite parties. This Court issued direction to the Vice Chancellor, Lucknow University, Lucknow to consider and decide the petitioner's representation, pursuant to which the Vice Chancellor, Lucknow University, Lucknow passed the order impugned.

6. After institution of writ petition no. 5601 (M/S) of 2005 this Court by means of the order dated 28.10.2005 passed the following interim order on the memo of writ petition:

"Sri Krishna Chandra, learned counsel has accepted notice on behalf of opposite parties. He is directed to file a detailed counter affidavit within 2 weeks. A week further time is allowed to file rejoinder affidavit. List immediately thereafter.

In the meantime, one vacancy shall be kept in reserve which shall be subject to further orders passed by this court."

7. On 23.12.2005 this court passed the following interim order on the order sheet:

"List in the second of January, 2006.

In the meantime, petitioner shall be permitted to appear in the examination in question provisionally but result shall not be declared."

8. It appears that pursuant to the aforesaid interim order passed by this Court the petitioner was permitted to appear in the examination in question provisionally but since this court restrained the declaration of the result, the same was not declared.

9. Then the petitioner moved C.M.Application no. 6845 of 2006 with the title (Third Application for disposal of writ petition and for issuing direction to the opposite party to declare the result of the LL.B. 3 years Ist semester examination and also for issuing direction to the opposite party to permit the petitioner to appear in the final examination of LL.B. 3 years 2nd semester examination scheduled to be started from 15th June, 2006).

10. Though it is not mentioned in the order that this court passed the order on the said application but by means of the order dated 29.5.2006 this court permitted the petitioner to appear in the 2nd semester provisionally.

11. On 29.5.2009 this court passed the following interim order on the memo of writ petition:

"By means of order dated 23.12.2005 the petitioner has been permitted to appear in the first semester provisionally. The examinations for the second semester are going to be held from 15.6.2006.

On the basis of the submission of the learned counsel for the petitioner it comes out that the second counselling was done, but the same has not been held by the University authorities.

Considering the fact that the petitioner has already appeared in the first semester, it is directed that the petitioner shall be permitted to appear in the second semester provisionally."

12. Thereafter the petitioner filed C.M.Application No. 102 of 2007 with the title (Application for issuing direction to the opposite party to declare the result of the petitioner of LLB 3 years 1st and 2nd semesters and also permit her to appear in the final examination of 3rd semester of LLB 3 years degree course which is scheduled to be held 10th from January, 2007), upon which on 5.1.2007 this Court passed the following interim order:

"On behalf of the petitioner it is contended that earlier in LL.B. three years course the petitioner was permitted to appear in the first and second semester and in continuation of the earlier order it is further required that for final examination of IIIrd Semester of LL.B. Three Years Degree Course, which is scheduled to be held 10.01.2007.

The petitioner shall also be allowed to write the examination failing which the rights of the petitioner shall be jeopardized.

Sri I.B.Sigh, learned counsel appearing for the University Lucknow has objection in the teeth of the earlier orders passed by this court.

Accordingly, the petitioner is permitted to appear in IIIrd semester of LL.B. Examination and the result be declared subject to the outcome of this writ petition."

13. Thereafter the petitioner filed C.M.Application No. 6105 of 2007 with the title (Application for disposal of the writ petition and also for issuing direction to the opposite party to permit the petitioner to appear in the final examination of 4th semester of LL.B. 3 years degree course which is scheduled to be held 17th May,2007). It appears that no interim order was passed by this Court on the said application. Therefore, the petitioner again moved C.M.Application No. 6219 of 2007 with the title (Second Application for issuing direction to the opposite parties to permit the petitioner to appear in the final examination of 4th semester of LL.B. 3 years degree course which is scheduled to be held 17th May 2007), upon which this court passed the following interim order on 15.5.2007:

"Earlier the petitioner was being represented by Sri J.S.Tomar Advocate and then by Mrs. J. Lakshmi Tiwari Advocate. Today the petitioner is present in person. She prays for and is granted permission to appear in person.

The petitioner submits that earlier in LLB. 3 years course she was permitted to appear in 1st, 2nd and 3rd semesters" examination under the orders of this court passed on 23.12.2005, 29.5.2006, and 05.01.2007 by Hon"ble Mr. Justice D.P.Singh, Hon"ble Mr. Justice S.S.Chauhan and Hon"ble Mr. Justice D.V.Sharma respectively. She also brings to the notice of the Court that examinations of 4th semester of the above course are scheduled from 17th May,2007 i.e. day after tomorrow.

Sri Vijay Pratap Advocate holding brief of Sri I.B.Singh, learned counsel for the respondents 1 to 4 has nothing to say substantial as far as permission for appearing in the 4th semester is concerned, in view of the earlier orders passed by this court as mentioned hereinbefore.

Accordingly the petitioner is permitted to appear in the examination of 4th semester of LLB. 3 years" course. However, the result of the petitioner shall not be declared till further orders of this court .

The petitioner informs that the examinations of 4th semester shall be completed by 5th June, 2007. List in July 2007 for final hearing as per request made on behalf of respondents 1 to 4.

A copy of this ordeal be supplied to the petitioner forthwith to enable her to appear in the examination of 4th semester of LL.B. 3 years" course."

14. Thereafter again the petitioner filed C.M.application no. 14704 of 2007 with the title (Application for issuing direction to the opposite party to permit the petitioner to appear in the final examination of 5th semester of LL.B. 3 years Degree course which is scheduled to be held 27th November, 2007), upon which on 21.11.207 this court passed the following interim order:

"It appears that vide earlier orders passed by this court at different occasions, the petitioner has been permitted to appear in Ist, 3rd, 3rd and 4th semesters of LL.B three years course. Now, the examination of 5th semester is scheduled to be held from 27th November, 2007. There can be no justification to debar the petitioner from further appearing in the next semester. Accordingly, the petitioner is permitted to appear in 5th semester examination scheduled to be held on 27th November, 2007. The respondents authorities are also directed to declare the result of petitioner of 1st, 2nd, 3rd and 4th semesters in which the petitioner has already appeared.

List after four weeks."

15. Thereafter again the petitioner moved C.M.Application No. 34043 of 2008 with the title (Application for issuing direction to the opposite

parties to permit the petitioner to appear in the final examination of 6th semester of LL.B. 3 years degree course which is scheduled to be held from 22nd April, 2008), upon which on 19.4.2008 this court passed the following interim order:

"By an order dated 10.5.2007 passed by Hon"ble the Senior Judge on the administrative side the nomination was made in favour of this court. Thereafter, on 15.5.2007 an order was passed on the pending application permitting the petitioner/applicant to appear in the 4th Semester examination of the LL.B three years" course. But subsequently on 21.11.2007 this case was wrongly listed before Hon"ble Mr. Justice Sabhajeet Yadav and his Lordship was pleased to pass an order giving permission in respect of 5th semester examination on 21.11.2007.

The Section Officer of Miscellaneous Single was called in the court. He told that due to inadvertent mistake this case was wrongly listed before Hon"ble Mr. Justice Sabhajeet Yadav and since the fact of nomination was not brought into his Lordship's knowledge, the order dated 21.11.2007 was passed by his Lordship.

A perusal of the record shows that the applicant was permitted to appear in 1st, 2nd and 3rd Semester examinations under the orders passed on 23.12.2005, 29.05.2006 & 05.01.2007 by Hon"ble Mr. Justice Devi Prasad Singh, Hon"ble Mr. Justice S.S.Chauhan and Hon"ble Mr. Justice D.V.Sharma. Thereafter for the 4th Semester examination the permission was granted in her favour vide order dated 15.5.2007. Similarly, for the 5th Semester examination the permission was granted vide order dated 21.11.2007. Now the examination for the 6th Semester is scheduled to be held from 22nd April, 2008.

Heard the petitioner/applicant (in person) and Sri S.M.Ali, Advocate holding brief of Sri I.B.Singh, Advocate. There can be no justification to debar the petitioner/applicant at this stage from appearing in the examination of 6th semester particularly keeping in view that on earlier occasions she has been permitted to

appear in all the previous semesters.

Keeping in view the facts and circumstances, the petitioner is permitted to appear in the 6th Semester of L.L.B Examination which is scheduled to be held from 22nd April, 2008. However, the results of the 6th Semester Examination shall not be declared till further orders of this court.

List on its own turn.

Let a certified copy of this order be provided to the petitioner/applicant on payment of usual charges today itself."

16. Thereafter again the petitioner moved C.M.Application No. 46735 of 2008 with the title (Application for issuing direction to the opposite parties to declare the petitioner's result of 6th Semester of LL.B. 3 years degree course with other students, so that the petitioner can apply to the state bar council for her registration, and also give the direction to the opposite parties to do the compliance of Hon"ble High Court order dated 21.11.2007), upon which on 23.5.2008 this court passed the following interim order:

" Heard the petitioner in person and Sri I.B.Singh learned counsel for the University of Lucknow.

It comes out from the record that the petitioner has been permitted to appear in the examinations of 1st to 5th semesters of LL.B. and respondents authorities were also directed to declare the result of the petitioner subject to the out come of this writ petition. Accordingly in respect of the result of 6th semester of LL.B. examination also the same direction is accorded."

17. Thereafter again the petitioner moved C.M.Application No. 54851 of 2008 with the title "Objection against application".

18. On 16.7.2008 this court passed the following interim order on the memo of writ petition:

"Heard petitionerMs. Samiksha Verma in person and Sri I.B.Singh, learned counsel for all the respondents.

It has been pointed out by the petitioner that the order dated 23.5.2008 passed by this court by which the respondents were directed to declare the result of the petitioner for all the semesters of LL.B. has not been complied till date.

Sri I.B.Singh, learned counsel for the respondents says that the order dated 23.5.2008 has not been complied with on account of the failure of the petitioner to deposit requisite admission and examination fees and in case the petitioner deposits the requisite admission and examination fees today, the petitioner's result for all the semesters of LL.B. examination will be declared by tomorrow. Sri I.B.Singh has also assured the court that he will inform the respondents about this order today.

It is provided that in case the petitioner deposits the entire admission and

examination fees today, the petitioner's result for all the semesters of LL.B. examination shall be declared by tomorrow i.e. 17.7.2008.

Put up this case on 18.7.2008 for final disposal before the appropriate Bench."

19. It appears that on the strength of the aforesaid order the petitioner was permitted to deposit the entire admission and examination fees for all semesters and her result of all the semesters of LL.B. examination was declared. With this progress writ petition no. 5601(M/S) of 2005 is pending for final disposal. Now the petitioner has filed another writ petition bearing no. 3196 of 2008 (M/S) seeking admission in LL.M. academic course 2008 even without marksheet of LL.B. examination.

20. The record of writ petition reveals that the petitioner also moved C.M. application No. 59920 of 2008 with the title " Application for issuing direction to the respondents to issue the regular marksheet to the petitioner as per the Hon"ble High Court order dated 21.11.2007 and 23.5.2008." but no order has been passed thereon, on account of which the petitioner in the writ petition no. 3196(M/S) of 2008 has prayed for giving admission in LL.M. academic course 2008 without marksheet of LL.B Examination. In the said writ petition this court passed the following interim order on 6.8.2009:

"By means of order dated 23.12.2005 the petitioner has been permitted to appear in the first semester provisionally. The examinations for the second semester are going to be held from 15.6.2006.

On the basis of the submission of the learned counsel for the petitioner it comes out that the second counselling was done, but the same has not been held by the University authorities.

Considering the fact that the petitioner has already appeared in the first semester, it is directed that the petitioner shall be permitted to appear in the second semester provisionally."

22. It appears that petitioner was not permitted to appear in the counseling which was scheduled on 7th August, 2009, she moved contempt petition which is registered as Criminal Misc. Contempt Petition No. 1618 ? of 2009, upon which on 13.8.2009 this Court issued notice to the opposite party no.1 Saroj Anand, Counseling Incharge and HOD, Education Department, University of Lucknow requiring her to be present in person before this court on 20.8.2009.

23. In writ petition no. 5601(M/S) of 2005 opposite parties filed supplementary counter affidavit with the submission that last counseling of LL.B. three years course was held on 19.10.2005 and last candidate admitted in the course was at the rank of 135; whereas the petitioner was placed at the rank of 502, as such the petitioner's position was below in the merit list to the candidate last admitted, therefore, the petitioner's admission was not possible, which had already been closed on 19.10.2005.

24. It has also been submitted that not a single seat was vacant after admitting the last candidate who was placed at serial no. 135 in the merit list.

25. After going through the record, I find that the petitioner was permitted to appear in the examination of LL.B. each and every semester without giving admission in the course even without declaration of the result of preceding semesters. Under the strength of the interim order dated 16.7.2008 the petitioner also succeeded to deposit entire admission and examination fees for all semesters and to get declare result of all the semesters of LL.B. examination at the same time.

26. Mr. Upendra Nath Mishra, learned counsel for the University submits that the petitioner was not within the rank in the merit list for admission and only those students had been given admission, who were over and above to the petitioner in the rank and thereafter no seat remained vacant. He further submits that this court may not issue direction to permit the petitioner to appear in the examination in violation of the statute of the University. The Hon'ble Supreme Court in several cases has held that the court cannot direct by its judicial fiat, the university to disobey the statute to which it owes its existence and the regulation made by the university itself as that would be destructive of the rule of law.

27. In support of his contentions he cited the following cases:

State of Maharashtra Vs. Vikas Sahebrao Roundale AIR 1992 SC 1926, in which it has been held as under:

"Slackening the standard and judiciary fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The direction to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Art. 226 of the constitution, directing the appellants to permit the students to appear for the examination etc."

C.B.S.E. Vs. P. Sunil Kumar 1998 (5) SCC 377, in which it has been held as under:

"This Court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularizing the same by taking a sympathetic view of the manner. In the case of A.P. Christians Medical Educational Society Vs. Govt. of A.P. (1996) 2 SCC 667 this court held that the court will not be justified in issuing direction to the University to protect the interest of the students who had been admitted to the medical college in clear transgression of the provisions of the University Act and the regulations of the University. It was also observed that the court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law. In the case of the State of T.N. Vs. St. Joseph

Teachers Training Institute, (1991) 3 SCC 87 this court held that the direction of admitting students of unauthorized educational institutions permitting them to appear at the examination has been looked on with disfavor and the students of unrecognised institutions who are not legally entitled to appear at the examination conducted by the Education Department of the Government cannot be allowed to sit at the examination and the High Court committed an error in granting permission to such students to appear at the public examination. All these cases were again considered by a threeJudge Bench of this court in the case of the State of Maharastra V. Vikas Sahebrao Roundale, (1992) 4 SCC 435 and it was held that the students of unrecognized and unauthorized educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognized institutions. The court ultimately struck down the direction issued by the High Court. In yet another case, Guru Nanak Dev University V. Parminder Kr. Bansal (1993) 4 SCC 401 another threejudge Bench of this Court interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing the MBBS examination. The Court observed :)SCC P. 403, para 7).

"We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, illconceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

28. He further submitted that equity in admission matters should not be based on misplaced sympathies. Loose and ill conceived sympathy in academic matters introduces an element of indiscipline in academic life and expose the entire system to ridicule and also renders any meaningful control of academic work impossible. This is subversive of academic discipline. Admission to next year or courses cannot be allowed/ordered without regard to eligibility of the candidates. Such misplaced sympathies encourage indiscipline and mismanagement in educational Institutes/Universities.

29. In State of U.P. & others Vs. Ramona Perhar (Km.) 1994 (6) SCC 1 it has been held that

"This court has emphasized in several decisions that passing of interim

orders more particularly of a mandatory nature like the present one is neither a matter of course nor a matter of charity. The power to grant interim orders is coupled with the duty to consider all the relevant facts and legal principles relevant in that behalf. Admissions to educational institutions should not be granted by interim orders at any rate, not without fully hearing the respondents."

30. He further submits that section 28 (6) of Uttar Pradesh State Universities Act, 1973 provides that "no students admitted to any college in a contravention of the provisions of this section shall be permitted to take up any examination conducted by the University and the Vice-Chancellor shall have the power to cancel any admission made in such contravention".

31. He further submits that in the case of Dr. Ram Manohar Lohia Awadh University Faizabad Vs. Civil Judge (Junior Division) 2005 (23) L.C.D 1601, this Court has held as under:

"In view of the statutory bar, under sub section 6 of Section 28 of the U.P. States Universities Act, students admitted beyond the sanctioned strength shall have no right to appear in the examination. Neither this court in pursuance to power conferred by Article 226/227 of the Constitution of India nor the subordinate courts have got power to permit the students to appear in the examination by interim order or by temporary injunction who have been admitted beyond the sanctioned strength in an University, College or an institution as it shall amount to an order passed in violation of statutory provision contained in U.P. State Universities Act. Admissions granted beyond the sanctioned in an University, College or an institute will not extend any right to such students and accordingly even if students had studied for a year or more will have no right to appear in the examination."

32. On the strength of the aforesaid judgments he submits that the petitioner has been permitted to appear in all the semesters of LL.B. 3 years course examination only on the strength of the interim orders passed by this court and her result has been declared, which cannot be done as has been held in the above noted judgments and on the basis of the result of LL.B examination the petitioner has no right to seek admission in LL.M. course. He further submits that no error has been committed by the Vice Chancellor of the Lucknow University in passing the order dated 20.10.2005 because the petitioner was much below in the rank securing 502 marks as the last candidate who was given admission was placed at the rank of 135 and her admission in LL.B course on the strength of the interim orders passed by this court as well as declaration of her result has no force of law and is absolutely in violation of dictum of Hon'ble Supreme Court. Therefore, the petitioner's result of LL.B. examination may not be treated the result in the eye of law and she may not be permitted to receive the benefit on the basis of the said result.

33. Though the petitioner has moved an application for initiating criminal proceedings against counseling Incharge, 2009 as he has committed forgery in

publication of LL.M. course 2009 but I am informed by the learned counsel for the University that earlier the merit list was purely tentative list and now final list has been published and mistake of the tentative list has been rectified, which does not suffer from error. After considering the material on record, I am of the view that the petitioner has no right to seek admission in LL.M.course on the basis of the result of the LL.B. examination. Therefore, I am also of the view that the petitioner has no locus to raise finger on the admission list of LL.M's students. Accordingly, I do not find any reason to initiate criminal proceedings in the matter. Therefore, the application is rejected.

34. After going through the order impugned, I find that the Vice Chancellor has rightly rejected the petitioner's representation seeking admission in LL.B. course as her merit was much below to the last candidate admitted in the course and after giving admission to the candidate who was at the rank of 135, the total seats also filled up. Therefore, I do not find error in the order impugned. Since the petitioner succeeded to appear in the examination and to get declaration of result under the strength of the various interim orders passed by this Court time to time which is not permissible as has been held by the Hon'ble Supreme Court in several cases discussed hereinabove, I am of the view that the petitioner is not entitled to receive any benefit on the basis of the said result. Therefore, I hereby provide that the petitioner's result of LL.B. examination shall be nonest and she shall not be entitled to get benefit of degree of LL.B. Examination, if awarded to her.

35. In the result, the writ petitions are dismissed.