
(1999) 09 AHC CK 0046
In the Allahabad High Court
Case No : C.M.W.P. No. 16039 of 1999

Seema Srivastava

APPELLANT

Vs

Vice-Chancellor, Allahabad University, Allahabad and others

RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Citation : (1999) 4 AWC 3120 : (1999) AWC 3120 : (2000) 2 UPLBEC 57

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : K.S. Kushwaha, for the Appellant; A.B.L. Gaur and Ashok Bhushan and S.C., for the Respondent

Judgement

A.K. Yog, J.—This petition was filed and taken up on 17th April, 1999. Learned counsel appearing on behalf of all the respondents (Respondent Nos. 1, 2 and 3) was granted time to seek instruction and produce relevant answer book of the petitioner pertaining to B.Sc. Part 1, 1997 Examination back paper of Organic and Household Chemistry. Court directed the case to be listed on 6th May, 1999. It is not clear as to what happened on 6.5.1999. as there is nothing on the order-sheet of the case. On 27th August, 1999, again respondents' counsel prayed for time and Court directed the case to be listed on 9th September, 1999 in order to enable learned counsel for the respondents to comply with the aforementioned order dated 17th April, 1999.

2. On 9th September, 1999, case was directed to be listed on 13th September, 1999. on the request of learned counsel representing University. On 13th September, 1999, case was listed before Hon''ble Yatindra Singh, J. Case was directed to be paced before the Hon''ble Chief Justice for nomination of Bench.

3. The Hon''ble the Chief Justice has nominated this bench on 15th September, 1999.

4. On the request of learned counsel for the petitioner (Sri K. S. Kushwaha), file of the case was requisitioned from the Registry on 16th September, 1999.

5. When case was taken up on 16th September, 1999. learned counsel for the petitioner as well as learned counsel of the respondents (Sri A.B.L. Gaur) were present. On the request of learned counsel for the respondents to seek instructions-case was directed to be taken up on 17th September. 1999.

6. Since all the parties are represented and learned counsel for the parties are agreeable, I propose to decide the case finally after hearing learned counsel for the parties.

7. The facts of the case are not disputed and same are as follows : Seema Srivastava, petitioner is a bona fide student of University of Allahabad. Petitioner was admitted in B.Sc. Part I (Home Science) three years course in the year 1996. She carried her studies and was allowed to appear in the B.Sc. Part I Examination, which commenced on 19th August, 1997.

8. It is mentioned in para 3 of the writ petition that she appeared in the First paper-"Organic and Household Chemistry" on 19th August, 1997. Petitioner states (in para 4 of the writ petition) that she got sick and left the Examination Hall abruptly midway and without completing her paper. She, however, appeared in the Second paper (Nutrition) and Third paper (Physiology) on 21.8.1997 and 23.8.1997 respectively. Result of B.Sc. Part 1 was declared. Petitioner was not shown successful. Mark-sheet of B. Sc. Part I Examination (Annexure-1 to the writ petition) shows that petitioner secured only 10 marks (less than 33% pass marks).

9. According to the petitioner, she was permitted to take chance to clear the said paper by appearing in the "back paper" and she was also allowed to seek admission in B.Sc. Part II Course. Petitioner was permitted to appear in B.Sc. Part II final Examination along with back paper (pertaining to B.Sc. Part 1).

10. Petitioner has filed her mark-sheet dated 18th November, 1998 relating to B.Sc. (Home Science) Part II-Examination, 1997-98 wherein she has been shown "Passed". Petitioner has also filed her another mark-sheet of B.Sc. (Home Science) Part I-Examination, 1997 dated 30th March, 1999. In the said Mark-sheet, she had secured Zero mark in the back paper (Organic and Household Chemistry) and shown as "Failed." though she had secured 35 marks out of 50 in the practical of the said first paper."

11. In para 8 of the writ petition, it is stated that petitioner approached the Authorities of the University for redressal of her grievance but no action has been taken in the matter.

12. Petitioner has, however, not disclosed the name of the authority nor she has annexed any copy of the representation to indicate exact "nature of her grievance before the authorities.

13. Petitioner, on the other hand, asserts that she is a meritorious student and if she secured 10 marks in the first paper (Organic and Household Chemistry) where she had not completed the Examination and also in view of other marks

apparently, It is not possible that petitioner will get Zero mark in the said subject. It is further alleged that the office of the University informed her that her copy was changed and/ or the concerned authorities were not giving her correct information as they were not ready to rectify the mistake committed at their end.

14. In para 10 of the writ petition, it is alleged that it is practically impossible that she will secure "Zero mark" in the paper in question though she had done well in other papers and also considering her average and percentage of marks, which is approximately 60%.

15. The grievance of the petitioner is that Examination of B.Sc. Part III is to commence from 22nd September, 1999 and her mark-sheet of B.Sc. Part I has not been corrected so far. She will suffer irreparable loss if she loses the chance for appearing in the said Examination.

16. Unfortunately, petitioner has not disclosed the relevant facts pertaining to her admission in B.Sc. Part III and/or the fact regarding submitting her examination form and fulfilling other requisite conditions so as to make her eligible for appearing in the B.Sc. Part III Examination.

17. Considering the fact that the petitioner is a young student and if she is not permitted to appear in the examination. She is bound to suffer irreparably in case it is found in future that she was entitled to be declared passed in B.Sc. Part I Examination.

18. This Court should not have normally entertained this petition regarding B.Sc. IIIrd year Examination, unless petitioner has passed B. Sc. Part I (Home Science) Examination.

19. Learned counsel for the respondents informs that Controller of Examination had informed him on 16th September. 1999 that relevant copy of the petitioner (Seema Srivastava) Roll No. 210018 [referred to para 7 of the writ petition) is not traceable and available for being produced before the Court though the relevant copy was available and personally seen by him about a month back in as much as the petitioner was approaching the authorities.

20. The fact remains that relevant copy of the petitioner is not available today. On the other hand, B.Sc. Part III Examination is to commence from 22nd September. 1999. Here is a piquant situation.

21. This Court has. however, no option but to direct the respondents to permit the petitioner to appear In B.Sc. Part III (Home Science) Examination which is scheduled to be commenced from 22nd September. 1999 (or any other rescheduled dates) subject to the following conditions :

(1) Petitioner is otherwise eligible to appear in B.Sc. Part III (Home Science) Final Examination. The said examination shall be provisional subject to final decision of the result of B.Sc. Part I (Home Science) Back-Paper Examination.

(2) It is made absolutely clear that petitioner shall have no rights for appearing in B.Sc. Part III Examination under this order.

(3) (a) Respondents are directed to trace out the copy of the petitioner on or before 10th October, 1999. If the relevant copy of the petitioner is not located or made to it available, the University authority shall hold an enquiry and fix accountability of the officials/persons concerned for this serious lapse of negligence and or manipulation and take suitable disciplinary action in accordance with law.

(b) In case copy in question is not available, respondents shall make arrangement for holding re-examination of the petitioner of the back paper. This direction is being specifically given in order to discourage the tendency of manipulating "loss of copies".

(c) If copy is traced out it shall consider petitioner's grievance as mentioned in this writ petition.

22. Possibility of "the copy" of not being traceable due to active participation of both "the petitioner" and "persons employed in the Office of University" cannot be ruled out.

23. Hence I am not inclined to issue direction for awarding "average marks." though prayed for on behalf of the petitioner-who has placed reliance upon-the following 1997 (2) AWC 1196 : JT (1985) SC 246 : 1985 UPLBEC 734 (DB). In none of those cases-Court had considered the effect of manipulation in ensuring that the copies "lost" or "not available". This Court cannot rule out possibility of manipulations and has apprehension of the copy not being available because of deliberations on the part of petitioner and respondents jointly. Apprehension of this Court is fortified from the circumstances that petitioner had filed no written representation before respondents, alleges in a vague manner that she was perusing the matter. From the statement at the Bar, it has come to the notice of the Court that she had been approaching authorities personally. The other conspicuous circumstance is that petitioner has mentioned nothing regarding her admission in B.Sc. Part III Course, in the writ petition.

24. Be that as it may without fixing responsibility on either the respondents or the petitioner, I am of the opinion that it is not a fit case where Court should direct for awarding average marks ; and hence. the direction for petitioner's re-examination in the "back paper" along with current B. Sc. (Home Science) Part 1 Examination, if possible or by making special arrangement for the same within two months from today so that her result of re-examination Is declared before or along with B.Sc Part III Examination.

25. Writ petition stands allowed. No order as to costs.