
(2005) 10 PAT CK 0067
In the Patna High Court
Case No : CWJC No. 9018 of 2005

Shishir Saurabh

APPELLANT

Vs

Bhupendra Narayan Mandal University and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Bihar State Universities Act, 1976 — Section 21(2)(d)

Citation : (2007) 1 PLJR 251

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Bishnu Kant Dubey, for the Appellant; Hemendra Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner has prayed for directing the Respondents to issue his original degree of B.A. (Hons.), who passed the said examination from Y.V.K. Degree College, Birpur, Supaul in Session 1993-96 as also the Migration Certificate. Petitioner was a student of Y.V.K. Degree College, Birpur (Supaul) in B.A. (Hons.) Course in the Sessions 1993-96 and for appearing in the examination he got himself registered with B.N. Mandal University bearing Registration No. 60433/94. He appeared in B.A. (Hons.) Part I examination in 1994 and passed the same and subsequently he also appeared after getting Admit Card from the University and passed Part II and Part III examination in 1995 & 1996 respectively and marks sheet for the final year was issued by the University on 5.12.1997. Thereafter, for further prosecution of studies the petitioner required the original degree of Bachelor of Arts (Hons.) and Migration Certificate and for that he filed application alongwith requisite fee before the Examination Controller of the Respondent-University on 6.5.2005, which has not been issued to him, hence, this writ application.

2. A counter affidavit has been filed on behalf of Respondent Nos. 1 to 3 in which it is stated that Y.V.R. Degree College, Birpur (Supaul) from where petitioner has

passed B.A. (Hons.) examination, is not an affiliated college in terms of Section 21(2)(d) of the Bihar State Universities Act, 1976, and, therefore, the petitioner is not entitled for issuance of any certificate/ degree of B.A. (Hons.) which he has passed from the said College. In support of this, reliance has been placed upon the decision of this Court in the case of Gyan Murti Vs. State of Bihar and Others, and upon an unreported order dated 1.4.2003 passed in C.W.J.C. No. 1283 of 2003, which was affirmed in L.P.A. No. 35 of 2004.

3. Learned counsel appearing for the petitioner has submitted that when petitioner was allowed to appear in the examination, rightly or wrongly, then the University is duty bound to publish the result and issue the marks sheet and the Respondent-University has no right to play with the career of the petitioner by withholding his final degree. In support of this, learned counsel relied upon the decision of the Apex Court in the case of Amarendra Pratap Singh vs. L.N. Mithila University, reported in 1989 PLJR (SC) 18 and Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, . He further submitted that this Court in C.W.J.C. No. 7281 of 2001 disposed of on 7.8.2001 (Shamee Kapoor vs. The State of Bihar & Ors.) and in C.W.J.C. No. 2362 of 2002 disposed of on 19.3.2002 (Anil Kumar vs. State of Bihar & Ors.), and in the case of Bhawanand Jha Vs. B.N. Mandal University and Others considering the decision of the Apex Court in the case of Shri Krishnan vs. Kurukshetra University (supra) directed the Respondent-University to issue degree and migration certificate.

4. I find force in the submission of the learned counsel for the petitioner. In the case of Amarendra Pratap Singh vs. L.N. Mithila University (supra), writ petitions were filed by the students of unaffiliated and unrecognised educational institutions for directions to declare their results on compassionate grounds and the High Court refused to issue mandamus as it would be contrary to statutory provisions and University Regulations. The Apex Court set aside the order of the High Court and directed to declare the results of the petitioners and others who appeared in the said examinations.

5. In the case of Shri Krishnan vs. The Kurukshetra University (supra) the appellant was a Government servant and was pursuing the course of LL.B. as an evening student. He failed in three subjects at the Part I examination but was promoted to Part II with option to clear those subjects. He was, however, refused permission for Part II examination which was ultimately given on his giving an undertaking to secure his employer's permission. After the examination he demanded that his results be declared as the permission was not necessary. He was informed that since his percentage in Part I was short his candidature stood cancelled. His petition to the High Court for a writ of certiorari was dismissed in limine. The Apex Court held that if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in the examination then by force of the University Statute the University had no power to withdraw the candidature of the appellant and the Apex Court directed to declare the result of LL.B. Part II examination.

6. In the case of Bhawanand Jha vs. B.N. Mandal University (supra) the reason behind withholding the Degree was that petitioner cleared Part I examination after Part III examination. According to the University, in terms of the Regulations the petitioner was not eligible to appear in Part III examination as he had not cleared Part I examination. This Court following the decision in the case of Shri Krishnan vs. Kurukshetra University (supra) directed the University to handover the original Degree to the petitioner in respect of B.A. (Hons.) Examination.

7. I fail to appreciate as to how the decisions relied upon by the counsel appearing for the University is of any help to him. I got the records from the Record Room and perused the decision of this Court in the case of Gyan Murti vs. State of Bihar and also the order passed by learned Single Judge in C.W.J.C. No. 1283 of 2003 and the order of the Division Bench in L.P.A. No. 35 of 2004 arising therefrom. In none of the said orders, the decision of the Apex Court in the case of Amarendra Pratap Singh vs. L.N. Mithila University & Ors. (supra) and in the case of Shri Krishnan vs. The Kurukshetra University (supra) have been considered.

8. This Court in similar circumstances as that of the petitioner of the present case, in the case of Shamee Kapoor vs. State of Bihar (supra) and in the case of Anil Kr. vs. State of Bihar (supra) directed the University and its authorities to issue certificate/degree of B.A. (Hons.) Examination to the petitioner. In their cases also the marks sheet were issued and the University declined to issue the degree on the ground that the College did not enjoy affiliation.

9. Thus, from the facts and circumstances discussed above, I am of the opinion that the petitioner cannot be denied of the benefit of labour in appearing at the examination for the laches, if any, on the part of the University. In fact, contrary view may cause serious prejudice and injustice to the petitioner, who after having been permitted to appear at the examination, has already passed the examination and, thus, in my opinion, is entitled for fruitful result arising therefrom. In the result, this writ petition is allowed. The Respondents are directed to issue original degree of B.A. (Hons.) as also the Migration Certificate to the petitioner within two weeks of the receipt/ production of a copy of this order.