
(1991) 09 AHC CK 0070

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6764 of 1987

Smt. Chandra Kanti Singh

APPELLANT

Vs

University of Kanpur and Another

RESPONDENT

Date of Decision : 26-09-1991

Acts Referred:

Evidence Act, 1872 — Section 115

Uttar Pradesh State Universities Act, 1973 — Section 28, 28(4), 28(5), 28(6)

Citation : (1991) 2 AWC 384

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Prem Prakash, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Bhat, J.—The Petitioner prays for grant of writ of mandamus directing the University of Kanpur to declare the Petitioner's result of B.Ed. class for the academic session 1985-86.

2. The case of the Petitioner is that after obtaining graduation in 1982 from the University of Kanpur she was admitted in B.Ed. class for the session 1985-86 in Sri Narain Girls Degree College, Unnaon, affiliated to the University of Kanpur. It is stated by her that as required she had sent application in duplicate for admission, one copy was sent to the Respondent No. 1 and the other was sent to Respondent No. 2. Thereafter, a registered card is said to have been received by the Petitioner which shows that she was admitted in B.Ed. Class in the said college. She was required to deposit the admission fee and was given roll number also. She is said to have deposited the admission fee as required." Copy of the receipt for the same is contained in Annexure-1 to the writ petition. By Annexure-2 dated 13-12-85 she was informed by the College that the Petitioner was being admitted and subjects mentioned in the letter were being allotted to her. She is said to have attended B.Ed. classes regularly. She was issued an identity card also by the Respondent No. 2. Photostat copy of the same is

Annexure-3 to the writ petition.

3. The Petitioner was thereafter allowed to fill up the form for appearing in the final examination and admit card was also issued to the Petitioner by the Registrar of the University, which is reflected by Annexure-4. She was allotted roll number also for the said examination. The Petitioner appeared in the said examination but her results have not been declared though results of the other candidates were declared on 2-9-86. She is said to have approached the University for declaration of her result many times but no heed was paid to her request and her result remained undeclared. The Petitioner is said to have moved an application on 15-2-87 which was forwarded by the Principal of the College to the University. Copy whereof is Annexure 5 to the writ petition. The Petitioner is said to have suffered irreparable loss by the arbitrary and mala fide acts of the University in not declaring her result so far.

4. A Counter affidavit is filed by Respondent No. 1 through its Assistant Officer Superintendent, Legal Cell. It is stated in the counter affidavit that the Petitioner was not validly selected for B. Ed class in accordance with the Rules of the University. She cannot be said to be validly admitted candidate for the said course for the academic session 1985-86. For the acts of the Principal, whereby the Petitioner had been issued identity card and permitted to attend the classes, it is contended that the University cannot be held to be bound by it. The University had never permitted the Petitioner to appear in the examination or attend the classes. She was never allotted roll number by the University. However it is stated that her examination form was forwarded by the Principal along with forms of other candidates. The Deputy Registrar has mentioned in his letter dated 4-7-86 that she was not mentioned as a selected candidate in the list for admission of B.Ed. class and the admission of the Petitioner appears to be against the rules. An explanation is said to have been called for from the college. It was pointed out to the college that the Petitioner was not selected in accordance with rules, therefore, it was not possible to declare her result. This communication was served on the Principal on 17-7-86. After Petitioner's appearance in the examination the University has been raising objection repeatedly as to why the Petitioner was admitted to the B.Ed. course by the College.

5. In her rejoinder-affidavit, the Petitioner has refuted the allegations made in the counter-affidavit by the Respondent No. 1 and has reiterated the facts asserted by her in the writ petition. It is stated that the Principal did not allot the roll number to the Petitioner. The Roll number was allotted by the University and to prove this a copy of the admit card of another candidate, namely Km. Chetna Agnihotri is placed on record. The Petitioner has stated that she has reliably heard that she has obtained 227/600 marks and in practical she has obtained 114/200 marks which entitle her to be declared as having passed the examination. It is stated that the University is bound to declare the Petitioner's result.

6. Learned Counsel for the Petitioner has submitted that the Petitioner has appeared in the examination after her examination form was scrutinized by the University and she was permitted to appear in the examination. Therefore, Respondent No. 1 cannot be heard to say that admission of the Petitioner was not valid. After being allowed to appear in the examination, Respondent No. 1 is not permitted to withhold the result of the Petitioner. Reliance is placed by the Petitioner on *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, . In this case a candidate was allowed to appear in L.L.B. part II examination. After appearing in the examination he was informed that on account of short percentage in Part I his candidature stood cancelled. After having lost the petition in the High Court the Petitioner in that case approached the Supreme Court. The Supreme Court held that power to withdraw candidature before the examination cannot be exercised after the candidate has appeared in the examination. The Petitioner also relied on *Sushil Kumar Srivastava v. Principal ITI Faizabad* 1982 UP LB EC 509. In this case the Petitioners after having been admitted in Industrial Training Institute at Faizabad were not allowed to attend the classes. After some time they were told that their names have been struck out from the rolls of the Institute without giving them any opportunity. That Petitioners were liable to seek admission and they were admitted in bona fide manner. Therefore, it was held that the striking out their names was bad and the Petitioners were estopped from challenging the validity of their admission.

7. The learned Counsel for the Respondents has relied on Rules for admission framed u/s 28(5) of the U.P. State University Act, 1973, hereinafter called the Act. A detailed procedure is prescribed for the admission of B.Ed candidates. A committee of three members for every college has to be constituted for selection of candidates. The committee is to consist of a nominee of the Vice-Chancellor, a nominee of the Director of Education and Principal of the college or in his absence the senior most teacher of the B.Ed. department of the College. A list of selected candidates is to be made in order of merit. A waiting list also is to be prepared. It was contended that in violation of the said rules no admission can be made and if any admission was made in violation of the said rule that can be cancelled by the Vice Chancellor u/s 28(6) of the Act. The said provision reads as under--

No students admitted to any college in 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.

8. Learned Counsel for the Respondents has also relied on *Mahesh Pandey v. The Vice Chancellor, University of Gorakhpur* 1981 UP LB EC 137: The Division Bench of this Court has held that admissions made in contravention of rules is illegal and Vice-Chancellor's order cancelling such admission is not bad and the admission granted in contravention of rules will not operate as estoppel against University. He has also relied on *Achhey Lal v. Vice-Chancellor, Gorakhpur*

University 1985 UP LB EC 38. The court was considering Sections 28(4), 28(6) and Section 115 of the Evidence Act. It was held that admission made by affiliated college of the University in breach and in disregard of criteria and directions given by admission committee of the University cannot operate as estoppel against University if the admission is cancelled by it, as there can be no estoppel against statute. Thus order passed by the University cancelling the admission as improper after enquiring in the matter was held to be valid. A regular enquiry seems to have been held in that case and the admission was cancelled before examination was conducted. However, there is an authority of this Court in *Kailash Chandra v. Vice-Chancellor, University of Lucknow* 1983 UP LB EC 296, it is held that non-declaration of result of a candidate even after examining his answer books, on the ground that his roll number is not acceptable, was unjustified and the University was directed to declare the result of the candidate.

9. Section 28(6) empowers the Vice-Chancellor to cancel any admission which was made in contravention of rules and no such candidate would be permitted to take up examination conducted by the University. The reading of Sub-section (6) of Section 28 makes it manifestly clear that a candidate whose admission has been granted in violation of the rules is not to be permitted to appear in the examination and his admission also can be cancelled. This provision does not envisage as to what will happen if the University has allowed the candidate to appear in the examination and thereafter withheld his result on the ground that the admission of such candidate was granted initially in contravention of rules. After having allowed a student to appear in the examination would it be possible for the Vice-Chancellor to cancel the admission of a candidate or refuse to declare his result, is the main question which falls for consideration. It is also true that the admission in contravention of rules may not confer any right on the candidate to appear in the examination. But facts in this case would not squarely fall under Sub-section (6) of Section 28 of the Act.

10. It is not the case of Respondent No. 1 that the Petitioner was not eligible to seek admission to B.Ed. class. She had applied for admission and was admitted by Respondent No. 2 and was allotted roll number also. She was permitted to complete the course, thereafter, her examination form was sent to the University. At that stage the Vice-Chancellor could have prevented the Petitioner from appearing in the examination if her admission was found to be in contravention of rules framed u/s 28 of the Act. Nothing of that kind was done but the admit card was issued to her by the Registrar and necessary fee was obtained from her and she was permitted to appear in the examination. The conduct of examination is the sole domain of Respondent No. 1. Respondent No. 1 has the duty to scrutinize the examination form before a candidate is allotted roll number and allowed to appear in the examination. Respondent No. 1 seems to have not objected to the Petitioner's admission and permitted her to appear in the B.Ed. examination. The conduct of examination is not the job of Respondent No. 2. He is only to forward the application forms filled up by the candidates, to the

University authorities. After that it is responsibility of the University authorities to conduct the examination in accordance with rules and exercise such power as is vested in them under the Acts or the rules in respect of the scrutiny of the candidates and genuineness of their admission. After the University has permitted the Petitioner to appear in the examination by allotting her roll number it will not lie now in the mouth of the University that the Petitioner's admission initially was in contravention of the rules. Her examination cannot be cancelled nor can her admission to B.Ed be cancelled after she has been permitted to appear in the examination. Her result also cannot be withheld. Her admission is challenged by the Respondents not on the ground of eligibility but on the ground of violation of procedure prescribed for admission to B.Ed. class. That procedure is man made, and if her admission is in violation of the procedure that seems to have been condoned by Respondent No. 1 by permitting her to appear in the examination and by allotting her roll number.

11. The argument advanced by learned Counsel for the Respondents that the Vice-Chancellor has a power to cancel the admission even after the Petitioner had appeared in the examination, is not supported by Section 28(6) of the Act. There is no other power of the Vice-Chancellor for cancellation of the admission of a candidate. This power is also to be exercised by the Vice-Chancellor before a candidate takes up the examination. After completion of the examination in which the candidate has also appeared this power is not exercisable by the Vice-Chancellor. In view of the fact that no inherent defect is pleaded in respect of the Petitioner being ineligible to seek admission to the B.Ed. course initially. The emergency power of the Vice-Chancellor could not be exercised by him in this matter. But if the Petitioner lacked inherent qualification to seek admission to the B.Ed. course, the matter would have assumed different dimension. We are concerned with the case in which the Petitioner's admission is challenged not on the ground of her eligibility and her qualification, but on the ground of procedural infraction. That infraction is condoned by Respondent No. 1 when it permitted the Petitioner to take up examination and allotted roll number to her and also issued admit card to her. These are the peculiar features of the case which were not present in the cases which learned Counsel for the Respondents has cited before the Court. Therefore, those authorities are distinguishable and do not apply to the present case.

12. The admission of the Petitioner has not been cancelled. Her results have been withheld. Withholding her results is sought to be justified on the terms of Section 28(6). It is, therefore, not permissible to Respondent No. 1 to withhold the results of the Petitioner. Respondent No. 1 is rather obliged to declare the results of the Petitioner when he permitted the Petitioner to appear in the examination. Learned Counsel for the Respondents did not show any record by which the Petitioner's admission was cancelled. He seems to be of the opinion that since Respondent No. 1 has a right to cancel the admission, therefore, it can have a right to withhold the results of the Petitioner. This is a conservative approach. Respondent No. 1 has no right to cancel the admission of the

Petitioner as discussed herein above. It, therefore, has no right to withhold the results of the Petitioner.

13. For the reasons stated above, the writ petition succeeds and is allowed. Respondent No. 1 is directed by a writ of mandamus to declare the results of the Petitioner of the B.Ed. class for the academic session 1985-86 in which she has appeared under roll number 824. From the date of presentation of a certified copy of this order before the Respondents they shall declare the results of the Petitioner within ten days and convey the same to her. In view of peculiar circumstances of the case, there will be no order as to costs.