

(1996) 02 AHC CK 0103
In the Allahabad High Court
Case No : C.M.W.P. No. 9703 of 1995

Surendra Nath Mishra

APPELLANT

Vs

Vice-Chancellor, Gorakhpur University and Others

RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 UPLBEC 791

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Tarun Varma, for the Appellant; Dilip Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Petitioner, by means of this petition under Article 226 of the Constitution of India, challenges the validity of the order dated 31st March, 1995/4.4.1995, contained in Annexure VII to the writ petition, whereby the result of the Petitioner for the year 1993 of B.A. Part II was withheld. The Petitioner also prayed for a writ, order or direction in the nature of mandamus commanding the Respondents to allow the Petitioner to appear in the examination of B.A. Part III which was scheduled to commence from 15.4.1995 from Digvijay Nath Post Graduate Degree College, Gorakhpur and to declare the result of the said class. Admission of the Petitioner in B.A. Part III was held illegal and the examination form submitted by him of B.A. Part III for the year 1993 was cancelled on the ground that the Petitioner was declared to have failed in B. A Part I in 1992 and further he had no right to appear in B.A. Part III examination.

2. The brief facts of the case giving rise to the present petition are that, it was in the year 1992 that the Petitioner appeared in B.A. Part I examination from the Digvijay Nath Post Graduate Degree College, Gorakhpur (hereinafter referred to as the college). He was allotted roll No. 29758 by the University. Thereafter, the Petitioner was declared to have passed the said examination and marksheet was

also Issued in which he was shown to have passed B.A. Part I. On the basis of the said marksheet, the Petitioner took admission In B.A. Part II in the year 1993. He also appeared in the examination of B.A. Part II and was declared successful on 20.7.1994. Thereafter, a notice dated 2.6.1994 was served calling upon him to show cause as to why he be not declared to have failed in B.A. Part I examination. It was stated that if no explanation was submitted within one week of the receipt of the said notice, his result of B.A. Part II will be cancelled. On receipt of the said notice, the Petitioner submitted his detailed reply within the time prescribed by Respondent No. 1. Thereafter, nothing was heard from the University therefore, Petitioner took admission in B.A. Part III as he has already passed B.A. Part II. After complying with the necessary formalities of depositing fee, etc., the Petitioner continued to attend classes and after depositing the requisite fee Petitioner also submitted his examination form. The Respondents have also issued admit card to the Petitioner for the examination which was scheduled to commence from 15.5.1995. It was on 8.4.1995 that all of a sudden, the impugned order was served upon the Petitioner. Since the examination was about to commence, the Petitioner has no option but to approach this Court and to file present petition for the relief, referred to above.

3. It was on 13.4.1995, this Court was pleased to pass the following order:

Shri Dilip Gupta has accepted notice for opposite party Nos. 1, 2 and 3. The Petitioner is directed to serve the opposite party No. 4 by registered post indicating that the counter-affidavit be filed within three weeks from the date of receipt of the notice. Steps may be taken in a week. Two weeks thereafter for rejoinder-affidavit.

List in the week commencing 10th July, 1995.

The Respondent Nos. 1 to 3 are directed to permit the Petitioner to appear in B.A. Part III examination for the year 1994 which is said to be scheduled from 15th April, 1995 provisionally. The result of the Petitioner shall not be declared, till further orders of this Court.

4. On the strength of the aforesaid order, the Petitioner appeared in B.A. Part III examination. Counter-affidavit has been filed on behalf of the Respondents and it has not been disputed that in the year 1992, the Petitioner appeared in B.A. Part I examination in which he was declared to have passed and that marksheet was also issued to him. It has also been admitted that in the year 1993, Petitioner appeared in B.A. Part II examination in which he was also declared to have passed. The facts, the Petitioner took admission in B.A. Part III, submitted his examination form and the admit card was also issued to him have also been admitted. It has, however, been asserted by the Respondents that two tabulation chart were prepared by the University. In one tabulation chart, the Petitioner was shown to have passed the B.A. Part I examination while in the other, he was shown to have failed in the said examination. The tabulation chart in which the Petitioner was shown to have passed the examination was sent to the college

concerned, on the basis of which marksheet was issued to him by the Principal of the College. It has been asserted that it was on account of clerical mistake that the Petitioner was shown in the said tabulation chart as to have passed the B.A. Part I examination. Actually, he has failed in the said examination and was not entitled to appear in B.A. Part II examination. Plea of availability of alternative remedy has also been taken.

5. I have heard learned Counsel for the Petitioner and learned Counsel appearing for the Respondents.

6. It has been vehemently urged by the learned Counsel for the Petitioner that no allegation of fraud, misrepresentation and suppression of fact has been made by the Respondents against the Petitioner. He was declared to have passed the B.A. Part I examination by them and thereafter, marksheet was also issued in which also he was shown to have passed the said examination. On the strength of the said marksheet, the Petitioner was admitted in B.A. Part II examination in which also he was declared to have passed. The Respondents, under the facts and circumstances stated above, were estopped from contending that the Petitioner has failed in B.A. Part I examination and on that footing, had no right to refuse him to appear in the examination of B.A. Part III. The impugned order was wholly illegal, without jurisdiction and Inequitable. It has also been submitted that this Court by its order dated 13.4.1995 permitted the Petitioner to appear in B.A. Part III examination, on the basis of which he appeared in the said examination and he is hopeful of success in the same. Therefore, under the said circumstances, it has been submitted, it would be in the interest of justice to allow this petition otherwise not only the career but life of the Petitioner shall be completely ruined and he shall suffer loss which could not be compensated in terms of money. In support of his submission, learned Counsel for the Petitioner has referred to and relied upon the several decisions of Hon"ble Supreme Court and of this Court which I will refer to and deal with later on.

7. On the other hand, learned Counsel appearing for the Respondents submitted that it was on account of the clerical mistake that he was shown to have passed in B.A. Part I examination. The Petitioner was legally not entitled to appear in B.A. Part II examination and in B.A. Part HI examination and that the impugned order was rightly passed by the Respondents.

8. I have considered the rival contentions made by the learned Counsel for the parties and have also carefully gone through the record of the case.

9. It is evident from the material on record that the Petitioner was not at fault at any point of time, no allegation of fraud, misrepresentation and suppression of fact has at all been made out against him. He was admitted in B.A. Part I after following the procedure prescribed for the same. Thereafter, he was permitted to appear in the examination, his result was also declared in accordance with law in which he was shown to have passed the said examination. Thereafter, the Respondents have supplied him the marksheet in which also he was shown to

have passed the said examination. On the strength of the said declaration of result and the marksheet, the Petitioner was given admission in B.A. Part II. He was issued the admit card and was permitted to appear in the examination. The result of the said examination was also declared by the Respondents and the Petitioner was declared to have passed the said examination. Under these facts and circumstances, the Respondents are estopped from contending that the Petitioner has failed in B.A. Part I examination and was not entitled to pass B.A. Part II and not to appear in the subsequent examination.

10. In *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, the Apex Court of the country has ruled as under:

It is, therefore, manifest that once the Appellant was allowed to take examination rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear.

11. Relying upon the aforesaid decision and the decision of this Court in *Anil Kumar Srivastava Vs. University of Allahabad and Another*, in *Bundelkhand University v. Laxmi Narain Yadav* 1983 UPLBEC 226, it was held as under:

13. The substance of the finding of fact recorded by the appellate court is that the marksheet issued to the Plaintiff being genuine and being in conformity with the Tabulation Chart maintained by the Defendant University and the Plaintiff having been granted admission at the Special Final Examination of B.Sc. Part II on the strength of the own document issued by the University to him, the University must be held to be estopped from contending that the Plaintiff was wrongly admitted to the B.Sc. Part II examination because he had, in fact, failed at the B.Sc. Part I examination.

Even if, therefore, it be assumed that in point of fact the Plaintiff had failed at B.Sc. Part I examination, on account of the omission or failure of the University to take adequate care in the preparation of the Tabulation Chart and the marksheet, the Plaintiff has been put in a position which is beyond repair, in that, he has, as a consequence, lost many years in the process a loss which cannot, in my humble view, be compensated in terms of money. In my view, on the facts found by the appellate courts its conclusion that the Defendant-appellate was estopped from withholding the Plaintiffs result, is correct and, indeed supported by good authority, including decision of the Supreme Court in *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, as well as a decision of our own Court in *Anil Kumar Srivastava Vs. University of Allahabad and Another*.

12. In the case of *Tarkeshwar Lal and others v. University of Gorakhpur and Ors.* 1984 UPLBEC 1437, a Division Bench of this Court was pleased to hold as under:

After considering the facts of the case and the legal position involved in the case, I have no hesitation in coming to the conclusion that it was not open to the

University of Gorakhpur to cancel the results of the Petitioners of L.L.B. Part II Examination as there is not an iota of evidence to suggest that the Petitioner were party to the interpolations made or fraud committed in declaration of the results in their favour. The University, on the other hand, before admitting the Petitioners for appearance at the L.L.B. Part III. Examination had ample opportunity to discover the fraud committed and refuse them permission to appear at the L.L.B. Part II Examination 1976. However, communication of the results through marksheet issued by the principal of the College amounts to declaration of results by the principal of the college amounts to declaration of results by the University. The University, in my opinion, is therefore, clearly estopped from cancelling the results of the Petitioner of L.L.B. Part II Examination 1975.

13. Exactly the same view was taken by their Lordships of Hon''ble Supreme Court in *Sanatan Gauda v. Barampur University* JT 1990 (2) 57 and the University was directed to declare the result of the Appellant and was restrained from preventing him from pursuing his final years course.

14. In *Pravesh Kumar Dubey v. University of Kanpur and Anr.* 1992 (2) UPLBEC 1053, this Court was pleased to hold that the student cannot be permitted to suffer for the mistake and negligence of the University or their authorities.

15. It is not necessary to refer to the other decisions which have been cited at the Bar. The trend of the authority is that if a student is permitted to take admission to appear in the examination and his result has also declared without there being any fraud, misrepresentation or suppression of fact on his part, he cannot be deprived of his right to take admission in the higher class nor his result can be cancelled thereafter. The University and its authorities are estopped from Interfering with his prosecuting his further studies on the ground that he has actually failed in the previous class. Hon''ble Supreme Court and this Court have also been interfering in such cases and have been granting relief to the students on humanitarian and equitable grounds also. A reference in this regard may be made to the decision in *Dr. Anil Kumar Agarwal v. Director of Medical Education and Training, U.P. Lucknow and Ors.* 1987 UPLBEC 547, wherein relying upon the decision of Hon''ble Supreme Court in *Dr. Rajiv Srivastava's* case 1985 UPLBEC 152, it was ruled as under by the Division Bench of this Court:

In any case, since in pursuance of the order passed by the Court, the opposite party granted the admission and since the admission was granted two years have elapsed and the Petitioner has completed his course and submitted his thesis, if we adjudicate upon the merits of petition it may inequitably be against the Petitioner, therefore, following the practice adopted by the Supreme Court in the case of *Dr. Rajiv Srivastava* 1985 UPLBEC 152, that where a student who has completed his course it would be fair to direct that his result may be declared on purely humanitarian grounds we, dispose of this petition by directing the opposite party to declare the result of the Petitioner in case he has completed the course in pursuance of the admission granted by the opposite party. The writ

petition is disposed accordingly.

16. In view of the aforesaid discussions, this petition succeeds and is allowed with costs. The order dated 4.4.1995 (Annexure VII to the writ petition) is quashed and the Respondent Nos. 1 to 3 are directed to declare the result of the Petitioner of B.A. Part III examination.