

(2008) 05 AHC CK 0085
In the Allahabad High Court

Syed Mohd. Asim

APPELLANT

Vs

Vice Chancellor, Aligarh Muslim University, Controller
Examination (Examination Division), Aligarh Muslim
University and Assistant Controller Examination (Examination
Division), Aligarh Muslim University

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Citation : (2008) 6 AWC 5724

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioner, Smt. Sunita Agarwal, Advocate on behalf of respondent Nos. 1 to 3 and perused the record.

2. This writ petition has been filed for quashing the notice/letter dated 25.3.2008 and 7.4.2008 and for mandamus directing the respondents authority to allot Hall Ticket (roll number) of B.Sc. (Hons.) Part III scheduled to be held from 10.5.2008 and for declaring his result of B.Sc. (Hons.) thereafter.

3. The matter had come up before this Court Yesterday i.e. 7.5.2008 when the following order was passed.

Heard Counsel for the petitioner and Smt. Sunita Agarwal for the respondents.

Smt. Sunita Agarwal submits that she wants to place relevant ordinance in support of her contention and may also seek instructions on the question of permitting the petitioner in back papers.

At her request, put up tomorrow.

4. The submission of learned Counsel for the petitioner is that the petitioner appeared in B.Sc. (Hons.) Part-I Examination, 2006. His result was declared but he failed in Calculus, Vector Analysis and Geometry & Electricity Magnetism and E.M. Waves subjects; that in the year 2007 he appeared in B.Sc. (Hons.) Part-II

Examination, 2007 in aforesaid two backpapers but failed in the paper of Earth's process and resources.

5. Respondent No. 3 issued notice to the petitioner on 25.3.2008 for submitting his original marksheet of B.Sc. (Hons.) Part-I and B.Sc. (Hons) Part-II in the examination division at the earliest. He was informed that in case fails to submit his aforesaid marksheets of Hall ticket (roll number) for the appearing in examination of B.Sc. Part-III will not be issued.

6. A reminder was also sent to the petitioner on 7.4.2008. The petitioner submitted his representation to respondent No. 3 on 28.4.2008 along with mark sheet of B.Sc. Part-I and Part-II but has not been issued Hall Ticket (Roll number) for appearing in B.Sc. final year examination scheduled from 10.5.2008, hence he gave a notice through an Advocate to respondent Nos. 2 and 3 forwarding a copy of the same to the Registrar as well as Vice-Chancellor, Aligarh Muslim University, Aligarh also and praying for issuance of Hall Ticket (Roll number) to him for appearing in the final year BSc. examination.

7. Smt. Sunita Agarwal, learned Counsel for the University submits that she has received certain documents by fax i.e. letter dated 8th December, 2007 by Professor Huzoor H. Khan addressed to the Assistant Controller (Examinations), A.M.U., Aligarh cover of answer copies of the petitioner in the subjects MM-104 (Calculus) and MM-105 (Coordinate and Vector Analysis) in which the petitioner has obtained 5 and 9 marks out of 40 marks respectively and marksheets of B.Sc. Part I and II of the petitioner. Photostat copies of fax letters dated 25.3.2008 and 7.4.2008 which are impugned in the writ petition and photocopy of the marksheet of B.Sc. (Hons.) examination, 2007 of the petitioner. These documents have also been placed before the Court from which it appears that copies of marksheets, letters dated 25.3.2008 and 7.4.2008 which have been appended by the petitioner as Annexures-2, 3 and 4 to the writ petition. Counsel for the petitioner has also relied upon Clause 10 of Chapter XXI B.A. (Hons.) & B.Sc. (Hons.) effective from academic session 1985-86 which is as under:

10. Candidate who obtains at least 30% marks in each of at least three-fourth of the papers and practicals (wherever prescribed) of his Main and Subsidiary Subjects (inclusive of sessionals), and at least two-third of the papers of the Compulsory Subjects in Part I shall be promoted to Part II; and a candidate studying in Part II who obtains at least 30% marks in each of at least three-fourth of the papers and practicals (wherever prescribed) of his Optional Subjects (including sessionals) and at least two-third of the papers of the Compulsory Subjects of Part II shall be promoted to Part III. Candidates promoted to Part-II in the manner aforesaid and appearing at Part II Examination shall appear in those papers and practicals, if any, of the Part I Examination in which they have failed.

Sessional marks obtained in the respective papers at B.A./B.Sc. Part I shall be carried over.

Provided that unless a candidate promoted to Part II passes the Part I Examination (inclusive of the Compulsory Subjects) shall not be eligible for promotion to Part III. For the purpose of this proviso, a candidate should be deemed to have passed if he obtained at least 30% of the marks in each of the papers (inclusive of sessional) and practicals (wherever prescribed).

Provided further that if a candidate, who is a regular student, fails to pass in the minimum number of the papers and practicals as prescribed in the first paragraph of this Clause, though he has fulfilled the necessary attendance requirements, he shall cease to be a regular student. He may appear as an ex-student only in the paper or practical in which he has failed, at the next Annual Examination and subject to permission by the Academic Council, at any further subsequent Annual Examinations.

Should a candidate who has thus ceased to be a regular student, pass the minimum number of papers for promotion to Part II or Part III, as the case may be, he shall register himself as a regular student for appearing at the Examination of the next higher Part.

Provided further that a regular candidate, (a) who fails to fulfil the minimum attendance requirements, or (b) who having fulfilled the minimum attendance requirements, fails to pass in the papers required for promotion to the next higher part, applies for re-registration as a regular students shall have to fulfil the attendance requirement a new for all papers of the Part in which he is studying and notwithstanding the provisions of Clause 7(b), he shall again perform sessional work and practical (any marks obtained in the preceding year being disregarded) and shall have to appear in all the papers at the next Examination of that Part. But no candidate shall be permitted to continue as a regular student for more than two years in any one Part of the B.A./B.Sc. (Hons.) Course.

Provided further that in case a candidate fails to obtain the degree within five years of his admission he shall cease to be a regular student. He may be permitted to appear at the two immediately following Annual including Supplementary Examinations as an ex-student, but only if he has undergone a regular course of study in Part III for one year. If a private candidate fails to pass the Examination of any Part within three years of his becoming eligible to appear at it, his candidatures shall cease and he can appear at a subsequent Examination of that part only under the permission of the Academic Council but the total duration of his candidature for the whole course shall not exceed seven years from his date of registration.

8. The Counsel for the respondent University insists that in case petitioner is allowed interim relief of appearing in the examination then her arguments on the basis of instructions received under fax letter dated 7.5.2008 and aforesaid faxed documents placed by her before the Court may be considered, noted and recorded in detail.

9. It is submitted by the learned Counsel for the University that:

(i) The petitioner was admitted in B.Sc. Course during the session 2005-06. He appeared in B.Sc. Part I examination in 2006 and was promoted to B.Sc. Part-II.

(ii) In the year 2007 he appeared in the Examination of B.Sc. Part II. Although in the examination of B.Sc. Part-II he secured pass marks in the subjects which is required for promotion to B.Sc. Part III but he could not be promoted to B.Sc. Part III because in B.Sc. Part II he could not clear the backlog paper of B.Sc. Part I as per the record though Inadvertently he was issued marksheet of B.Sc. Part II showing him having passed in B.Sc. Part I backlog paper and promoted to B.Sc. Part III.

(iii) Since he did not pass B.Sc. I backlog papers, Clause 10 of Chapter XXI of Ordinances (Academic) became applicable wherein in para 1 the rule regarding promotion provides that the students having backlog paper of B.Sc. Part I, will have to clear this backlog paper in B.Sc. Part II.

(iv) Reliance has also been placed upon para II to Clause 10 of the Ordinances (Academic) which provide that unless a candidate promoted to Part II passes the Part I Examination (inclusive of the Computer Subjects) he shall not be eligible for promotion to Part III. It is stated that as the petitioner has not cleared B.Sc. Part I, he can not appear in the Examination of B.Sc. Part III examination.

(v) Attention of the Court is also drawn towards para III of Clause 10 which provides that if a regular candidate fails to pass in the minimum number of papers and practicals as prescribed in Clause 10(1) he may fulfill the necessary requirements, he shall cease to be a regular student even though he may appear as an Ex-student only in the paper of practical in which he has filed at the next Annual Examination.

(vi) The petitioner could not clear his backlog papers of B.Sc. Part I in 2007, hence the petitioner can appear in the next annual examination i.e. in 2008 to clear the backlog of B.Sc. Part I as an Ex-student.

10. In rebuttal learned Counsel for the petitioner has submitted that the original marksheet of B.Sc. Part I and B.Sc. II appended as Annexure-2 to the writ petition issued to the petitioner by the University shows that he has passed the aforesaid examination These marksheets are not manufactured document by the petitioner; that after passing B.Sc. II year examination the petitioner has been admission in B.Sc. III year and has legitimate expectation for appearing in B.Sc. III year examination conducted by the University and not in any said backlog papers as an ex-student.

11. It is vehemently urged by the Counsel for the petitioner that no reason has been given by the University in its letters dated 25.3.2008 and 7.4.2008 as to why he was being directed to return the original mark sheet to the University. All that is said in the letters dated 25.3.2008 and 7.4.2008 is that "in case he fails to submit the above mentioned mark sheet. Hall Ticket for the examination of

B.Sc. Part III will not be issued". Letter dated 25.3.2008 is reproduced as under for ready reference:

Office Of The Controller of Examination (Examination Division) Aligarh Muslim University Aligarh- 202 002.

D. No. XM/ED/287/ Dated 25.3.2008 Provost SS Hall (North) AMU, Aligarh.

Sir,

I have been directed to request you that Mr. Syed Mohd. Asim, Faculty Roll No. 04GLB-56 and Enrolment No. GB-4773, resident of your Hall may be ordered to submit his original mark sheets of B.Sc. Part I and II in the Examination Division Kothi No. 3 at the earliest. In case he fails to submit his above mentioned mark sheets, Hall Ticket for the examination of B.Sc. Part III will not be issued.

Sd. Illegible Assistant Controller (Examination Division)

12. It appears from the faxed documents submitted by the learned Counsel for the University that there was internal correspondence between the department of the University in respect of the petitioner which is apparent from the letter dated 8th December, 2007. Neither this letter nor the cover of the copies show the reason why the original marksheet of the petitioner having passed B.Sc. II year is being directed to be submitted to the University. It may be that on the cover of the copies the petitioner has been given 5 marks out of 40 marks in MM-104 (Calculus) and 9 marks out of 40 marks in MM-105 (Coordinate and vector Analysis). What marks have actually been awarded to the petitioner to the petitioner in the copy is not before the Court and even otherwise the petitioner was declared pass and issued a pass marksheet of B.Sc. II, on the basis of which he has been given admission as a regular student of B.Sc. III. If the arguments of the learned Counsel for the University are taken to be correct on its face value that the petitioner has failed in backlog papers in B.Sc. Part-I examination he ought to have been communicated the reason as far back as in December, 2007 when this had come to the knowledge of the authorities. Instead they shielded the alleged mistake of issuance of incorrect marksheets by directing him to submit the originals of B.Sc. I and B.Sc. II under threat that if he fails to do so, Hall Ticket for B.Sc. III examination will not be issued; meaning thereby that if the petitioner does not succumb to their demand, he will be restrained from appearing in B.Sc. III examination.

13. There does not appear to be any fault of the petitioner and he cannot be made to suffer by two years of academic loss due to the fault of the University. The petitioner in the circumstances cannot be made a scapegoat for any mistake on the part of the University.

14. *Pravesh Kumar Dubey v. University of Kanpur* through its Registrar and Ors. 1990 A.C.J 508 the Court has held that so far as promissory estoppel is concerned, equities are to be adjusted in favour of one who will suffer most. If the mistakes are permitted to be corrected nobody will be allowed to suffer for

the mistake of others and as such it was directed that the University is estopped from refusing to declare the result of B.Sc. Part II of the petitioner. It was further held that the High Court will not permit the petitioner to suffer for the mistake/negligence of University authorities and accordingly the University to permit the petitioner to appear in B.Sc. Part III examination if the petitioner is declared pass in Part II examination.

15. Admittedly, the petitioner has been issued pass marksheet of B.Sc. Part I and II examinations. Following the ratio laid down the aforesaid case the petitioner will suffer most if he is not permitted in the circumstance to appear in B.Sc. Part III examination, 2008 therefore, the equities are to be balanced directing the University to permit the petitioner to appear in B.Sc. Part III examination, 2007-08. Even if pass marksheet has been issued to the petitioner by the University by mistake he ought to have been informed about it and reasons were required to be given in the letters dated 25.3.2008 and 7.4.2008. If the petitioner had been informed in writing when such mistake was detected by the University in December, 2007 i.e. when departmental communication was being made in this regard vide letter dated 8th December, 2007. Apparently the said letter does not disclose the fact that the petitioner has failed in B.Sc. Part I examination and he has been wrongly issued pass marksheets of B.Sc. Part I and II examination. Even letters dated 25.3.2008 and 7.4.2008 give an impression that there is nothing amiss and in case the petitioner deposits or submits all his original marksheets of B.Sc. Part I and II to the University, he will be permitted to appear in B.Sc. Part III examination and will be issued Hall Ticket.

16. The letter dated 7.4.2008 is the reminder to somewhat in the same language as letter dated 25.3.2008 quoted in the body of this order. It is as under:

Office of the Controller of Examinations (Examination Division) Aligarh Muslim University Aligarh- 202 002.

D. No. XM/ED/28882 Dated 07.04.2008 Reminder

Provost SS Hall (North) AMU, Aligarh

Reference: The letter sent to you vide D. No. XM/ED/2871 dated 25.3.2008 regarding the submission of original marksheets of B.Sc. Part I & II by Mr. Syed Mohd. Asim, the resident of your Hall (copy enclosed) B.Sc. Part I & II).

Sir,

In this connection it is submitted that Mr. Mohd. Asim, Faculty Roll No. 04GLB-56 and Enrolment No. GB-4773 has not submitted the original marksheets of B.Sc. Part-I & II so far.

So, you are requested to direct the above student to submit his aforesaid marksheets to the Assistant Controller, Examination Division, Kothi No. 3 at the earliest. In case of not submitting the above mentioned marksheets by the candidate, Hall Ticket for the examination of B.Sc. Part-III will not be issued.

Sd. Illegible Assistant Controller (Examination Division)

The student concerned is hereby directed to submit the original marksheets of B.Sc. Part-I & II as required by the Assistant Controller (Examinations Division) immediately.

Sd. Illegible Provost Sir Syed Hall (North) Seal.

17. It therefore appears from arguments of the Counsel for the University and the fax documents that the University has allegedly committed some mistake and has issued pass marksheets to the petitioner which was in its knowledge but in order to it up in a hush bush manner the petitioner was directed to submit the original marksheets. The petitioner has been permitted to appear in B.Sc. III examination. Thereafter is a sixty four thousand dollar questions. Even from letter dated 8th December, 2007 it appears that no reasons were being provided to the petitioner rather an impression was being hinted out he will be issued Hall Ticket for appearing in B.Sc. Part III examination if he submits the original markssheets of B.Sc. Part I and II examinations. However, if the conduct of the University does not inspire confidence that the petitioner would have been permitted to appear in B.Sc. III examination if he had deposited his pass Markssheets of B.Sc. Part I and II examinations.

18. From the instructions given by the Aligarh Muslim University, Aligarh to its Counsel it appears that probably the petitioner might not have passed in the backlog papers in B.Sc. Part-I examination and it is for this reason that he has been directed to submit original marks sheets of B.Sc. Part I and II examinations without giving any reason for this in order to hide the alleged inadvertent mistake of the University.

19. Considering the facts and circumstances of this case and on perusal of the record as produced by the parties in my opinion, there is nothing on record except the fax instructions to the Counsel for the University to show that the petitioner has in fact failed in B.Sc. Part I and II examinations. It is for the first time today on 8.5.2008 the reason for directing the petitioner to submit the original marksheets of B.Sc. I and II, have been light of the day when examinations of B.Sc. III are to commence from 10.5.2008.

20. The argument of the Counsel for the petitioner should appear in the backlog papers along with main examination in 2008 scheduled from 10.5.2008 cannot be accepted for the reason no advantage can be taken by the University of its own mistake and for the reason that if the petitioner is directed to appear in backlog papers in the main examination of B.Sc. III, 2008 he has been caught unaware and cannot appear without any preparation of the said backlog papers. Otherwise in the event if he is permitted to appear in backlog papers with main examination in 2009 he would be losing one whole year which would be a set back due to mistake or fallacy wholly attributable to the University.

21. So far as provisions of Clause 10 of the Ordinance are concerned, suffice it to

say that petitioner has been issued pass markssheets of B.Sc. I and II year and has also been admitted in B.Sc. III year as a regular student. Whether the petitioner has in fact failed in Bachelor papers of B.Sc. I year is yet to be determined. The reason for directing the petitioner to submit his original marksheets of B.Sc. Part I and II has come to light orally only today it cannot be decided without counter and rejoinder affidavits. Hence whether Clause 10 of the Ordinance aforesaid would be applicable at this stage is under cloud.

22. For all the aforesaid reasons and in view of law laid down in the case of Pravesh Kumar Dubey (supra) the petitioner at this stage is permitted to appear in the main examination of B.Sc. Part III as a regular candidate being held by the AMU w.e.f. 10.5.2008. The University will accordingly issue Hall Ticket to him and he shall not be restrained in any manner from appearing in the aforesaid examination that the petitioner has been issued an incorrect marksheet by the University resulting in this chaos. Since the fact has come today orally, the Court may after exchange of counter and rejoinder affidavits permit the petitioner to appear in the backlog papers i.e. MM-104 (Calculus) and MM-105 (Coordinate and Vector Analysis) of B.Sc. Part I, if required, by holding a separate examination for him in July/August, 2008 after giving him time for preparation of aforesaid paper for examination and for declaration of his result.

23. Counter affidavit be filed within a period of 3 weeks as prayed. Rejoinder affidavit may be filed within two weeks thereafter.

24. List in the third week of July, 2008.

25. In the mean time, result of the petitioner of B.Sc. III year examination shall not be declared till next date of listing.

26. Let a copy of this order be supplied to the learned Counsel for the petitioner by tomorrow on payment of usual charges.