

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 17708 of 2015

Date of Decision: 18.09.2015

Balkaranbir Singh

... Petitioner(s)

Versus

Panjab University, Chandigarh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ravinder Pal Singh, Advocate
for the petitioner(s).

Mr. Suvir Sidhu, Advocate
for the respondents.

G.S.Sandhawalia , J.

The present writ petition has been filed seeking a writ of mandamus directing the respondents to declare the result of the petitioner pertaining to B.A. (1st and 2nd semesters) and to admit the petitioner in the 3rd semester of B.A.

The pleaded case of the petitioner is that after completing his 10+2 from the Open School of Learning, he got provisional admission in B.A. (1st semester) in September, 2014 in University School of Open Learning, Panjab University at Chandigarh. His admission was

provisional on account of the fact that he got compartment in mathematics subject. He, thereafter, had re-appeared in the mathematics subject and had been declared pass by the Open School of Learning. He had appeared in the 1st semester of B.A. in December, 2014 and was also admitted in the 2nd semester of B.A. and also appeared in the examination held in May/June, 2015. However, his result had not been declared. It is pleaded that this was on account of the fact that he did not have minimum 20% marks in the subject of mathematics when he had got compartment in 10+2 and, therefore, his result had been withheld. It was, thus, the case of the petitioner that there was no misrepresentation, fraud and concealment of facts on his part as he had passed the 10+2 examination and thereafter, had also appeared in the subsequent examinations of 1st & 2nd semesters of B.A. Resultantly, the relief claimed is that his result be declared and he be admitted in 3rd semester of B.A.

In the written statement filed by the respondent-university, the defence is taken that not only that the petitioner had failed in the subject of mathematics having earned only seven marks but he had also obtained compartment in the subject of computer science and, therefore, he only passed three papers out of five papers in the 10+2 examination. The candidate is required to pass four papers out of five and should have minimum 20% marks in the fifth compartmental paper for seeking admission in the first semester. The prospectus of the University School of Open Learning was relied upon wherein the said

conditions have been mentioned. Since the petitioner was not eligible to pursue the course in view of the above regulations, an ineligible letter along with two refund forms and original 10+2 detailed marks card of the petitioner was sent to him by registered post on 29.11.2014 from Sector 14, Chandigarh Post Office vide receipt No. RP 454280653IN. The said letter was received back undelivered with the remarks that there was insufficient address, which was the same as mentioned in the writ petition.

The dealing official had contacted the petitioner on his mobile number which was mentioned in the admission form and informed him that he was ineligible and he should get his fee refund form and original detailed marks card and should apply for refund. The petitioner had also received the original detailed marks card and the fee refund forms. The roll numbers of the candidates were online and the petitioner had downloaded his roll number from the university website and had appeared in the B.A. (1st Semester) examination. The petitioner was well aware of the regulations contained in the prospectus and inspite of knowing about his ineligibility, he submitted his examination form with malafide intention to bypass the rules and regulations contained in the prospectus. The candidate having compartment only in one subject in 10+2 examination is eligible to pursue the said course. The resultant forms filled were attached as Annexure R1 wherein he had been declared ineligible along with refund forms. No replication was filed on behalf of the petitioner, to controvert

the said fact.

Learned counsel for the petitioner has, thus, placed reliance upon the judgments of the Hon'ble Apex Court in ***Sri Krishan v. The Kurukshetra University, Kurukshetra 1976(1) SCC 311, Guru Nanak Dev University v. Sanjay Kumar Katwal and Another 2009(1) SCC 610, Smt. Giyarshi v. Kurukshetra University and Others 2010(3) SCT 456, Renu Chauhan v. Kurukshetra University, Kurukshetra and Others 2011(2) PLR 651 and Shri Guru Govind Singh Khalsa College and Others v. Panjab University, Chandigarh and Another 2014(3) RSJ 499*** to submit that once admission has been granted to the student and he has been allowed to take examination, his result cannot be withheld.

The argument, which is raised in the facts and circumstances of the present case, is not acceptable. The petitioner's sole case before this Court was that he was having only a compartment in the subject of mathematics and, therefore, as per Clause 4.1.1B of the Eligibility for Admission and Subjects for Undergraduate Courses, he was eligible for admission having been placed in compartment in one subject. Relevant part of the Rules reads as under:-

"B. A student who has been placed compartment at +2 level examination through PSEB, Mohali/any other Board/Body/Council/University in India under (semester system) shall be eligible to seek admission to the First year of B.A. Course, provided he/she fulfills the following conditions:

- i) He/she should have been placed in compartment in one subject only i.e. either in first semester or in second semester;*
- (ii) He/She should have obtained at least 20% marks (theory+practical+internal assessment) in the subject in which he/she has been placed in compartment."*

A perusal of the above Rule would go on to show that firstly the candidate is required to get 20% marks in theory, practical & internal assessment in the subject in which he was placed in compartment and the compartment is only to be in one subject for being eligible for admission in B.A. (1st Semester). The petitioner, as noticed above, had got only seven marks in mathematics and not crossed the bar of 20% marks.

Secondly, he had not been shown pass in computer science which would be clear from his result card dated 5.6.2014 (Annexure P3) since he secured only 37 marks. He, being aware of the terms of the prospectus, was willing to take a chance for admission and submitted his application. The university never declared him eligible which is his categoric case. He gave his re-appear examination for both the subjects in October, 2014 session and was declared pass as per the detailed marks card dated 6.4.2015 (Annexure P4) and as per the case of the university he had never been issued any roll number and rather had been declared as ineligible. His examination fee had been refunded and his original detailed marks card had also been returned. The

categoric case of the university is that inspite of the petitioner receiving the original detailed marks card and the fee refund form, he had downloaded his roll number from the university website and appeared in the examination. With this background, he cannot rely upon the precedent that the university had permitted him to sit in the B.A. (1st semester) examination and, thus, was estopped from declaring the result. The petitioner was, thus, absolutely ineligible and was not qualified to take the admission. He had taken a chance and thus, he appeared in the examination which is a case of misrepresentation and fraud. This fact was also not disclosed to this Court and his pleadings are silent about this aspect. The judgment rendered in ***Sri Krishan's case (supra)***, in such circumstances, is without any basis. In the said case, reference was made to the Statute in question and it was factually noticed that the student had never written to the university that he had attended the prescribed number of lectures and in spite of shortage, he had been allowed to attend classes and there was ample time and opportunity for the university authorities to find out the defect and they had permitted him to give the examination and then could not deny him the benefit of the result. It was recorded that no fraud was proved in that case.

Similarly, ***Smt. Giyarshi's case (supra)*** also pertains to the fact that the candidate did not have the requisite number of marks which were 45% and on account of ineligibility and the failure of the university who had ample time, the writ petition was allowed.

In ***Sanjay Kumar Katwal's case (supra)***, the issue was of non-

recognition of the Annamalai University through distant education. The candidate had been only informed after he had taken the first semester and he had been allowed to complete the LL.B. course and being successful before the High Court, in such circumstances, the issue was decided in his favour.

In the present case, the petitioner's case is of his basic ineligibility and he has not completed his education and, therefore, no benefit can be given to him.

Similarly in, ***Shri Guru Govind Singh Khalsa College's case (supra)***, the issue was of the affiliation granted to the M.Sc. (Chemistry) course which had earlier been granted. The students had submitted their educational certificates and had been given admission. The roll numbers had been scrutinized by the university and they were allowed to sit in the second semester examination. In such circumstances, the Court decided in their favour on the principle of equity and estoppel and, therefore, the said judgment is not applicable to the facts of this case.

Similarly in ***Renu Chauhan's case (supra)***, the students had been given admission three days after the cut off date and thus, on account of no fault of theirs, direction was issued to declare the result and not to cancel their admission.

The weight of the precedents by the Hon'ble Apex Court in the favour of the university in cases where the basic qualifications are missing is far heavier which this Court is bound to follow. Reliance can be placed upon the judgment of the Apex Court in ***Regional Officer,***

CBSE vs. Kumari Sheena Peethambaran, 2003 (7) SCC 719. In the said case, it was held that condoning lapses and overlooking legal requirements on the question of sympathy was not permissible. In the said case, reliance was placed upon the earlier judgment in ***Guru Nanak Dev University vs. Parminder Kumar Bansal, 1993 (4) SCC 401*** that the lack of discipline was leading to serious impasse in academic life. Reliance was also placed upon the earlier judgment in ***A.P. Christians Medical Educational Society vs. Government of Andhra Pradesh, 1986 (2) SCC 667*** wherein, it has been held that the university cannot be directed to disobey the Statute to which it owes existence. Similarly, in ***Central Airmen Selection Board vs. Surender Kumar Das, 2003 (1) SCC 152***, which was followed by Division Bench of this Court in ***Manmeet Sharma vs. State of Haryana and others, 2008 (4) SLR 498***. The judgment in ***Ashu Singla v. Punjabi University, Patiala and Another 2004(2) RSJ 720*** was noticed and it was held that the principle of promissory estoppel cannot be invoked in such cases as it is based on equitable principles and where there is misrepresentation and the authority has been misled, benefit cannot be given. In ***Central Airman's case (supra)***, the person had been selected on the ground that he had possessed 10+2 qualification but was not eligible as on account of the upper age limit. Relaxation had been given as per the rules but it was found that he had failed in his Chemistry subject in his 10+2 examination and was not justified in claiming the exemption. The Apex

Court set aside the judgment of the Division Bench of the High Court which was based on the principle of promissory estoppel by holding as under:-

"7. The question, therefore, is whether in a case of this nature the principle of promissory estoppel should be invoked. It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. As we have found above, this finding of the High Court is erroneous, contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the Secondary examination as well as the Higher Secondary +2 examination, and it is clear from the counter affidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the Higher Secondary +2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the mark sheet annexed to the application

disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the Higher Secondary +2 examination, was factually incorrect and a clear misrepresentation. In these circumstances we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court was clearly erred in law in invoking the said principle in the facts of this case. The judgment and order of the High Court therefore cannot be sustained."

The Apex Court in ***Mahatma Gandhi University and another vs. Gis Jose and others, 2009 (1) RSJ 438*** held that once the basic qualification is missing, there could be no misplaced sympathy.

Recently, the Apex Court in ***Priyadarshini College of Computer Science and another vs. Manish Kumar and others, 2013 (11) SCC 802*** held that every candidate is required to go through the terms of advertisement thoroughly failing which he/she cannot claim any benefit for his/her own wrong. The relevant observations read thus:-

"10. It has to be kept in mind that every candidate applying for a particular course in any College is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct

particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong.”

Thus, keeping in view the settled position, this Court is of the opinion that in the absence of the basic requirement, the decision of the University cannot be faulted with. If the plea of the petitioner is to be accepted, then admissions of all such ineligible candidates will have to be accepted amounting to persons who do not have the basic qualifying skills to get higher degrees and colleges would get licenses to violate such mandatory eligibility conditions for financial gains and only would amount to lowering the academic standards.

Keeping in view the settled position and the facts of the present case, the writ petition is accordingly dismissed.

(G.S.Sandhawalia)
Judge

September 18, 2015

“DK”