

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.22321 of 2014
Decided on : 02.11.2015**

Alka

... Petitioner

Versus

Guru Nanak Dev University and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. H.S. Batth, Advocate
for the petitioner.

Mr. Amrit Paul, Advocate
for the respondents.

G.S. Sandhawalia , J. (Oral)

The petitioner seeks the quashing of the order dated 30.09.2014 (Annexure P-7) vide which her admission in M.A.(Hons.) English was cancelled on account of the fact that she did not fulfill the condition of 50% marks in the subject of English which was required as per the eligibility criteria. The eligibility criteria is reproduced as under:-

“B.A. (Honours School) in English with 45% marks or any other Bachelor Degree with 50% marks in the subject of English for 3 years, with a total weightage of 100 marks for each year.”

Counsel for the petitioner has vehemently argued that the petitioner was entitled for admission as she had 49.33% marks in the qualifying examination and, therefore, rounding off should have been done and even otherwise the petitioner's admission

should not have been cancelled at a late stage for which she was entitled for compensation.

While issuing notice of motion on 20.11.2014, a Coordinate Bench of this Court has rejected the plea of rounding off on the ground that in the absence of any statute, the rounding off could not be done and even otherwise the rounding off could be only done if the petitioner had above 49.50% marks. Similarly, the calender of the University (Annexure R-9) is also to the same effect and the relevant Clause-15 reads as under:-

"In case the minimum percentage of marks obtained by a candidate required for admission to various courses is in a fraction, the fraction of 0.5 or more shall be rounded to the next whole number, e.g. 44.5 and above will be considered as 45 per cent. The fraction with less than 0.5% marks will not be taken into account."

Thus, the only issue which survives for consideration is whether the petitioner is entitled for compensation as per notice of motion order.

It is the case of the petitioner that since the documents were not verified within time and, therefore, she could not seek admission anywhere and neither in M.A. ordinary English and she has lost her one academic year on account of the casual attitude of the University.

The said submission is also without any basis. It has been pointed out that firstly the petitioner was under an obligation

to read the admission criteria and to be aware that as to what was the qualifying criteria. In spite of the fact knowing that she required 50% marks in B.A. she had given a declaration as per Annexure R-2 as filled up online basis, wherein it has been mentioned that she checked the eligibility criteria as per the prospectus. It thus does not lie in her mouth that the University is at fault. It is also pertinent to mention that the admission was given provisionally on 16.07.2014 (Annexure R-4) and the petitioner was thereafter asked to submit the eligibility documents which were to be checked by the registration branch on the same date.

The case of the university is that the documents were not submitted and the candidates were thus required to submit the same by 30.09.2014 and then by 14.10.2014 as per Annexures R-6 and R-7. Documents were submitted only after 30.09.2014 and a reference is made to the Migration Certificate from Punjabi University which is dated 30.07.2015 (Annexure P-6).

In such circumstances, the University could not have scrutinized the original certificate and rejected the case prior to that and therefore the documents were considered after 28.08.2014 (Annexure R-8) and the impugned order was passed on 30.09.2014 just after one month.

In such circumstances, it cannot be said that there was any delay on the part of the university in dealing with the case of

the petitioner, who on her own account knowing the eligibility clause took a chance. It is settled principle that candidates are to be aware of the terms and conditions of the prospectus which are binding upon them, who cannot turn around and contend that the University was at fault in granting admission in violation of the eligibility criteria. The principle of promissory estoppel cannot be used against the University. In such circumstances, once the University acted promptly on the scrutiny of the documents and on the receipt of the same declared the petitioner ineligible just after a period of one month no fault can be found with it. The Apex Court in **Central Airmen Selection Board Vs. Surender Kumar Dast (2003) 1 SCC 152** held that the principle of promissory estoppel is based on equitable principles and a person who has misled the authorities cannot invoke the said principle. The observations read 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 judgement and order of the High Court therefore cannot be sustained.

In similar circumstances, the Supreme Court in ***Mahatma Gandhi University and another vs. Gis Jose and others, 2009 (1) RSJ 438*** set aside the order of the High Court wherein, the student had secured only 53.3% marks in a qualifying examination against the minimum requirement of the cut off marks as 55%. The submission that the student had never misrepresented was rejected. It was held that once an irregular admission had been given in breach of Rules, she should not be allowed to complete the course and to write the examination and the same would be illegal. It was held that misplaced sympathy should not be shown in total breach of rules. The relevant observations read thus:-

“9. The misplaced sympathies should not have been shown in total breach of the Rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in **Regional Officer, CBSE vs. Ku. Sheena Peethambaran and Others [(2003) 7 SCC 719]**. In paragraph 6 of the Judgment, this Court observed as follows :

“6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions.....”.

10. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal.”

Reliance can also be placed upon the judgment of the Apex Court in **The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs. G. Hemlatha and others 2012 (8) SCC 568** where it had been held that once the eligibility criteria is prescribed, it must be strictly adhered to and any dilution or tampering with it will work injustice on other candidates.

In **Priyadarshini College of Computer Science and another vs. Manish Kumar and others (2013) 11 SCC 802**, the Apex Court held that every candidate applying for a particular course is required to go through the instructions thoroughly

including the eligibility criteria and after fulfilling the required conditions, fill in the application form and cannot claim any benefit of his own wrong.

In such circumstances, no compensation can be granted.

However, the fact remains that the petitioner has deposited the fee of ₹ 19,000/- vide receipt dated 12.07.2014 and the petitioner having not studied and her admission having been cancelled at the initial stage, the university will refund the said amount, whatever is permissible as per rules after deducting for the period the petitioner studied. The said refund be made within a period of one month after the receipt of the certified copy of this order.

With the above observations, the present writ petition stands disposed of.

NOVEMBER 02, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE