

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

LPA No. 1034 of 2015(O&M)

Date of Decision: July 15 , 2015.

Nikhil Kumar

..... APPELLANT (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Ashwani Bhardwaj, Advocate
for the appellant.

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

HEMANT GUPTA, J.

CM No.2148-LPA of 2015

For the reasons mentioned in the application, the same is allowed and delay of 21 days in filing the appeal is condoned.

LPA No.1034 of 2015

Challenge in the present Letters Patent Appeal is to an order dated 15.05.2015 passed by learned Single Judge whereby writ petition filed by the appellant for lateral entry in the B.Tech (ME) course was dismissed as he had

got admission in the degree course without passing the qualifying examination i.e., Diploma Course.

The appellant while doing the Diploma course in Mechanical Engineering appeared in 6th semester and got supplementary in one subject. In July 2013, without qualifying the Diploma course, he applied for admission in B.Tech(ME) in respondent No.3-institute against management quota by way of lateral admission. According to the appellant, he was given admission for the academic session 2013-14 subject to the condition that he has to clear the subject in which the appellant could not clear one paper for which, he was given supplementary chance. Grievance of the appellant is that he has qualified the supplementary examination after he was admitted in the 3rd semester of the degree course and has also appeared in 4th and 5th semesters. It was at the stage of 6th semester that his admission was cancelled on the ground that he was not qualified for admission in the degree course.

Argument of learned counsel for the appellant that the appellant has not concealed any fact while taking the admission in the degree course and that he has been permitted to appear in the 3rd, 4th and 5th semester therefore, at this stage if the admission in B.Tech course is cancelled, an irreparable loss and injury would be caused to him.

The fact remains that before qualifying the diploma course, the appellant has been admitted by respondent No.3 in the degree course. In view of the judgment of Hon'ble Supreme Court reported as **Council of Homeopathic System of Medicine, Punjab v. Suchintan, 1993 Supp (3) SCC 9**, the passing of supplementary examination does not relate back to the original examination.

The court held:-

“38. On this score to say that passing the supplementary examination would relate back to the annual examination will be totally incorrect. *What counts is when the whole is made up.* From that time of making up one year or one and half years must elapse for second or third DHMS examinations as the case may be.”

The appellant was admitted to degree course though he had not qualified the qualifying examination. The appellant qualified the Diploma course after he was admitted to the degree course. Thus, at the time of admission in the B.Tech (ME), the appellant was not eligible for admission to the said course as he had not qualified the Diploma course.

The admission granted by respondent No.3 to the appellant does not act as an estoppel against the university. There cannot be any estoppel against the statute. The institute should have been careful to grant the admission to such a student in the face of his supplementary in the Diploma course. For such an act of the institute, the university cannot be made to allow the appellant to participate in the degree course. If the appellant has any grievance, he may take appropriate action against the institute who granted the admission to him even though he was not qualified for admission to the degree course.

With the said observation, the present Letters Patent Appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

July 15 , 2015.