

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.408 of 2016
IN
Civil Writ Jurisdiction Case No. 16186 of 2015**

- =====
1. The Patna University, Ashok Rajpath, Patna - 800004.
 2. The Vice-Chancellor, Patna University, Ashok Raj Path, Patna - 800004.
 3. The Registrar, Patna University, Ashok Raj Path, Patna - 800004. (Respondents in the writ petition).
 4. The Controller of Examinations, Patna University, Ashok Rajpath, Patna-800004.
 5. The Head of the Department, Department of History, Patna University, Ashok Rajpath, Patna-800004.

.... Appellant/s

Versus

1. Bandana Kumari wife of Gyan Kaushik Chaturvedi, resident of House No. 109, Gandhi Nagar, P.S. Shri Krishnapuri, Boring Canal Road, Patna, District - Patna, Pin - 800001.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Digvijay Singh, Adv.

For the Respondent/s : Ms. Soni Shrivastava, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 19-07-2016

The Patna University, which is, hereinafter, referred to as the respondent University, introduced, in the year 2012, a post graduation course; the course being for a period of two years, divided into four semesters and designated as ‘Master of Arts in Women’s Studies, the abbreviated form thereof being ‘M.A.W.S.’. The course was to be managed by the Department of History of the respondent University.



The appellant took admission in the course of M.A.W.S. for the session 2012-2014. The appellant cleared the 1st and 2nd semesters. On 09.04.2014, the appellant appeared in the 4th paper of the 3rd semester, wherein the Centre Superintendent seized the answer-sheet alleging use of *unfair means* by the appellant. This was followed by a show cause notice, dated 28.04.2014, served by the respondent University on the appellant directing the appellant to submit her explanation. The appellant submitted her reply to the show cause notice, on 03.05.2014, denying the allegation that she was caught, while involved in *unfair means*.

While the proceeding, arising out of the said incident, was pending, the time for filling up the examination form for the 4th semester commenced. Though the appellant filled up the form for the 4th semester, no admit card was issued to her. On a request made by the appellant, the appellant was allowed to *provisionally* appear in the 4th semester, which commenced on 14.07.2014.

While the decision on the show cause notice, issued to the appellant, was still pending, the appellant applied for permission to appear in the 4th paper of the 3rd semester. The appellant was issued an admit card and she accordingly appeared in the examination of the 4th paper of the 3rd semester, but the result was not published.



Upon making an enquiry, the appellant was told that her case was pending before the *Unfair means* Committee, which is entrusted with the responsibility of examining the accusations of *unfair means* adopted by the examinees. The respondent University, eventually, on 16.06.2015, informed that she can obtain, upon submitting requisite fees, the mark-sheets of 1st and 2nd semesters, but mark-sheet of the 3rd semester cannot be given inasmuch as her application was rejected by the said Committee. When the appellant applied, under the Right to Information Act, seeking information as to why the respondent University was not publishing the results of the 3rd and 4th semesters, the respondent-University informed, on 03.07.2015, that the examinations of the appellant had been cancelled and she had been made eligible from December, 2015.

With the help of a writ petition, made under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No.16186 of 2015, the appellant sought for issuance of an appropriate writ/order or direction commanding the respondents, particularly, respondent No.4, to publish the result of the appellant of Master in Arts, in Women Studies of the session 2012-2014, on the ground that the appellant had successfully completed the course and had cleared all the examinations including the fourth semester examination, which commenced from 14.7.2014, and the results of

which are not being published on frivolous grounds.

The respondent University filed their counter affidavit, wherein they pointed out that in terms of Regulation 5.5, a student shall not be allowed to be admitted in the IV semester unless he/she passes all the earlier semesters.

By a communication, dated 03.07.2015, the respondent University informed the appellant that she was found guilty of having adopted *unfair means*/cheating in the examination of the 4th paper of the 3rd semester and, therefore, her examination had been cancelled and she would be eligible to appear for the 3rd semester in December, 2015.

By order, dated 09.11.2015, a learned Single Judge of this Court disposed of the writ petition by directing the respondent University to publish the result of the appellant, forthwith, preferably within a period of six weeks from the date of production/communication of a copy of this order.

Aggrieved by the direction so received, the respondent University is in appeal before this Court.

Heard Mr. Digvijay Singh, learned Counsel, appearing on behalf of the appellants, and Ms. Soni Shrivastava, learned Counsel, appearing on behalf of the respondents.

While considering the present appeal, it may be noted



that despite the fact that the appellant had been held by the respondent University to have indulged in *unfair means* in the examination of the 4th paper of the 3rd semester and despite also the fact that the respondent University cancelled the result of her examination and made her eligible only in December, 2015, to appear in the examination for 3rd semester and debarred her thereby until December, 2015, the appellant never sought for any relief against the conclusions of the *unfair means*, which had been reached by the Committee concerned.

In the face of this fact, there can be no escape from the conclusion that the finding of the Committee concerned had remained unshaken and, therefore, when the appellant has been found guilty of having adopted *unfair means* in the examination of the 4th paper of the 3rd semester, the respondent University could not have been directed to publish her result treating her as an eligible candidate to appear in the 4th semester of the course. Reliance placed by the learned single Judge on the case of **Shri Krishan v. Kurukshetra University**, reported in (1976) 1 SCC 311, is misplaced inasmuch as in the case of **Shri Krishan** (supra), the facts of the case were that the appellant therein was a teacher in the Government High School, Dumarkha, in the District of Jind (Haryana), the University of Kurukshetra was running law classes



for three years course and had extended the facility to persons, who were in service to attend the evening classes and complete the three years course in that manner. The appellant, in **Shri Krishan** (supra), decided to take the benefit of the facility so given to the Kurukshetra University and joined LL.B. Part I classes some time in years 1971. According to the University statute, a student of the Faculty of Law was given the option to clear certain subjects in which he may have failed at one of the examinations before completing the three-years course. The students were to appear in six papers each year. In April 1972, the appellant appeared in the annual examination of Part I, but failed in three subjects, namely, Legal Theory, Comparative Law and Constitutional Law of India. Later on, he was promoted to Part II, which he joined in the year 1972. Under the University Statute, the appellant was to appear in Part II Examination in April 1973. On April 26, 1973, the appellant applied for his Roll Number to the University in order to reappear in the subjects in which he had failed and to clear them, but he was, according to the appellant, refused permission without any reason. The annual examination for Part II was to be held on May 19, 1973, and the appellant approached the University for granting him *provisional* permission, subject to the permission from his employer, to attend the Law Faculty. In between, it appears that the appellant had been prosecuted for



offences under Sections 376, 366 and 363 I.P.C. and was suspended during the period, when the case was going on against him. The appellant was, however, acquitted and was reinstated by his employer on August 22, 1972. It would, thus, appear that on May 18, 1973, as also on April 25, 1973, when he had applied for his Roll Number to clear the subjects, the stigma of criminal case had been completely removed.

It was in the above circumstances that the decision, in **Shri Krishan** (supra), was rendered; whereas, in the case at hand, the appellant, in the light of the findings of the Committee concerned, has been found to have adopted *unfair means* in the examination of the 4th paper of the 3rd semester and when her said examination has been cancelled, she could not have been treated as eligible to appear in the 4th semester. This apart, the appellant was allowed to appear in the 4th semester *provisionally* and this fact was known to the appellant meaning thereby that the result of the 4th semester was dependent upon the outcome of the proceedings pending before the Committee concerned. When the Committee rendered its finding and the punishment has been imposed on the appellant, the resultant effect is that as long as the said finding is not disturbed and the order of cancellation of the examination of the 4th paper of the 3rd semester is not interfered with, the appellant has no

legs to stand.

Situated thus, we allow this appeal and set aside the order under appeal.

There shall, however, be no order as to costs.

(I.A. Ansari, ACJ)

Anjana Mishra, J: I agree

(Anjana Mishra, J)

K.C.jha/-

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