

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

CWP No. 8278 of 2016
Date of decision: 06.12.2016

Rajesh Kumar

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. R.B. Gupta, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. R.S. Tacoria, Advocate,
for respondents no. 2 and 3.

None for respondent no. 4.

G.S.SANDHAWALIA, J.

The petitioner seeks quashing of the order dated 17.08.2013 (Annexure P-4) whereby, he has been declared fail in the English subject in the B.A. (final year) having secured 24 marks.

It is the case of the petitioner that he had already been declared pass in the said examination earlier on 20.07.2013 and the communication dated 01.04.2016 (Annexure P-7) whereby, his admission was cancelled in the LLB course for the session 2013-14 was also not justified. He had been informed by the institute at Faridabad-respondent no. 5 on 06.04.2016 (Annexure P-8) that on account of the cancellation by the respondent-university, he would not be entitled to pursue the 3 year Law Course.

Resultantly, he has also challenged the above said Annexures on the ground that he had already taken admission and was in the 6th

semester of the 3 year Law Course and the said decision was taken without even giving him opportunity of being heard. Vide interim orders, he was permitted to continue with his LLB course. While taking into account the defence of the university, this Court passed the following order on 27.09.2016:-

“It is not disputed that the petitioner has also appeared in the 3rd year of Law and on account of the impugned order would have to give his examination of B.A. final year in English subject, apart from the fact that he would have to do law again.

As per the written statement filed, there was a mistake by NYSA an agency hired by the University.

In such circumstances, this Court is of the opinion that the University should take a decision whether it is to provide a special chance to the petitioner to clear the said paper, so that he would not lose his 3 years.

Counsel for the respondent-University prays for time to seek instructions in this regard.

Adjourned to 08.11.2016.

Copy of this order be given to the counsel for the parties under the signatures of the Special Secretary of this Court.”

Resultantly, counsel for the respondent-university has produced communication dated 05.12.2016 whereby, the university has decided to grant a special chance to the petitioner to complete his B.A. Course. The said concession has been given for the academic session March-April, 2017. The relevant portion reads thus:-

“Kindly refer to your memo No. MDU/LC/2016/497 dated 24.11.2016 on the subject cited above.

In the light of observation, made by the Hon'ble Punjab & Haryana High Court, the matter has been considered by the University authorities and as decided a special chance to complete BA course has been granted to Mr. Rajesh Kumar, which would now be held in March/April 2017 with fee of Rs. 3500/-, equal to the last admissible consecutive chance, as prescribed by the University. Accordingly, you are requested to arrange to intimate our University Counsel. Copy of the orders passed by the University authorities is added below.

This is for information and further necessary action.”

Counsel for the petitioner submits that he has already given the 5th and 6th semester examination of his Law Course but the result has not been finally declared due to the pending litigation and on account of the fact that he has been declared fail in the English subject of B.A.

It is not disputed that vide the notification dated 20.07.2013 (Annexure P-2), the petitioner had been shown as pass. He thereafter had obtained admission in the Law Course on 26.08.2013 with respondent no. 5-college which is also affiliated with the respondent-university. Thereafter, he had progressed in the said course and appeared in the 5th semester, which was held in December, 2015. At the time of passing of the orders dated 01.04.2016 (Annexure P-7), he had already reached the 6th semester and, thus, by virtue of the cancellation of his qualifying examination itself, he would lose over 3 years of academic years. It is further to be noticed that the order dated 01.04.2016 (Annexure P-7) has been issued without giving any show cause notice to the petitioner to show that his marks were being corrected and his past status declared in July, 2013 was being converted to a

'fail' status. The University has admitted its mistake in its written statement and tried to pass on the blame upon the agency which was hired to process the results. In the meantime, the petitioner has also progressed in the Law course and almost completed the same, which is under affiliation with the respondent-University.

Keeping in view the above fact, this Court is of the opinion that even the additional chance which is being now provided would result in losing one academic session and which would be prejudicial to the petitioner for no fault of his. It was open to the respondents at an earlier point of time to resort to this process by issuing proper show cause notice to ensure that the petitioner would not lose an academic session, which has not been done. Even this Court had passed the order on 27.09.2016 but the University took more than 2 months to take action on the said order and the petitioner could have been given the chance to appear in the supplementary examinations in December but on account of delayed action, his academic session would be pushed to July-August, 2017.

Resultantly, this Court is of the opinion that where there is no fraud or misrepresentation on the part of the student and no action has been taken by the University for a period of almost 3 years and the result having been revised unilaterally without giving a chance to the candidate, the University cannot as such be allowed to take the stand that the action is justified. Reliance can be placed upon the judgment of the Division Bench of this Court in ***Pranay Kawduji Barapatre vs. Panjab University and others, 2007 (6) SLR 529*** wherein, in similar circumstances, the result had been revised after 14 months and the student had been declared as reappear.

He had taken employment after passing out from the MBA course and the

revision was on detection of mistake in computation of grace marks. It was accordingly held that in the absence of any fraud or misrepresentation when the petitioner had settled in life, the University was not justified to revise the result. The relevant portion reads thus:-

“9. On a consideration of facts collectively, we find that the result was declared on 5.8.2003, whereby the petitioner was declared pass. Admittedly, the said result was notified. On the strength of the certificate, thus obtained the petitioner applied for job and has been employed since then with one employer or the other. It is for the first time in October, 2004, i.e. after 14 months that the respondents have revised the result thereby asking the petitioner to re-appear.

10. It is not in dispute that the respondents have revised the result of the petitioner without hearing him. It is also not disputed that petitioner had not played any fraud or misrepresentation so as to interfere with the process. Other than this we find that the result has been revised after 14 months of the initial declaration within which time the petitioner had settled in life. If any action was to be taken under the regularisation on account of some error, the same should have been done within reasonable time. Surely delay of 14 months is not justifiable.

11. Considering the fact that the petitioner was not heard before the impugned action was taken and also the fact that the result has been revised and changed to re-appear from pass after unexplained and undue delay, we find the action of the respondents to be totally arbitrary and unreasonable.

12. We, accordingly, allow the petition and quash the impugned letters/orders.

Petition allowed.”

Keeping in view the above, the present writ petition is allowed.

Orders dated 17.08.2013, 01.04.2016 and 06.04.2016 (Annexures P-4, P-7 and P-8) respectively are quashed. The result of the petitioner as on 20.07.2013 would continue. The University will issue him the detailed marks card of B.A. degree and his result for the subsequent examinations of Law would also be declared.

06.12.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No