

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.580 of 2018

In

Civil Writ Jurisdiction Case No.4113 of 2017

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Sunil Kumar Son of Kanhaiya Paswan, Resident of Village-Mohaniya, P.S.-
Karaghar, P.O.-Barkhi Kharaki, Dist.-Rohtas, Sasaram.

... .. Appellant/s

Versus

1. Bhupendra Narayan Mandal University and Ors
2. The Vice-Chancellor, B.N. Mandal University, Laloo Nagar Madhepura.
3. The Registrar, B.N. Mandal University, Laloo Nagar Madhepura.
4. The Controller of Examination, B.N. Mandal University, Laloo Nagar, Madhepura,
5. The Millia Institute of Technology through the Director Rambagh, Purnea.
6. The Director Millia Institute of Technology Ranibagh, Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Amarnath Singh, Advocate Mr. Ashok Kumar, Advocate Mr. Bibhuti Narayan, Advocate
For the Respondent/s	:	Mr. Raju Giri, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-02-2019

I.A. No. 3221 of 2018

Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be within time.

L.P.A. No. 580 of 2018

The appellant is a B.Tech. student of the Millia Institute of Technology, Purnea, affiliated to Bhupendra Narayan



Mandal University, Madhepura. It is stated by the learned counsel for the University that the institution now stands affiliated to Purnea University on account of bifurcation of the area of the University.

The appellant is aggrieved on account of non-publication of his B.Tech. examination results and, therefore, he had instituted C.W.J.C. No. 15472 of 2015 which was disposed off with a direction to the Controller of Examinations of the respondent-University to pass a reasoned order. The University passed an order rejecting the request of the appellant on the ground that the appellant having not cleared the sessional work, he has to take re-admission as per regulation 12(i) of the Examination Regulations of the University. The said Regulations are already extracted on the second page of the impugned judgement which indicates the procedure to be adopted in the event a candidate fails in more than three subjects in an examination.

Aggrieved by the order, the writ petition giving rise to the present appeal was filed and the learned Single Judge, after taking notice of the Regulations, has arrived at the conclusion that since the appellant had not cleared the sessional work, therefore, the order of the University dated 30th November,



2016, did not require any interference.

The learned Single Judge further relied on the Division Bench judgement in the case of Mihir Kumar Jha Vs. Bhupendra Narayan Mandal University & Ors. in L.P.A. No. 904 of 2014 decided on 7th January, 2015.

Learned counsel for the appellant contends that there was no fraud or misrepresentation on the part of the appellant in his admission, and allowing him to appear in the examinations one after the other, clearly indicated that the respondents did not raise any objection to the pursuing of the course of studies by the appellant and, consequently, at the fag end of his career, he cannot now be denied the publication of his results. For this, heavy reliance has been placed on the judgement of the Apex Court in the case of Guru Nanak Dev University Vs. Sanjay Kumar Katwal & Anr. (2009) 1 SCC 610, paras 18 to 22 thereof. Learned counsel submits that in spite of the fact that the said judgement was cited before the learned Single Judge and the ratio thereof was relied on, there does not appear to be any consideration and, therefore, the impugned judgement is vitiated. It is submitted that the respondents themselves having allowed the appellant to continue to pursue his studies, they cannot turn around and now take a plea that he deserves a re-



admission as he has not cleared the sessional work.

We have considered the submissions raised and what we find is that the Regulation is explicit and suffers from no ambiguity. Failure in sessional work entails the consequence of re-admission. The said Regulation is not under challenge. It is only on the ground of equity and the judgement in the case of Guru Nanak Dev University (supra) that the submissions have been advanced that once the respondents have themselves allowed the appellant to appear in the examinations, they cannot turn turtle.

The ratio of the judgement in the case of Guru Nanak Dev University (supra) arose out of an allegation of not possessing the qualifying degree at the time of admission as required under the admission notice. The concerned student had obtained a degree through the correspondence course which was a Distance Education Degree and was not the equivalent degree recognized for the purpose of admission, yet he was allowed to appear in the first semester examination. As a matter of fact, not only was he allowed to appear in the first semester examination, but he was also allowed to complete his entire course and it was four years thereafter that he was informed about his ineligibility. The same was challenged and the High Court allowed the writ



petition, against which the University had gone in appeal. The Apex Court, after relying on a couple of earlier judgements, came to a conclusion that the examinations could not have been cancelled subsequently, and the University was estopped from withholding the declaration of results inasmuch as the student, after four years, will have to irretrievably suffer, having been allowed by the University itself to appear in the examinations.

The aforesaid ratio of the judgement was in the case of a student relating to the University itself, whereas in the present case it is an incident of an engineering student of a private Engineering College. The permission to appear in the examinations has been given by the Principal whereafter the Controller of Examinations has allowed the appellant to appear in the same. It was the duty of the Principal of the Institution to have been informed the University about the appellant not having cleared the sessional work, which does not appear to have been done in this case. The default, therefore, is not of the University in allowing the appellant to appear in the examinations which appears to have been done unknowingly on account of the default on the part of the private Engineering College itself. Consequently, in the present case, the facts are clearly distinguishable vis-a-vis the facts of the case relating to



Guru Nanak Dev University (supra). In this background, where the private engineering college has facilitated the appearing of the appellant in the examinations with no lapse on the part of the University, the same cannot be a ground to bind or estopp the University on account of its conduct so as to allow this Court to issue a direction to the University to declare the results.

Consequently, on account of the aforesaid distinguishing features, we are unable to subscribe to the arguments raised on behalf of the appellant, without prejudice to his rights to seek re-admission as per the Regulations.

The appeal is consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

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