

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2795 of 2017

Order Reserved On : 26/11/2018

Order Passed On : 09/04/2019

- Kiranpal Singh Chowla S/o Late Shri Harbhajan Singh Chawla Aged About 45 Years R/o Career Point Buliding Chawla Chambers, Dayalband, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Guru Ghasidas University Through Its Registrar Koni Bilaspur Chhattisgarh.
2. Controller - Of - Examination, Guru Ghasidas University Koni, Bilaspur Chhattisgarh.

---- Respondent

For Petitioner : Shri Anshuman Shrivastava, Advocate.

For Respondents : Shri Vikas Mishra, Advocate.

Hon'ble Shri Prashant Kumar Mishra, Ag CJ

C A V Order

1. The petitioner would call in question the legality and validity of the order dated 12.11.2016 (Annexure-P/1) passed by respondent No.2, who is the controller of examination of respondent No.1/University informing the petitioner that after lapse of many years, his result of MBA (HR) examination of the year 1999 is not possible to be declared. Communication also states that the University is not possessed of any document of the petitioner's appearance and obtainment of marks in

the said examination.

2. The petitioner obtained admission in the MBA (HR) Course in the year 1997, for the period 1997-99. He claims to have appeared in all the internal and external examination of all the four semesters and has cleared all of them but did not apply for the mark sheet because he was busy in some household issues and moved out of the State for earning. On petitioner's request, the University provided mark sheet of 1st and 2nd semester (Annexure-P/2) in which he was clearly shown to have appeared as regular student. In 2015, the petitioner decided to pursue PhD for which mark sheet and degrees of MBA examination were necessary. Therefore, he applied for the mark sheet, on which he was informed that he needs to deposit late fee under the various heads, therefore, the petitioner deposited Rs.15,952/- in October, 2015. On 18.2.2016, the petitioner requested the University that he has cleared Pre-PhD examination from Dr. C.V. Raman University, Kota, Bilaspur, therefore, mark sheet of 3rd and 4th semester of MBA Course be supplied to him.
3. The petitioner's further assertion is that the respondents provided one rough sheet vide Annexure-P/5 containing marks for theory and sessional examination, but in that rough sheet marks of one theory and several sessional examinations were not filled. It was orally informed to the petitioner that some teachers have not given sessional numbers of 3rd and 4th semester examination due to reasons best known to the University. The petitioner was eventually informed vide impugned

order (Annexure-P/1) that after lapse of several years, mark sheet cannot be supplied to him because the University does not possess the required documents. In an RTI query made by the petitioner, the respondents supplied to him one enquiry report wherein it was found that internal marks were not mentioned in the record of the University.

4. On the basis of above facts, the petitioner's counsel would argue that when the petitioner has appeared in all the examinations and the University never declared his result declaring him as fail in the examination, it was the bounden duty and obligation of the University to provide mark sheet.
5. Per contra, learned counsel for the University would argue that the petitioner should have applied for mark sheet within a reasonable time. In the absence of availability of required documents with the University, declaration of mark sheet is not possible at this juncture. It is also argued that the writ petition suffers from delay and laches.
6. In para-5 of the return, it is clearly admitted by the University that on petitioner's request, mark sheet of only 1st and 2nd semester was provided to him on 9.12.2015. It is also admitted that as per tabulation report of MBA, 3rd and 4th semester examination of 1998-99, it came to the knowledge of office of the University that the marks obtained by the petitioner was incomplete, as marks of internal assessment were not available at the time of declaration of result of MBA Course, hence result of 3rd and 4th semester was kept withheld by the University at that time. Taking shelter of Ordinance No.5 (para-

15), it is averred in the return that all the materials relating to examination except tabulation register has been destroyed. Therefore, as per the available records, marks obtained by the petitioner are incomplete and, therefore, the University is unable to declare the result after lapse of 15 years. It is clearly admitted in para-7 of the return that the result of 5 students could not be declared due to non-availability of marks, the petitioner being one of them.

7. From what has been admitted by the University in its return, the present Writ Petition does not appear to be suffering from delay and laches. While supplying mark sheet of 1st and 2nd semester in December, 2015, plea of destruction of records was not raised by the University. The said stand has now been raised for the mark sheet of 3rd and 4th semester only when the University is not possessed of documents. Ordinance or Regulations of the University nowhere provides for supply of mark sheet within specific period. It is also logical to hold that once the student has written examination and appeared in all the papers, the result cannot be withheld merely for the reason that teachers of the University have not provided sessional marks of some students. The University has not come up with a case that any action was taken immediately against the teachers or that 5 students whose result was withheld due to this reason, including the petitioner, were informed to appear in the said examination again. If the University has failed to carry on its duties and obligation to conduct examination and declare the result of a student, who has

appeared in the examination, the petitioner cannot be faulted with. The University or for that matter any college or body regulating the examination for degree course cannot be permitted to raise such defence that for want of papers, result cannot be declared and mark sheet cannot be supplied. The blame squarely lies with the University and it is shocking that such a plea is raised before this Court.

8. In the matter of **Sanatan Gauda Vs. Berhampur University and Others** {(1990) 3 SCC 23}, the Supreme Court held thus at para-15:-

“15.This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law Course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course.”

9. In Division Bench Judgment of the Bombay High Court, in the matter of **Ms. Swati Shantaram Bagde Vs. The Controller of Examination, University of Mumbai & Others** reported in 2017 SCC Online Bom 1816, the Court directed the University of Mumbai to declare result of the petitioner therein after finding that practical marks of the petitioner were not submitted to the University due to clerical mistake committed by the Staff. The following was held at para-10:-

“10.We are alive to the fact that the petitioner was the bonafide student of respondent no.3 and she has secured good marks in the practical examination as well as the written examination. The respondent no.3 had admitted the clerical mistake committed by the staff, on account of which the practical marks were not submitted to the University before declaration of the result of 6th Semester examination. We are also conscious of the fact that the respondent no.1 have declared the result of the other students by accepting the penalty of Rs.50,000/- from respondent no.3. We are of the opinion that the agony of the petitioner must come to an end. In the light of the fact that the lapse on the part of the respondent no.3 was condoned by accepting the fine of Rs.50,000/- for not forwarding the practical examination marks of other four students, we are inclined to impose a fine of Rs.15000/- upon the respondent no.3 which is to be deposited with the concerned account department of respondent no.2. We are however not inclined to grant any compensation as prayed by the petitioner. The said prayer is also not seriously pressed by the petitioner. In the aforesaid circumstances, we are of the opinion that the reliefs as prayed for by the petitioner are required to be granted.”

Emphasis supplied

10. In the case at hand, the University does not dispute that the petitioner had appeared in all the examinations. Neither is the case of the University that the petitioner was guilty of any mal-practice or irregularity disentitling him under any Ordinance to obtain mark sheet. The only defence, not permissible in law, is that papers of the sessional marks are not available.
11. Applying the observations made by the Supreme Court in the matter of **Sanatan Gauda** (Supra) and that of the Bombay High Court in the matter of **Ms. Swati Shantaram Bagde**, as also upon consideration of

the entire fact situation of the case at hand, I am of the considered view that the University is bound to declare the result of 3rd & 4th Semester of MBA Course for which the petitioner has appeared in the examination. The University may find it difficult to declare result for want of marks of sessional examination, therefore, the University is directed to declare the result by awarding average marks for the sessional or theory papers for which the marks are not available, on the basis of average of marks secured by the petitioner in theory or sessional papers of other subjects of same semester in which marks are available with the University.

12. Let the University supply mark sheet of 3rd and 4th Semester of MBA Examination of 1997-99 to the petitioner by preparing mark sheet in the manner indicated above within a period of 6 weeks from today.
13. The Writ Petition is accordingly allowed.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

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