

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 320 of 2020**

*(Arising out of order dated 18.05.2020 passed by learned Single Judge in
WP(C) No. 933/2019)*

- Dhanraj S/o Shri Dasharam Sahu, aged about 20 years, R/o House No. 422, Bajrang Chauk, Ward No. 20, Raikona, Baloda Bazar, C.G. 493559

-----Appellant/ Petitioner**VERSUS**

1. Guru Ghasidas University through Its Registrar, Koni, Bilaspur Chhattisgarh.
2. Bastar University, through Its Registrar, Jagdalpur (Dharampura), district Bastar, Chhattisgarh 494005
3. Government Veer Gend Singh College Pakhanjur, through its Principal, District Kanker, Uttar Bastar, Chhattisgarh.

-----Respondents

For Appellant	:	Mr. Anshuman Shrivastava, Advocate
For Respondent 1 & 2	:	Mr. Neeraj Choubey, Advocate.
For Respondent 3	:	Mr. Vikram Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, J.****27/08/2020**

1. Challenge in this appeal is to the order dated 18.05.2020 passed in WP(C) No. 932/2020 whereby the writ petition filed by the appellant/ petitioner was dismissed.
2. Relevant facts giving rise to this appeal are that the appellant initially took admission at Respondent 1-Guru Ghasidas University for prosecuting 5 years Integrated Program course of B.Sc. (Hon.) Botany in the academic year 2017-18 as a regular student. He appeared in 2nd Semester and secured satisfactory marks with 6.82 SGPA in both the semester of First Year, thereafter, due to some personal problem, the petitioner was unable to continue his study as a regular student at Respondent 1-University and, therefore, he opted to pursue his study on private basis. Appellant/

Petitioner approached Respondent 2-Bastar University, Jagdalpur and Respondent 3 college situated at Pakhanjur, District Kanker Chhattisgarh which is an institution affiliated with Respondent 2 -Bastar University. After some discussions, the petitioner was permitted and given admission directly in the Second Year. Appellant/ Petitioner, thereafter, obtained migration certificate from Respondent 1- Guru Ghasidas University, Bilaspur and took admission in Respondent 3- College for academic session 2018-19 as a second year student, accordingly, admission fee was also deposited, after filling forms, admit card was also issued based upon which appellant/ petitioner appeared in all the six subjects in examination. Provisional mark-sheet was issued by Respondent 2-Bastar University mentioning the result of the petitioner as withheld. Appellant came to know that Vice-Chancellor (Examination) of Respondent 2-Bastar University had issued a letter dated 26-06-2019 addressing to Respondent 3-College mentioning that the result of the appellant was withheld as his application form was not found to be in accordance with the University's guidelines and the application form was rejected/ cancelled. This made the petitioner/ appellant to approach this Court by filing writ petition with the following reliefs.

“10. a) Direct the Respondents to produce the entire records pertaining to the case for kind perusal of this Hon'ble Court;

b) Issue an appropriate writ of and/ or in the nature of mandamus directing the Respondent No. 2 and 3 to issue marksheet and declare the result of Petitioner;

c) Issue an appropriate writ of and/ or in the nature of mandamus commanding the Respondents to forthwith revoke/ set aside the cancellation order/ letter dated 26/06/2019 (Annexure P/8) and the decision made therein;

d) to direct Respondents to pay Rs. 20 lakhs towards the physical strain and mental agony suffered by the Petitioner, as compensation.

e) Such further and other interim and ad-interim orders, directions and relief as the nature and circumstances of the case may require.”

3. Learned Single Judge upon considering the grievance projected in the writ petition and after hearing learned counsel for the petitioner therein as well as the learned counsel for the University has held that it was the mistake of the petitioner who was negligent and accordingly mere taking admission in a college cannot legalize the claim of the petitioner which otherwise is not permissible under the rules and dismissed the writ petition by impugned order.
4. Aggrieved by the order of dismissal, the petitioner filed this appeal raising similar grounds as mentioned in the writ petition and argued that it is for the Respondent 2 and 3 to adhere rules and regulations and make compliance of the same and it cannot be expected from the student to know each and every rules and regulations of the University. Respondent-3 has given admission after accepting the fees from the student and by arbitrarily and illegal action precious two years of the appellant has been wasted. He further argued that the learned Single Judge while considering the submission and pleadings made in the writ petition has not considered the alternate prayer/ relief of granting compensation to the petitioner on account of the arbitrary and illegal action on the part of Respondent 2 and 3. He submits that the appellant was a meritorious student and having excellent career, withholding the result for 8 months and thereafter, mentioning that the application form of examination submitted by the appellant is not in accordance with the rules of the University cannot be said to be a correct procedure adopted by Respondent 2 and 3. He submits that the appellant has been given admission after considering all the material facts and there is no misrepresentation or fraud on the part of the appellant and, therefore, the University could not blame the appellant and withheld the result. The authorities of Respondent 2 and 3 cannot be permitted to act arbitrarily and illegally jeopardizing the career of the student by their conduct. He submits that the Respondents be directed to pay a compensation of Rs. 20

Lacs in the facts of the case where the appellant has lost his two precious years of studies.

5. Countering the submissions of learned counsel for the appellant, Mr. Vikram Sharma, learned Deputy Government Advocate submits that the learned Single Judge has rightly taken into consideration all the facts and circumstances of the case and also the requirement for getting admission in the college affiliated to another University and has rightly dismissed the writ petition which does not call for any interference. He submits that the appellant has portrayed the case that Respondent 3 has given admission and on that basis he prosecuted his study and appeared in the examination is not correct, the appellant appeared in the examination as private student, he submitted his examination form to Respondent 2- Bastar University directly as a private student, but as he is pursuing B.Sc. Course for which there is requirement of appearing in practical examination, the appellant deposited nominal fee of Rs. 250/- for using the infrastructure of Respondent 3 college for the purpose of practical examination, appellant was not given admission by the Respondent 3 college. Pointing out clause 5 of the guidelines issued under the Chhattisgarh University Act, 1973, he submitted that it provides for common eligibility criteria for the students who want to take part in regular course and Clause 6 provides for the private student wherein they are only permitted to undergo the practical examination and they are not allowed to sit and participate as regular student in the college for prosecuting their study. He also pointed out that the appellant appeared in the written examination and failed in Botany subject, the appellant further not appeared for practical examination of Chemistry and Botany. He submits that from the above, the interest and sincerity of the appellant towards his study can be ascertained and, therefore, the appellant is not entitled for any relief as prayed by him including the award of compensation. He also points out that as per the notification dated 02-12-2019 issued by Bastar

University for submission examination form online at the web portal of University. Clause 5 of the examination notification makes it clear that if any student appears in the examination held by the Bastar University from any other University then it the responsibility and duty of the candidate to first secure the eligibility certificate from Bastar University and, thereafter, such student can become eligible for submission of his form and can appear in the examination and withholding of the result may be for this reason. He submits that, there is no merit in the claim of the appellant and the appeal be dismissed.

6. Mr. Neeraj Choubey, learned counsel for the University submits that the appellant has withdrawn himself from pursuing the course at Respondent 1-University, appellant has not complied with the regulations and supported the submission made by Mr. Vikram Sharma, learned counsel for Respondent 3. He also submitted that the claim of compensation cannot be considered in the writ proceeding and the writ petition has been rightly dismissed by the learned Single Judge which does not call for any interference.
7. We have heard learned counsel for the respective parties and also perused the record.
8. Mr. Vikram Sharma, learned Deputy Government Advocate representing Respondent 3 has very categorically pleaded in its paragraphs of return dated 20-08-2020 as under.

(a) It is worthy to mention at this juncture that by perusal of Annexure P/7 annexed with the writ petition, it is clear that the appellant has not scored the minimum passing marks in Botany and has also failed to appear in the practical examination of Chemistry and Botany subjects.

(b) Clause 5 of the guidelines provides for minimum eligibility for the student who wants to take part for regular course. Similarly, for regulation of private students, certain instruction were also prescribed by the State Government which are collectively filed herewith as Annexure R/2, wherein clause 6 provides that the private students are only allowed to

do practical in the colleges and they were not allowed to sit on regular basis in on-going classes. Relevant portion is being reproduced for ready hand reference as under:-

'(छ) स्वाध्यायी विध्यर्थियो को केवल प्रायोगिक कार्य करने की व्यवस्था है । वे इस आधार पर सैद्धांतिक कक्षाओ में बैठें, नियम नहीं है ।'

(c) By virtue of this pleading, it was portrayed by the appellant that he took admission in the college of the answering respondent on regular basis by submitting the prescribed fees. But, on the contrary, it is most humbly and respectfully submitted that the appellant has only applied for conducting the practical of Science subject by paying fees of Rs. 250/- only.

(d) By perusal of this examination application form, it is clear that the appellant has himself applied under the category of Private/ Non collegiate and not under the category of Regular Student. Means thereby, the responsibility of the answering respondent is only limited up to providing the infrastructure/ premises for the private students to sit and write their examination and also to provide infrastructure for appearing in the practical examination and nothing more.

(e) A bare perusal of clause 5 of the examination notification makes it clear that if any person is appearing for the examination in the Bastar University from any other University, then it is the responsibility and duty of that candidate to first secure the eligibility certificate from Bastar University i.e. the respondent no. 2."

9. Pleadings in the return filed on the part of Respondent 3 are not controverted by the learned counsel for the appellant by filing any rejoinder.
10. Upon going through the pleadings and considering the submission made by the learned counsel for Respondent 3, we do not find the contention of the appellant to be correct that he took admission at Respondent 3-College, in fact, he submitted his examination form as a private student directly in the University and he has paid the relevant fee for utilizing the infrastructure of Respondent 3-College for conducting the practical examination only of Science subject. Clause 6 of the guidelines also very specifically prescribes that for private students depositing the fee for

holding the practical examination, there is no rule for appearing of those private students in regular classes of theory in the concerned college, the appellant only deposited Rs. 250/- for conducting his practical examination within the premises of Respondent 3 as private student. Notification dated 02-12-2019 specifies the requirements of eligibility for appearing in the examination to be conducted by the Respondent 2-Bastar University which reads as under.

“(1) परीक्षा में सम्मिलित होने की अर्हता :-

विश्वविद्यालय द्वारा निर्धारित पाठ्यक्रम एवं अध्यादेश के अनुसार अर्हतादायी परीक्षा उत्तीर्ण होना आवश्यक है। प्रमाण स्वरूप अर्हतादायी परीक्षा की सत्यापित प्रतियां निम्नानुसार संलग्न करें।

1. 10 वी, 12 वी परीक्षा उत्तीर्ण अंकसूची की छायाप्रति।
2. यदि इस विश्वविद्यालय द्वारा आयोजित 2019 की किसी परीक्षा में सम्मिलित हुए हो, तो अंकसूची की छायाप्रति।
3. 2019 की मुख्य परीक्षा एवं उसके पूर्व वि. वि. की परीक्षा में सम्मिलित न हुए हो तो गैप सर्टिफिकेट (नोटरी के शपथपत्र)
4. यदि इस विश्वविद्यालय से किसी पाठ्यक्रम का एक या दो वर्ष 2019 के पूर्व पार्ट कोर्स उत्तीर्ण किया हो और इस बीच पाठ्यक्रम में परिवर्तन आ गया हो, तो विषय/ प्रश्नपत्रों के चयन के साथ परीक्षा में सम्मिलित होने हेतु पात्रता पत्र बस्तर वि. वि. द्वारा निर्धारित प्रपत्र में आवेदन कर प्रमाण पत्र प्राप्त कर परीक्षा आवेदन पत्र के साथ संलग्न करें।
5. छत्तीसगढ़ के बाहर स्थित बोर्ड अथवा अन्य विश्वविद्यालय से परीक्षा उत्तीर्ण कर आने वाले परीक्षार्थियों के लिए जारी पात्रता प्रमाण पत्र की मूल प्रति। ”

11. From perusal of essential requirements as mentioned in the notification in clause 5, there is specific mention that the student who has passed the examination from another University has to acquire the eligibility certificate, but the appellant could not place on record any such certificate.
12. From the aforementioned un-controverted facts and submission made by the learned counsel for Respondent 3 and also the requirement of obtaining the certificate for a student passing any examination from other

University, we do not find any force in the submission of learned counsel for the appellant that the appellant suffered only on account of fault of Respondent 2 and 3. The appellant has not disputed the fact that he did not appear on the scheduled dates of practical examination in Respondent 3 premises and also got failed in the Botany subject.

13. After taking into consideration all the facts and circumstances of the case, we do not find any infirmity in the order passed by the learned Single Judge. The appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly. However, the appellant will be at liberty to approach any appropriate forum if available to him under the law for redressal of his grievance with regard to compensation.

14. No order as to cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge