

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(C) No. 146 of 2021****Order delivered on : 13.04.2021**

Mayank Shukla, S/o. Shri Umashankar Shukla, Aged About 19 Years, R/o. House No. 111, Sector- II, Janta Quarter Shankar Nagar, Raipur, Tahsil And District- Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Higher Education, Indrawati Bhawan, Mantralaya, Nawa Raipur, Tahsil And District- Raipur, Chhattisgarh
2. Pt. Ravishankar Shukla University, Through It's Registrar, Pt. Ravishankar Shukla University, Raipur, District- Raipur, Chhattisgarh
3. Deputy Registrar (Examination), Pt. Ravishankar Shukla University, Raipur, District- Raipur, Chhattisgarh
4. Vivekanand College, Through It's Principal, Vivekanand College, Maudhapara, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sourabh Sharma, Advocate
For State/Respondent No.1	:	Mr. Aditya Tiwari, Panel Lawyer
For Respondent No.2 & 3	:	Mr. Neeraj Choubey, Advocate
For Respondent No.4.	:	Mr. Shobhit Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri**CAV ORDER**

1. By this writ petition, the petitioner prays for the following reliefs :

“(i) That, this Hon'ble Court may kindly be pleased to issue a writ/ writs, order/orders, direction/directions to the respondents to give admission to the petitioner in the III-Semester of BBA Course by restoring II-Semester result and provide chance to clear ATKT in I-Semester.

(ii) That, this Hon'ble Court may kindly be pleased to issue a writ/ writs, order/orders, quashing the impugned order dated 17.12.2020 (Annexure P-1) holding that petitioner has successfully clear the II-Semester Examination as he was eligible to appear in the II-Semester exam and rightly allowed to be appeared in II-Semester exam and has not been debarred or cease to be student of BBA Course.

(iii) Any other relief as this Hon'ble Court may deems fit looking to the facts and circumstances of the case may also be awarded.

2. Learned counsel for the petitioner would submit that the petitioner appeared in the BBA examination for the semester of 2018-19 wherein initially the results were declared on 02.04.2019 and the petitioner was declared fail in three subjects. Subsequently, the petitioner appeared as an ex-regular student in all the subject and he failed in Business Mathematics, 1 paper, out of 5 papers and his result was declared as ATKT 1st Chance. This first result was declared on 13.03.2020. Since the result declared as ATKT 1st Chance as such he was promoted to the II-Semester and the II- Semester results were declared on 06.10.2020 wherein he was declared pass. However, when he wanted to obtain the result, the same was denied on the ground that the promotion of the petitioner to the II-Semester was not permissible according to the Ordinance-91 as in the second examination he was not entitled to get the status of ATKT. Consequently, the result of II-Semester was bad. The counsel would submit under the circumstances, had there been the correct expression of result would have been made, the petitioner would have switched over to some other stream and would not have wasted a year. It is stated because of negligence of respondent No.2, the petitioner was forced to lose an academic year.
3. Per contra, learned counsel for the respondent University would submit as per the Ordinance 91, the petitioner was not entitled to appear as ATKT (Supplementary) as supplementary can only be obtained when the student

do not procure the number in two subjects whereas the petitioner herein failed in three subjects. Consequently, the marking of the result as ATKT 1st Chance was wrongly made in Annexure P-3, i.e. the result declared for the first semester. He submits that Annexure P-6 which is the result of II-Semester no examination was held and general promotion was made and no substantial loss thereby was caused to the petitioner.

4. Learned counsel for the respondent No.4 supports the contention of the respondent University.
5. The Ordinance on which the petitioner's course BBA governs which is not in dispute, the relevant part of which reads as under :

“BBA Ordinance – 91

8. *A candidate after passing in the internal assessment of all the papers and appearing all the theory papers fails in two of the theory papers but secures at least 45% marks in aggregate in papers already cleared shall be eligible to keep the term (ATKT) and will be promoted to the next semester.*

9. *A candidate having ATKT in I, III and V (odd semesters) and II IV and VI (even semester) shall be permitted to appear in the ATKT examination along with the following even or odd examinations respectively.*

10. *A student who has obtained ATKT in any semester examination shall be allowed Two chances to clear the ATKT papers of that semester, when the examination of that semester will be held.*

11. *A candidate obtaining ATKT and after appearing in two chances given to him/her to clear the semester, fails to clear it, shall be allowed to appear in All the papers of that semester once, as an Ex student. If a candidate fails to clear the semester as an Ex student he/she shall cease to be the student of BBA course.*

6. The petitioner appeared in I-Semester of BBA in December-January 2018-19 and he failed in three subjects i.e. Computer Application, Business

Mathematics & Financial Accounting. According to the Ordinance, the students would be entitled for ATKT if he fails in two of the theory subject. Therefore, after the result of I-Semester was declared by Annexure P-2, he appeared as ex-regular student for the subsequent examination. The results of subsequent examination for the BBA were declared for the Semester December-January 2019-20 on 13.03.2020 (Annexure P-3) wherein though the petitioner appeared in all 5 subjects but he failed in Business Mathematics again. Since he was appearing in the supplementary examination, it appears that he was not entitled as the ATKT and a preference reflected in his mark sheet Annexure P-3 as ATKT 1st chance. The petitioner thereafter obtained admission in the II-Semester on the basis of result and because of COVID-19 pandemic lock-down, the examination was not held and general promotion was made and the result was declared by Annexure P-6. Therefore, it appears that in the second result, which was declared on 13.03.2020 (Annexure P-3) the marking of ATKT 1st Chance was wrongly made as the petitioner was appeared in all the papers and fail in one subject again. The petitioner therefore though appeared in the I-Semester supplementary examination but was not entitled to do so as there cannot be double supplementary in case in more than 3 papers a person has failed. In such eventuality, the marking of ATKT 1st Chance in the second result, Annexure P-3 dated 13.03.2020 was wrongly made on the basis of which the petitioner was promoted and allowed to prosecute his studies for the II-Semester.

7. The petitioner suffered because of the negligent act of the University, Examination Department. The simple wrong marking on a result may lead to govern the entire future of a student. When the petitioner was allowed to prosecute his studies in the II-Semester and had passed in the II- Semester, despite the fact it was against the Ordinance 91. However, because of the fault of the University, he was allowed to study in the II-Semester. In a

result, considering the language of Ordinance 91, no relief can be granted to the petitioner as his entitlement to II-Semester on the basis of ATKT remarks itself was bad. Under those circumstances, the relief cannot be granted against the Ordinance but because of the negligent act of the University, the petitioner has suffered and lost a year.

8. Though the Ordinance do not support the petitioner but this fact cannot be ignored that because of the wrong declaration of the result of the petitioner, he was promoted to II-Semester and even passed out the II-Semester but eventually the II-Semester result was not issued on the ground that he was not entitled to be promoted in the I-Semester and was not entitled for ATKT (Supplementary). The document Annexure P-3 would show that the petitioner was promoted in the BBA, I-Semester and the result was declared as ATKT 1st Chance and he was promoted to the II-Semester. Had the result been correctly declared, the petitioner could have opted for another stream of study. When the results were declared on 13.03.2020, the University examination department without examination of the fact have issued the result casually which has a cascading effect to the future of the students. Subsequently, the University though came out that Ordinance do not provide but at the time of issuance of the result to show the petitioner has ATKT 1st Chance, the University should have been conscious of the fact as they were intermeddles with the future of the students and not of any commodity. Under the circumstances, since the petitioner was to suffer to loss of one year for the faulty declaration of the result by the University because of no fault on his part except the academic disqualification, one year academic year was lost and the petitioner may have to start a fresh in the other stream. Under the circumstances, I deem it appropriate to compensate the petitioner with an amount of Rs.15,000/- (*Rupees Fifteen Thousand Only*) to be paid to the petitioner by the University following the law laid down by the Supreme Court in Civil Appeal No.3940 of 2020

(National Medical Commission v. Mothukuru Sriyah Koumudi & Ors.). The amount shall be paid to the petitioner within a further period of 60 days from the date of presentation of this judgment.

9. In view of the above, the petition stands disposed off.

Sd/-
Goutam Bhaduri
Judge

Ashok