

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

Sr. No.118

CWP-17766-2022 (O&M)

Reserved on : 16.11.2022

Pronounced on: 23. 11.2022

Anmol

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Ms. Supriya Garg, Advocate, for the petitioner.

SUDHIR MITTAL, J.

The petitioner is a student of MBBS Course and has approached this Court by way of this writ petition as the result of her First Professional Examination has been cancelled.

After having qualified the NEET Examination, the petitioner was admitted to respondent No.3-College, who directed her to submit the original of her 11th class certificate. She submitted a certificate dated 11.10.2017, copy of which is on record as Annexure P-4, whereafter, respondent No.2-University addressed a communication dated 08.09.2021 to the Principal of respondent No.3-College to inform the petitioner to appear before the Registrar on 13.09.2021 alongwith her parents and the originals of her class 11 & 12 certificates. On the said date, the petitioner appeared and submitted a representation of even date stating that she did not have 'Biology' as a subject in the 11th class and that the certificate

submitted by her was created/made as she was advised to do so by the College. Vide order dated 22.09.2021, respondent No.3-College suspended her till further orders. Meanwhile, the petitioner must have approached the Punjab Government. The Director, Medical Education & Research, Punjab initiated a communication dated 10.12.2021 stating that the matter of eligibility for admission to the MBBS Course was pending adjudication before the Supreme Court and that the petitioner was eligible for admission and may be permitted to continue with her course. Thereafter, the suspension order was revoked. Vide communication dated 04.01.2022, the petitioner sought regularization of her period of absence. No final decision was taken on this representation and provisional admit card was issued to enable the petitioner to take the First Professional Examination. On 21.04.2022, a provisional result card was issued in which the remark 'RL-REGN.' was mentioned. The petitioner sought declaration of her result vide representation dated 02.05.2022 submitted to the Registrar of respondent No.2-University which was followed by representation dated 02.06.2022 addressed to the Punjab Government. Vide communication dated 27.07.2022, respondent No.3-University informed respondent No.2-College that the result of the petitioner had been cancelled on account of inadequate attendance. This was communicated to the petitioner by respondent No.3-College vide communication dated 03.08.2022 and thus, the present writ petition has been filed.

Learned counsel for the petitioner has submitted that cancellation of the result of the petitioner without issuance of notice and

grant of opportunity of hearing was illegal. Reliance has been placed upon Kiran Bala Vs. The State of Haryana through Secretary, Education Department, Haryana and others, 1995 SCC online P&H 46, Sanatan Gauda Vs. Berhampur University and others (1990) 3 SCC 23 and Shri Krishnan Vs. Kurukshetra University, Kurukshetra (1979) 1 SCC 311. It is also submitted that the petitioner having been permitted to take the examination, respondent No.2-University was estopped from cancelling the same.

On a perusal of the record of this case, it is revealed that the result of the petitioner has been cancelled on account of shortage of attendance. The petitioner was suspended w.e.f. 22.09.2021 and the same was revoked on 30.12.2021 as is evident from a representation received in the office of the Principal of respondent No.3-College on 04.01.2022. Thus, the petitioner could not attend classes for a period slightly in excess of three months. Obviously, she had fallen short of lectures.

Learned counsel for the petitioner has been unable to establish that despite her absence, the petitioner fulfilled the requirement of minimum number of lectures and thus, the reasons given in the order passed by respondent No.3-University cannot be said to be erroneous.

Under the circumstances, the question arises whether, the petitioner was entitled to issuance of notice and grant of opportunity of hearing?

In my considered opinion, there was no such requirement. An opportunity of hearing is required to be granted, where, the passing of an order may result in visiting the delinquent with civil consequences. By

cancellation of her result, it cannot be said that the petitioner has been visited with civil consequences. She was permitted to take the examination provisionally as is evident from her admit card and result was not declared till the passing of the impugned order. Instead of declaring the same, it was cancelled and grounds for cancellation have been mentioned. The procedure laid down has been followed and there was no requirement of granting any opportunity of hearing. Declaration of result or cancellation thereof is within the jurisdiction of the examining authority and before exercise of either jurisdiction, grant of opportunity of hearing is not envisaged. Judgment in **Shri Krishnan** case (supra) is not applicable. In the said case, the appellant had submitted an application for issuance of roll number to enable him to take re-appear examination in the subjects in which he had failed. Provisional permission was granted subject to him obtaining permission from his employer. His candidature was subsequently cancelled on the ground of short percentage in the first year examination and he was refused admission to the next class resulting in filing of a writ petition. The writ petition was dismissed, but the Special Leave Petition was allowed. It was held that under the University Calendar, there was no power to withdraw the candidature of a candidate and thus, the order impugned was without jurisdiction. It was also held that candidature could be withdrawn on account of insufficiency of lectures only before the examination was taken but not afterwards. This finding was also based on the interpretation of the University Calendar. A similar stipulation in the Calendar of respondent No.2-University has not been referred to and thus, the judgment is distinguishable. In

Sanatan Gauda (supra), the dispute was regarding non-declaration of the result of the student after permitting him to take the examination on the ground of irregularity in admission. It was held that the petitioner had not concealed any facts at the time of taking admission and thus, cancellation of his result on the ground of ineligibility was illegal and barred by the principle of estoppel. It was also held that in fact, he was not ineligible. Again this judgment is distinguishable as the petitioner has not been held ineligible on account of non-fulfillment of requisite qualifications for admission. Here, the petitioner was found ineligible on account of shortage of lectures and the permission granted for taking examination was only provisional. Thus, the principle of estoppel is not attracted. **Kiran Bala** (supra) is also not attracted in the facts and circumstances of this case. In the said case, the petitioner had suffered from typhoid and missed a large number of classes. Intimation of her illness was sent under certificate of posting and yet, her name was struck off from the rolls. During the pendency of the writ petition, pursuant to order passed by the High Court, the petitioner therein was given re-admission pursuant to which he had completed the course by the time, the writ petition came up for final disposal. There being a valid reason for her absence, it was held that the same could have been explained, in case, the notice had been given. This situation does not exist in the instant case as even if, notice has been given, it would have been an exercise in futility.

In view of the foregoing reasons, the writ petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

23.11.2022
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes