

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

LPA No. 1101 of 2022 (O & M)

Reserved on: 07.02.2023

Date of Decision: 17.02.2023

Anmol

.....Appellant(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Parampreet S. Bajwa, Advocate,
for the appellant.

Mr. Abhay Pal Singh Gill, DAG, Punjab.

Mr. Naresh Kumar, Advocate,
for respondent No.2.

Mr. Ivan Singh Khosa, Advocate,
for respondent No.3.

G.S.SANDHAWALIA, J.

Consideration in the present Letters Patent Appeal is to the order of the learned Single Judge dated 23.11.2022 passed in CWP No. 17766 of 2022 wherein, the writ petition of the appellant was dismissed. The argument raised that the cancellation of the result of the writ petitioner had been done without issuance of notice and grant of opportunity of hearing and, therefore, the same was illegal was rejected on the ground that she had fallen short of lectures. The learned Single Judge was of the opinion that the appellant had been permitted to take the examination provisionally and the result was not declared till the passing of the impugned order and it was cancelled for the reasons given therein and the procedure having been followed, there was no

requirement of providing any opportunity of hearing. The declaration and cancellation was within the jurisdiction of the examining authority and opportunity of hearing was not required to be provided. The judgment in ***Shri Krishnan vs. Kurukshetra University, Kurukshetra, (1979) 1 SCC 311*** was accordingly distinguished by holding that the case was based on the interpretation of the University Calendar. Similarly, the judgment in ***Sanatan Gauda vs. Berhampur University and others, (1990) 3 SCC 23*** was distinguished on the ground that there was no concealment of facts at the time of taking admission and, therefore, cancellation of the result on the ground of the eligibility was illegal and barred by the principle of estoppel whereas in the present case, there was a shortage of lectures. The judgment in ***Kiran Bala vs. The State of Haryana through Secretary, Education Department, Haryana and others, 1995 SCC Online P&H 46*** was distinguished by noting that there was a valid reason for the absence of the candidate and the same could have been explained whereas in the present case, the same was not possible.

Counsel for the appellant has vehemently submitted that the cancellation at a subsequent stage as such after 1-1/2 years of education is not permissible as she had been attending classes from 15.01.2021 and the respondents were estopped as such at this belated stage to take such action. It was accordingly argued that the original certificates should have been checked at the earliest and there is no formal order passed against her and she was a poor scheduled caste candidate. Even the fees had been taken and now she has not been allowed to continue with her course.

We are of the considered opinion that the appellant is not liable

shall record after taking into account the background of the case since it is not disputed that the writ petitioner after clearing her 10+2 examination in the year 2018 had sat in the National Eligibility-cum-Entrance Test (NEET) and passed the same in the year 2020. Being a scheduled caste candidate, her category rank was 9238 as per the result dated 16.10.2020 (Annexure P-1). She was accordingly allotted Dayanand Medical College and Hospital, Ludhiana for admission in the MBBS course and was given admission in the second round of counselling on 21.12.2020 (Annexure P-3) against the government quota.

After she apparently started attending classes, the process of scrutinization of documents started and apparently on account of the ambiguity that she did not have a 10+1 pass detailed mark sheet of Biology subject. As per the averments itself in the writ petition, it is her case that she had taken Biology as additional subject on account of pursuing her career of becoming a Doctor. Resultantly, vide letter dated 27.03.2021 (Annexure P-3A), her 10+1 class passed detailed mark card with Biology subject was asked for. Apparently, the writ petitioner had also apprised the officials that she had not studied Biology in 10+1 and had been wrongly advised to get such a certificate. She then produced a certificate dated 11.10.2017 (Annexure P-4) from Dashmesh Public Senior Secondary School, Gurdaspur claiming that she had studied Biology. Apparently, she had done her 10+1 in the Government Girls Senior Secondary School, Gurdaspur in the year 2017 and she never had studied subject of Biology and only had Physics and Chemistry alongwith Maths, which would be clear from the certificates which have been appended when she had passed out. The details of the

awarded against the subject Biology.

Resultantly, another notice was received by her on 08.09.2021 (Annexure P-5) from the University wherein she was asked to put in appearance before the Office of the Registrar on 13.09.2021 alongwith her parents and the original certificates of 10+1 and 10+2. She apparently admitted before the concerned authorities that her major subjects in 10+1 were Physics, Chemistry and Mathematics but she had passed her 10+2 examination with Biology also. She had been told by the officials to produce and create the 10+1 additional paper for Biology which apparently, as noticed, was not produced. Resultantly, the respondent No.3-College placed her under suspension till further orders on 22.09.2021 (Annexure P-7). Resultantly, she prayed for regularization of the admission before the State authorities that she had shifted to a private school namely Golden Senior Secondary School, Gurdaspur and taken Biology as additional subject and passed her 10+2 in the year 2018. She apparently appeared twice in NEET in the years 2018 and 2019 but was not able to qualify and eventually managed to qualify in the year 2020. A perusal of the representation (Annexure P-8) would go on to show that apparently to save her career as such, she made an admission that she had got the Biology certificate at a subsequent point of time and sought permission for exemption of classes.

The matter was kept pending by the authorities who gave a wrong advise on 10.12.2021 (Annexure P-9) that there was some SLP pending before the Apex Court and she be allowed to continue her MBBS course. Apparently, on the mis-communication as such, she was allowed to attend classes again and prayed for condoning the absence period from the

date of suspension i.e. 22.09.2021. She was also allowed to give her

examination for the 1st Prof. but her result was put in the “result later category” on 21.04.2022, which would be clear from Annexure P-12. Resultantly, she filed representation dated 02.05.2022 (Annexure P-13) for declaration of her result and accordingly was asked to come present before the Registrar of the University on 23/25.05.2022. She was eventually referred to the Secretary of the Department, though no official order was passed and the matter was kept pending on account of the fact that there was a SLP pending. This would be clear from communication dated 21.06.2022 (Annexure P-16) issued by the Department of Medical Education and Research, Government of Punjab.

Eventually on 27.07.2022 (Annexure P-18), the cancellation of the examination was done on two accounts i.e. on account of shortage of attendance and the student being not eligible for exams by the University on the ground that the competent authority had cancelled the result and the continuity of the student was to be decided by the National Medical Commission and by the Government. Resultantly on 03.08.2022 (Annexure P-17), the University cancelled her 1st Prof. Examination and directed her to attend classes of 1st Prof., subject to further decision of the University as well as the National Medical Commission/Government. It is pertinent to notice that the National Medical Commission had not been made party in all these proceedings. Resultantly, she filed representation dated 05.08.2022 (Annexure P-19) and eventually filed the writ petition challenging the orders dated 27.07.2022 and 03.08.2022 and seeking permission to attend the second year classes of the MBBS course.

The University has also placed on record the letter dated

and Medical Education, Punjab wherein, it has been mentioned that the matter had been enquired thoroughly. Resultantly it came forth that a fake 11th class examination certificate from Dashmesh Senior Secondary School, Gurdaspur as such had been produced in support of the original certificates which had been appended with the writ petition as Annexure P-4, as discussed above. When it was asked from about the requisite qualification of the candidate of passing her 10+1 with Biology, it was mentioned that it had been clarified by the State that there was no such SLP pending and even the National Medical Commission had been informed by the University on 02.06.2022 (Annexure R-2/3), now placed on record by the University. The report of the District Education Officer, Gurdaspur dated 31.08.2021 would go on to show that the Deputy District Education Officer, Secondary Education, Gurdaspur had enquired into the matter and found out from the Principal of the Government Senior Secondary School, Gurdaspur that the appellant had passed 10+1 in non-medical subjects in the school in the year 2017 and had been duly issued a school leaving certificate. The Principal of the Dashmesh Senior Secondary School, Gurdaspur had denied admitting the appellant in the school or the issuance of the certificate of 10+1. It was also clarified on 02.05.2022 (Annexure R-2/2) that there was no SLP pending, as earlier intimated by the State.

Thus, from the above sequence of events, it would be clear that the basic eligibility as such was missing in the subject of Biology in 10+1 and on that account, the appellant has reached the stage where she has wasted her career on the wrong advise by furnishing a certificate which was found to be not genuine only on account of an attempt to regularize her admission. In

permitting her to continue was only on the account that there was a mistake on the part of the State as such which had not bothered to verify her admission at the initial stage. Apparently on the strength of the fact that she had an all India rank having cleared the NEET and getting a position in the same, she had been given admission. In such circumstances, it had led to suspension of studies at the initial stage which led to shortage of lectures and then she had been permitted to give her examination and the result had been withheld. The fault, thus, lies with the appellant herself but it cannot be said that the State or the University as such can also be absolved by not taking redressal steps at appropriate time and allowing a candidate to continue and wasting a seat for not taking up the eligibility criteria at the initial stage.

Resultantly, we are of the considered opinion that no relief as such can be granted to the appellant of further appearing in the MBBS course itself having not qualified Biology subject in both the 10+1 and 10+2 examinations after she had done her matriculation, which would be essential as such to pursue her MBBS course. In ***Chandigarh Administration and another vs. Jasmine Kaur and others, (2014) 10 SCC 521***, it has been held by the Apex Court that the Court should not pass orders for grant of admission in any particular course for accommodating the students in certain cases on account of the tight time schedule. It was further held that the students can be duly compensated by payment of compensation and those who were at fault can be appropriately proceeded against and punished in order to ensure that such deliberate or malicious acts do not re-occur.

In view of the above, we are of the considered opinion that though the fault lies with the appellant as such in taking admission in a course in which she was not duly qualified but keeping in view the fact that

she was a scheduled caste candidate and the fees has been taken by the College and there was a lapse on the part of the University in processing her qualifications. She continued attending classes from 15.01.2021 till her cancellation of the MBBS admission on 27.07.2022, in such circumstances, for compensating her for the lost years, we are of the opinion that the fees that she has paid should be directed to be refunded to the extent of 50% each by the University and the State Government, as it is not the fault of the respondent-College. The fault lies with the State authorities for not following up and processing her case and checking her eligibility within a fixed time frame. Accordingly, whatever fees she has paid for her studies would be refunded to her within a period of 2 months from the date of receipt of certified copy of the order.

The appeal stands disposed of with the abovesaid observations.

(G.S. SANDHAWALIA)
JUDGE

17.02.2023
shivani

(RITU TAGORE)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes