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Court : Karnataka

Decided On : Apr-20-1990

Reported in : AIR1991Kant35; ILR1990KAR1871

Judge : N. Venkatachala, J.

Acts : [Constitution of India](#) - Article 226; [Evidence Act, 1872](#) - Sections 115

Appeal No. : W.P. Nos. 14745/88 and 2338/89

Appellant : N.E. Krishna Murthy and Another

Respondent : University of Mysore and Others

Advocate for Def. : V.C. Brahmarayappa, Adv.

Advocate for Pet/Ap. : M.C. Narasimhan, Adv.

Judgement :

ORDER

1. By consent of learned counsel, these writ petitions are treated as having been posted for hearing and I have heard them.

2. In the academic year 1987-88, Acharya Tulasi National College of Commerce, Shimoga ('the College'), had affiliation from the University of Mysore ('the University'). 64 students, who had, during that academic year, completed their final year B.Com., Course from the College, took the final year B.Com, Examination

held by the University in the month of April 1988. Results of that examination pertaining to the said students, were announced by the University on 30-6-1988 by means of a Provisional List. However, a correction slip was issued by the University on 17-9-1988 respecting the results which had been announced on 30-6-1988. The correction slip so issued brought about several changes in the earlier results. In fact, 16 students, whose earlier results showed that they had successfully passed the final year B.Com., Examination, were declared 'failed' under the correction slip. The Correction Slip issued by the University being forwarded to the College, the latter was directed by the University to obtain from the students, whose results had been affected by that correction slip, 'Statement of Marks' issued to each of them and direct such of those who were declared 'failed' under the correction slip to take the examination to be held for them by the University in October 1988. Intimations were accordingly issued by the College to the affected students.

3. Petitioner in Writ Petition No. 14745/ 1988 received the intimation dated 26-9-1988 (Annexure-B) showing (herein that he had failed in the subject 'Cost Accounts'. In his writ petition filed in this Court on 11-10-1989, he has not merely questioned the sustain-ability of the aforementioned correction slip and the intimation, but has, as well, sought for their nullification. According to him, the University, which announced the result of his examination declaring that he had passed in that examination, should not have declared him 'failed' by a correction slip issued subsequently, when, by reason of its earlier announcement, he has joined the M.Com., Course in a post-graduate Institution of the Shivaji University of Maharashtra and was prosecuting his studies, at considerable cost, ignoring the principle of equitable estoppel which operated against it. That writ petition when came up for preliminary hearing on 13-10-1988 before this Court, while the standing counsel for the University was directed to take notice of the writ petition, an interim order was made thus :

'Petitioner is permitted to complete the M.Com., Course from Shivaji University, Maharashtra subject to the result of the writ petition.'

4. Petitioner in Writ Petition No. 2338/ 1988 was also a student of the College who had taken his final year B.Com., Degree examination held by the University in April 1988. Though he was also declared 'passed' in the result of his examination announced by the University on 30-6-1988, by the correction slip issued subsequently by the University, he was declared 'failed'. As he had failed in the subject 'Advanced Accountancy', he was required by the College to take the examination in that subject to be held by the University in October 1988. The action of the University in issuing the correction slip is challenged by him, as has been done by the petitioner in Writ Petition No. 14745/1988.

5. As matter stand, it appears that it is only the two students, petitioner in each of the above writ petitions, who have challenged the action of the University in issuing the aforesaid correction slip though under the correction slip, the results of as many as 64 students had been adversely affected.

6. The University, which has filed a common statement of objections respecting the said two writ petitions, has stated therein that the action of the University in issuing the correction slip correcting results of an examination announced earlier, can neither be assailed nor its nullification be sought on the plea of the operation of equitable estoppel against the University, having regard to the facts situation leading to the issuance of the correction slip by it, namely, correction or rectification was necessitated by reason of mistakes in the announced results of students of an examination, which had occurred on account of misreading of the Grace Marks Rules by the Tabulators.

7. Sri M. C. Narasimhan, learned counsel, who argued for the petitioners, assailed the action of the University. According to him, the impugned correction slip could not have been issued by the University as would bring about adverse changes in the results of students of an examination already announced, particularly, the students like the petitioners while had joined post-graduate courses in other Universities at considerable cost on the basis of their earlier results of their examination overlooking the rule of equitable estoppel which operated against the University.

8- Sri V. C. Brahmarayappa, learned counsel, who argued for the University, refuted the argument of Sri Narasimhan on his submission that the impugned correction slip issued by the University in relation to examination results of the petitioners and others similarly situated, was not amenable to challenge on the plea that in issuing such correction slip, the University had overlooked the rule of equitable estoppel, in that, in issuing the correction slip, the University had performed its duty of correcting mistake committed by the Tabulators in applying the Grace Marks Rules of the University to the students who had taken the examination, immediately after the mistake was discovered and within the shortest possible time.

9. As to vitiation or otherwise of the impugned correction slip on the application of the rule of equitable estoppel has to necessarily depend on the fact situation culminating in the issuance of such correction slip, the same shall be adverted to here.

Existence of Grace Marks Rules in the University and their application wherever needed to help students in passing their University examinations, are not disputed. Rule 1 of such Grace Marks Rules, which is of materiality, reads :

'1. Grace Marks may be awarded within limits for the purpose of helping a candidate to make up for limited deficiency in unit or more and pass the examination in such units or subjects, subject to the following conditions :--

(a) The grace marks permissible for this purpose shall be one percent of the aggregate marks (maximum) of all the papers in the part or group or whole examination of a year/ semester for which a candidate has actually appeared subject to a minimum of 3 marks and maximum of 10 marks;

(b) The maximum grace marks for a unit which will be taken as a group or subject or a division thereof (external or internal assessment, as the case may be) whichever has a separate minimum for pass, shall not exceed 3% of the maximum of that unit.'

The Tabulators, who had to give the benefit of that rule to University examinees, by a misreading of it, had given excess grace marks in subjects taken in the University April 1988 examination by examinees from the College. It is this giving of marks by mistake which had made the University Authorities to get the same corrected by issuance of the impugned correction slip. Within a week of the date of issuance of the correction slip, intimation in this regard is given to the College concerned and the students adversely affected by such corrections. While the result announced on the basis of giving of excess grace marks was done by the University on 30-6-1988, the same is got corrected or rectified and the impugned correction slip in that regard has been issued on 17-9-1988, just in 77 days' time. No doubt, the petitioners were two of the 64 students who had been adversely affected on account of such correction.

10. What now remains to be seen is whether the above fact situation culminating in issuance of the impugned correction slip warrants its nullification as sought for by the petitioners as that done by the University against the rule of equitable estoppel.

As elsewhere, mistakes occur rather respecting examinations conducted by the examining bodies and the Universities are no exception in this regard. The causes for such mistakes are difficult of enumeration, in that, resourcefulness on the part of the examinees in that regard is not found wanting. Therefore, to lay down a rule that whatever mistakes are committed and whenever they are committed by the examining bodies including an University in relation to the results of their examinees could not merely be preposterous, but will result in denuding the examining bodies and other University Authorities of their concomitant power of correcting mistakes arising in respect of examinations conducted by them. It is for this reason that the Courts have recognised the concomitant power of examining bodies including the Universities in correcting mistakes committed by them or the persons entrusted by them with the work connected with examinations. However, instances are not wanting where Courts have taken the view that the examining bodies or the University concerned should be precluded on the application of the rule of equitable estoppel from denying to the examinees the benefit derived due to mistakes committed by the examining bodies or the persons entrusted with the

work of examinations. It is here where the fact situation respecting each case assumes importance.

11. The fact situation in these writ petitions as already stated, is that the result of the examinees including that of the petitioners in relation to their final B.Com., Degree examination was announced on 30-6-1988. The Statements of Marks relating to examinees have been issued by the University to the College concerned and the same have been passed on to the examinees concerned. On the strength of the results so announced and the Statements of Marks so issued, the petitioners here appear to have joined post-graduate courses. In the case of the petitioner in Writ Petition No. 14745/88, he joined the postgraduate course on 9-7-1988, while in the case of the petitioner in Writ Petition No. 2338/ 1989, he is said to have joined the postgraduate course even though he has not furnished the details in that regard. Admittedly, both of them were intimated by their College about the correction of their results within a week from 17-9-1988, the date of issue of the correction slip by the University. If the correction slip had to be issued by the University on 17-9-1988, it must have necessarily discovered the mistakes committed in the results earlier announced a few days earlier. Thus, between the date of the earlier announcement of the result on 30-6-1988 and the date of issue of correction slip, time lapsed is hardly about two months and a half. I find it rather difficult to think that the University was precluded or estopped from the issuance of the correction slip correcting the examination results of the petitioners and others similarly situated arising on account of grave mistake which has occurred in the Tabulators misreading the Grace Marks Rules of the University under the rule of equitable estoppel. If regard is had to the manner in which the University has acted in correcting the mistakes committed by its Tabulators in relation to the examination results of the petitioners and others similarly situated, I cannot help thinking that it has acted most expeditiously and it has not allowed any time to lapse by negligence or otherwise. Hence, in the fact situation, I am clearly of the view that the impugned correction slip issued by the University and intimations issued by the College can neither be assailed nor nullified as those issued in violation of the rule of equitable estoppel. Consequently, the writ petitions are liable to be dismissed.

12. However, Sri Narasimhan since invited my attention to several decided cases in support of his argument that the impugned action of the University in issuing the impugned correction slip was hit by the rule of equitable estoppel, I shall refer to them to show that the fact situation which arose for consideration in each one of them being different and dissimilar to the fact situation in the present writ petitions, they cannot in any way advance his argument.

(i) *Surya Narain Yadav v B. S. E. Board*, : AIR 1985 SC941 , is a case where the B. S. E. Board was directed by the Supreme Court to offer regular appointments to certain trainee-Engineers working under the Board because of their working as such trainee-Engineers for over a period of about six years by the promise made by the Board for their absorption as regular Engineers, by holding the rule of equitable estoppel against the Board.

(ii) *Dr. Mrs. Sheela Ashok Patwardhan v. The Dean, Dr. V. M. Medical College, Solapur*, : AIR 1989 SC382 , is a case where the Dean of Medical College, Solapur, was directed by the Supreme Court to give admission to Sheela in the post-graduate course because of her joining the House post in Obstetrics and Gynaecology which enabled her under a rule made by the Government of Maharashtra to be admitted to such course and for no fault of her she had lost two academic years in her endeavour to secure the seat, because of the subsequent refusal of the Authorities to give her admission to the postgraduate course.

(iii) *Ashok Chand Singhvi v. University of Jodhpur*, : [1989]1SCR230 , is a case where the admission of a diploma holder in Engineering to the degree course in Engineering College on study leave was accepted by the Vice-Chancellor after considering all facts and circumstances and also objections raised by the Office to the admission of that candidate. The Supreme Court held that a student when had been admitted according to the orders of the Vice-Chancellor, it would not be open to the Vice-Chancellor to order withdrawal of that admission on the plea of a mistake, applying the rule of equitable estoppel.

13. Yet, what needs consideration is as to what has to be done in relation to the petitioner in Writ Petition No. 14745/88 who has almost completed his M.Com., Degree Course by virtue of an interim order made by this Court on 13-10-1988 in

his writ petition permitting him to complete the M.Com., Course.

In *A. K. E. Society v. Director of School Education*, (AIR 1989 SC 183), where the Supreme Court had to deal with a situation arising on account of an interim order made by it permitting the students of the petitioner-Institution to complete their B.Ed., Course, it observed thus:

'students. . . .were admitted on the strength of the interim order made by this Court. The students were perhaps led to believe that this Court permitted the appellant to admit them. We consider, therefore, that it may not be proper to drive them to street if they have undergone the prescribed course with the necessary syllabi and other matters relating thereto. But, it would be for the Director of School and the Registrar, Nagarjuna University to consider and satisfy themselves and not for this Court at once to permit them to appear in the examination.'

If regard is had to the fact that the petitioner in Writ Petition No. 14745/88 has almost completed the M.Com., Course on the strength of the interim order made by this Court, I think ends of justice would be met if he is allowed to have the benefit of the M.Com., Course and the examinations taken by him in that Course if, within next two years, he takes the examination in his failed subject 'Cost Accounts' to be conducted by the University and gets a pass in that subject. I make it clear that the issuance of the Degree Certificate, either provisional or regular, or M.Com., Course to the petitioner by the Shivaji University, Maharashtra, may be kept in abeyance until the petitioner passes the University examination in the subject 'Cost Accounts'. The relief granted to this petitioner cannot be granted to the petitioner in Writ Petition No. 2338/89 since he has suppressed the information in his writ petition as to the date of his joining the Law College and there is no interim order made in his writ petition as has been done in the case of the petitioner in Writ Petition No. 14745/88. Moreover, the petitioner in Writ Petition No. 2338/89 has filed the writ petition in this Court only on 18-1-1989, while the petitioner in Writ Petition No. 14745/88 has filed the writ petition on 11-10-1988.

14. With these observations, I dismiss these writ petitions.

15. Petitions dismissed.

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