

Daitari Lenka Vs. Asst. Controller of Examinations and ors.

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Court : Orissa

Decided On : May-15-1995

Reported in : AIR1997Ori25

Judge : Susanta Chatterji and ;R.K. Patra, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Original Jurisdiction Case No. 3178 of 1994

Appellant : Daitari Lenka

Respondent : Asst. Controller of Examinations and ors.

Advocate for Def. : B.S. Mishra, ;G.P. Mishra and ;M.R. Mishra, Advs.

Advocate for Pet/Ap. : M.M. Sahu, ;N. Dash and ;A. Sahoo, Advs.

Disposition : Petition allowed

Judgement :

Susanta Chatterji, J.

1. The present writ application is at the instance of one Daitari Lenka praying, inter alia, for issuance of an appropriate writ to quash the letter dated 13-10-1993 issued by the Assistant Controller of Examinations, Berhampur University, copy whereof is Annexure-1. By the aforesaid impugned letter, the Assistant Controller

of Examinations has recorded that the petitioner's application dated 20-3-1993 for appearing at the M. Com. Part II examination, 1993 as a non-collegiate candidate from Banja Bihar Centre cannot be entertained in view of the fact that the petitioner had passed the +3 Arts examination in the year 1987 from Berhampur University and as per the existing regulation 23 of Chapter V, the petitioner was required to pass B. Com. or B. A. examination with Honours in Economics for appearing at M. Com. examination as non-collegiate candidate from the university.

2. Being aggrieved, the petitioner has come to this Court for quashing of the aforesaid order Annexure 1 and for further directions to the Berhampur University authority to permit the petitioner to appear the M. Com. Part II examination as a non-collegiate candidate. It is contended, inter alia, that the petitioner passed his B. A. examination as a non-collegiate candidate from the Berhampur University with Political Science and Economics as pass subjects along with other compulsory subjects in the year 1987. Thereafter he applied for appearing at the M. Com. examination under Berhampur University in the year 1992, filled up the form for the said examination and the opposite party No. 1 Assistant Controller of Examinations, Berhampur University, having duly considered his application granted necessary permission to him to appear at the Part I of the said examination and issued the admit card with roll number 73391. After obtaining the admit card, the petitioner had appeared in the said M. Com. Part I examination in 1992 at the Bikramdev College Centre and came out successful. After completion of Part I of the M. Com. examination 1992, the petitioner applied to the Berhampur University-opposite party No. 3 for necessary application form on 20-3-1993 for granting necessary permission to the petitioner for appearing at the Part II of the said examination and had deposited the necessary examination fees by way of bank draft, as referred to in the writ petition. Stating all these evidence in detail, the petitioner has come to this Court alleging that the refusal of permission by the university authorities to appear at the Part II examination has left the petitioner in quandary and without finding any other efficacious remedy, he has come to the writ Court seeking the reliefs, as indicated above.

3. The writ petition is contested by the opposite parties by filing counter affidavits sworn to by the Deputy Registrar (Special) of the Berhampur University. It

is disclosed in the said counter affidavit that Chapter V of the Berhampur University Regulations governs the field of Master Degree examinations in Arts, Science and Commerce by non-collegiate candidates. Regulation 23 envisages that any registered candidate of this university who has passed B. Com. or B. A. examination with Honours in Economics or some other examination recognised by the Academic Council as equivalent thereto may be admitted to the M. Com. examination. By referring to and quoting regulation 23, the university has taken a stand that the earlier permission granted to the petitioner to appear at the M. Com. Part I examination was an error. A wrong step cannot be ratified by another wrong step to permit the petitioner to appear at the Part II examination. In view of Regulation 23, petitioner's application for permission to appear at the M. Com. Part II examination was misconceived and consequently it was rejected. The writ petition is thus misconceived and the petitioner is not entitled to any relief whatsoever.

4. Upon perusal of the record and having heard the learned advocates for the petitioner and for the university authorities, we find that regulation 23 certainly indicates that a non-collegiate candidate is only eligible to appear at the Master of Commerce examination provided he has passed the B. Com. or B. A. examination with Honours in Economics. In the instant case, the petitioner has passed the B. A. examination with Economics as a pass subject but without any Honours. Two aspects are to be considered by this Court --(i) whether by granting previous permission to the petitioner the university is estopped from refusing the petitioner to appear at the M. Com. Part II examination; and (ii) if there is any regulation prohibiting the petitioner to appear at the M. Com. examination, whether the university has any right to relax such regulation and permit the petitioner to appear without being properly eligible. In fitness of things, we had requested Mr. Pradyumna Mohanty, learned advocate, who usually appears for the university to act as *amicus curiae* to assist this Court to appreciate the legal proposition. Mr. Mohanty in his usual way has helped this Court by drawing our attention to the relevant regulation and also as to the powers of the Academic Council. The Academic Council shall, subject to the provisions of the Act and the Statute, have power to make Regulations relating to all matters which by such Act or the Statutes may be provided by Regulations besides prescribing therein courses of

studies and curricula shall have general control of teaching in the Colleges within the jurisdiction of the concerned University; and shall be responsible for the maintenance of standards of instruction. In Section 12(2)(k) it is provided that the Academic Council has power to define the conditions under which exemption relating to admission of students to examinations may be given. An argument has been made on behalf of the University authorities that the previous permission granted to the petitioner to appear at the M. Com. Part I examination was simply an error made by them. The petitioner cannot take the advantage of the error or wrong done by the University authorities and insist for issuance of any writ on the basis of the wrong step by the university authorities. If the university authorities have committed any wrong, it is not right to ratify the wrong and one wrong will not ratify another wrong. We appreciate the stand taken by the university and this proposition appears to be sound in law. We have tried to examine the aspect that the University is a creature of statute and can certainly act in terms of Statute and not beyond the same. Certain rules are framed under which the examination is held and the eligibility of a candidate is considered. Various functions of the University are delegated and re-delegated to different functionaries. Academic Council is the appropriate authority to consider the eligibility of the qualification of the candidate concerned to appear at the examination. Regulation 23 in this behalf has been enacted to consider that any registered candidate of the university who has passed B. Com. or B. A. examination with Honours in Economics and other examinations recognised by the Academic Council as equivalent thereto maybe admitted to the M. Com. examination. Certain rights are certainly reserved to the Academic Council in this regard. Facts of the case further reveal that regard being had to the qualification, the petitioner made application for appearing at M. Com. Part I examination. It has to be presumed that upon consideration of the provisions of law permission was granted. If any permission has been granted and pursuant thereto the petitioner has appeared at the examination and claims to have passed M. Com. Part I examination, it has to be considered whether under the regulation which governs the examinee's right to appear has been relaxed in the case or not. Academic Council has obviously the right to relax any condition for any examinee. Our attention has been drawn to a case reported in AIR 1990 SC 1075 (*Sanatan Gauda v. Berhampur University and others*). In the aforesaid case, the candidate-

appellant while securing his admissions into the Law College had admittedly submitted his mark-sheet along with the application for admission. Law College had admitted him. He had prosecuted his studies for two years. The University had also granted him admit card for the Pre Law and Intermediate Law examinations. He was permitted to appear at the said examinations. He was also admitted to the final year of the course. It is only at the stage of declaration of his results of the Pre Law and Inter Law examinations that the university raised objection to his so-called ineligibility to be admitted to the Law course. The university was, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course. The decision of this Court was, however, reversed by the Supreme Court. It was found by the Supreme Court that although the appellant in the said case was not eligible in terms of the marks obtained at the B. A. examination but he improved his qualification by obtaining M. A. Admittedly M. A. degree being higher to the minimum qualification of B. A., the Supreme Court had taken all the facts and circumstances into consideration in the proper perspective and found that there was no violation of the regulation and by applying the principle of estoppel in the said case reliefs were granted accordingly. With due regard, we have considered the ratio of the said decision. Strictly speaking, the principle of estoppel and/ or the distinction as made in the said case; are not applicable to the facts of the present case. But, however, we find, regard being had to the materials on record, that the petitioner having Economics, as pass subject in B. A. examination was allowed to appear at the M. Com. Part I examination. The permission so granted by the university is not construed as a mistake and/or wrong step. It can at best be construed as a permission granted expressly in relaxation of the regulation. Although the question of estoppel cannot apply against the statute but if any step has been taken by relaxing the eligibility criteria, the university authorities cannot year round and refuse permission to appear at the M. Com. Part II examination. Taking a little liberal view of the matter and considering the peculiar facts and circumstances of the case that the petitioner being a non-collegiate candidate pursued the studies to improve his qualification and thereafter obtained permission from the university to appear at the M.Com. Part-I examination and being successful therein and having legitimate expectation filled the form to appear at the

M. Com. Part II examination, the decisions taken by the university in issuing Annexure-1 appears to be harsh and unnecessarily strict. We accordingly find merit in the petition to allow the same. The writ application is accordingly allowed. Annexure-1 is quashed and the university authorities are directed to permit the petitioner to appear at the M. Com. Part II examination; on completion of other formalities as prescribed under law. It is, however, made clear that this case would be considered as a special case and cannot be considered as a precedent.

R.K. Pair A, J.

5. I agree.

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