

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3176 of 2021

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PRABHANSH KUMAR BHARTI Son of Sri Awadhesh Prasad Bharti
resident of Kochgama, P.O.- Bagnagar, P.S.- Araria, District- Araria

... .. Petitioner

Versus

1. The Vice Chancellor, Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura
2. The Controller of Examination, Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura
3. The Registrar, Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura
4. The Principal Purnea College, Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prahalad Kumar Bhagat, Adv.
For the BNMU : Mr. Ritesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 24-12-2021

The present writ petition has been filed for quashing the Order dated 17.2.2020, passed by the Controller of Examination, Bhupendra Narayan Mandal University, Madhepura (hereinafter referred to as the 'University'), whereby and whereunder the petitioner has been informed that his request for publication of result of BCA second semester



examination (2011-2014), has been rejected, being beyond the regulations inasmuch as the petitioner had appeared in BCA second semester examination, after the time period prescribed under the Regulation IX (b) had expired.

2. The brief facts of the case are that the petitioner had taken admission in Bachelor of Computer Application (BCA) Course in the Respondent-University for the academic session 2011-2014. The petitioner had appeared in the second semester examination held by the University in the month of October, 2012 and when the result was published, the petitioner found that he had failed in one subject, however, he had passed in the other subjects. After passing the 4th semester exam, the petitioner had filled examination form for the aforesaid one subject in which he had failed, which was accepted by the University and admit card was also issued in the month of June, 2016 and then, the petitioner had appeared in the exam held for the said subject in the year 2017 and had also passed in the said



exam. It is the case of the petitioner that the petitioner had appeared in all the 6 semester exams and had passed the same, but the final result of the petitioner was not published, showing the same to be pending inasmuch as the marks of second semester were awaited. The petitioner had approached the University several times for declaration of his result, but to no avail, hence, he had filed a writ petition bearing CWJC No. 1533 of 2020, which was disposed of by an order dated 23.01.2020, passed by a coordinate Bench of this Court, granting liberty to the petitioner to file a detailed representation before the Controller of Examination of the Respondent University and the Controller of Examination was directed to dispose of the same. The petitioner had then filed a representation on 04.02.2020, however the same has been rejected by the impugned letter dated 17.02.2020.

3. The learned counsel for the petitioner has submitted that the case of the petitioner is squarely covered by a judgment rendered by the



Hon'ble Apex Court in the case of ***Shri Krishnan vs. Kurukshetra University, Kurukshetra***, reported in (1976) 1 SCC 311, paragraph no. 7 whereof is reproduced herein below:-

“7. It appears from the averments made in the counter-affidavit that according to the procedure prevalent in the college the admission forms are forwarded by the Head of the Department in December preceding the year when the examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the university authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the university to see that the form complied with all the requirements of law. If neither the Head of the Department nor the university authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence,



fraud is not proved. It was neither a case of *suggestio falsi*, or *suppressio veri*. The appellant never wrote to the university authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the university authorities to have found out the defect. In these circumstances, therefore, if the university authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I examination in April 1972, then by force of the university statute the university had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in *Premji Bhai Ganesh Bhai Kshatriya v. Vice Chancellor, Ravishankar University, Raipur* [AIR 1967 MP 194, 197 : 1967 MPLJ 370] where a Division Bench of the High Court of Madhya Pradesh observed as follows:

“From the provisions of Ordinance Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance 19 or Ordinance 48 which would enable the ViceChancellor to



withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice Chancellor to withdraw that permission subsequently and to withhold his result.”

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the examination in May 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the university to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the university authorities in cancelling the candidature of the appellant.”

The learned counsel for the petitioner has



also referred to a Judgment rendered by a coordinate Bench of this Court dated 23.01.2020 passed in CWJC No. 1533 of 2020.

4. *Per contra*, the learned counsel for the Respondent-University has submitted that the petitioner was a student of Purnea College, Purnea bearing Roll No. 4129 and Registration No. 34850/2012. It is submitted that the final result has not been published and the mark-sheet has also not been issued by the Respondent-University to the petitioner on account of the fact that the petitioner had appeared in the BCA second semester exam beyond the examination regulation. The learned counsel for the Respondent-University has referred to the BCA Regulations, more particularly Regulation IX(b) thereof, which is reproduced herein below:-

“IX(b). A candidate having completed the course fails to appear at the examination or fails to pass the examination or does not clear any paper shall be allowed to appear at the subsequent examinations in only that those parts and which he / she has failed or absented



himself / herself on the payment of prescribed examination fee without being required to go through the course again. However, the opportunity shall be given in only two more examinations within a period not exceeding 3 years excluding the main examination held at the end of session."

It is thus submitted that the petitioner appeared in the B.C.A. second Semester Examination in June 2012 and was promoted although he had failed in one paper i.e Mathematics-1, Advance calculus & Matrices Numerical Method. The petitioner had then belatedly appeared in the B.C.A. second Semester Examination, 2016 to qualify in the paper in which he had failed in the year 2012, beyond the aforesaid Regulation IX(b). For the said reason, the result of the petitioner of B.C.A. Examination is not being published.

5. The learned counsel for the Respondent has referred to various judgments rendered by this Court, in order to buttress the case of the Respondent-University. The first case referred to by



the learned counsel for the Respondent-University is a judgment dated 14.08.2018 passed by a coordinate Bench of this Court in CWJC No. 6114 of 2018 (***Ruchi Rachna vs. The State of Bihar & Ors.***) and the second one is a Judgement dated 12.09.2018, passed by a coordinate Bench of this Court in CWJC No. 17195 of 2018 (***Aman Kumar Tiwari vs. The Vice-Chancellor, B.N.Mandal University, Madhepura***). The learned counsel for the Respondent-University has also referred to a judgment rendered by a Division Bench of this Court in the case of ***Sunil Kumar vs. B.N. Mandal University & Ors.***, reported in 2020 (4) PLJR 129, paragraphs no. 5 to 10 whereof are reproduced herein below:-

“5. The learned Single Judge further relied on the Division Bench judgement in the case of Mihir Kumar Jha Vs. Bhupendra Narayan Mandal University & Ors. in L.P.A. No. 904 of 2014 decided on 7th January, 2015.

6. Learned counsel for the appellant contends that there was no fraud or misrepresentation on the part of the appellant in his admission,



and allowing him to appear in the examinations one after the other, clearly indicated that the respondents did not raise any objection to the pursuing of the course of studies by the appellant and, consequently, at the fag end of his career, he cannot now be denied the publication of his results. For this, heavy reliance has been placed on the judgement of the Apex Court in the case of Guru Nanak Dev University Vs. Sanjay Kumar Katwal & Anr. (2009) 1 SCC 610, paras 18 to 22 thereof. Learned counsel submits that in spite of the fact that the said judgement was cited before the learned Single Judge and the ratio thereof was relied on, there does not appear to be any consideration and, therefore, the impugned judgement is vitiated. It is submitted that the respondents themselves having allowed the appellant to continue to pursue his studies, they cannot turn around and now take a plea that he deserves a re-admission as he has not cleared the sessional work.

7. We have considered the submissions raised and what we find is that the Regulation is explicit and suffers from no ambiguity. Failure in sessional work entails the consequence of re-admission. The said Regulation is not under challenge. It is only on the ground of equity & the judgement in the case of Guru Nanak Dev



University (supra) that the submissions have been advanced that once the respondents have themselves allowed the appellant to appear in the examinations, they cannot turn turtle.

8. The ratio of the judgement in the case of Guru Nanak Dev University (supra) arose out of an allegation of not possessing the qualifying degree at the time of admission as required under the admission notice. The concerned student had obtained a degree through the correspondence course which was a Distance Education Degree and was not the equivalent degree recognized for the purpose of admission, yet he was allowed to appear in the first semester examination. As a matter of fact, not only was he allowed to appear in the first semester examination, but he was also allowed to complete his entire course and it was four years thereafter that he was informed about his ineligibility. The same was challenged and the High Court allowed the writ petition, against which the University had gone in appeal. The Apex Court, after relying on a couple of earlier judgements, came to a conclusion that the examinations could not have been cancelled subsequently, and the University was estopped from withholding the declaration of results inasmuch as the student,



after four years, will have to irretrievably suffer, having been allowed by the University itself to appear in the examinations.

9. The aforesaid ratio of the judgement was in the case of a student relating to the University itself, whereas in the present case it is an incident of an engineering student of a private Engineering College. The permission to appear in the examinations has been given by the Principal whereafter the Controller of Examinations has allowed the appellant to appear in the same. It was the duty of the Principal of the Institution to have been informed the University about the appellant not having cleared the sessional work, which does not appear to have been done in this case. The default, therefore, is not of the University in allowing the appellant to appear in the examinations which appears to have been done unknowingly on account of the default on the part of the private Engineering College itself. Consequently, in the present case, the facts are clearly distinguishable vis-a-vis the facts of the case relating to Guru Nanak Dev University (supra). In this background, where the private engineering college has facilitated the appearing of the appellant in the examinations with no lapse on the part of the University, the same cannot be a ground to



bind or estopp the University on account of its conduct so as to allow this Court to issue a direction to the University to declare the results.

10. Consequently, on account of the aforesaid distinguishing features, we are unable to subscribe to the arguments raised on behalf of the appellant, without prejudice to his rights to seek re-admission as per the Regulations.”

6. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that though it is true that the petitioner had appeared in the examination, pertaining to one paper of the second semester in which he had failed, after lapse of three years, but then, the Respondent-University had accepted the examination form of the petitioner, issued the admit card, permitted the petitioner to sit in the second semester exam, 2016 and had also published the result, meaning thereby that the University authorities had acquiesced the infirmities present in the case of the petitioner's examination form and had allowed the petitioner to appear in the second semester exam, 2016, thus



considering the law laid down by the Hon'ble Apex Court in the case of **Shri Krishnan** (supra), the Respondent authorities cannot now refuse to publish the result of the petitioner. In this regard, it would be apropos to refer to a judgment rendered by the Hon'ble Apex Court in the case of **Guru Nanak Dev University vs. Sanjay Kumar Katwal**, reported in (2009) 1 SCC 610, paragraphs no. 18 to 22 whereof are reproduced herein below:-

“**18.** However, on the peculiar facts of the case, the first respondent is entitled to relief. The first respondent was admitted through a common entrance test process during 2004-2005. He was permitted to take the first semester examinations by the University. He is not guilty of any suppression or misrepresentation of facts. Apparently, there was some confusion in the appellant University itself as to whether the distance education course attended by the first respondent was the same as the correspondence course which was recognised.

19. The first respondent was informed that he was not eligible only after he took the first semester examination. He has, however, also



been permitted to continue the course and has completed the course in 2007. He has succeeded before the High Court. Now after four years, if it is to be held that he is not entitled to admission, four years of his career will be irretrievably lost. In the circumstances, it will be unfair and unjust to deny the first respondent the benefit of admission which was initially accepted and recognised by the appellant University.

20. This Court in *Shri Krishnan v. Kurukshetra University* [(1976) 1 SCC 311 : AIR 1976 SC 376] has observed that before issuing the admission card to a student to appear in Part I Law examination, it was the duty of the university authorities to scrutinise the papers; and equally it was the duty of the Head of the Department of Law before submitting the form to the university to see that it complied with all requirements; and if they did not take care to scrutinise the papers, the candidature for the examinations cannot be cancelled subsequently on the ground of non-fulfilment of requirements.

21. In *Sanatan Gauda v. Berhampur University* [(1990) 3 SCC 23] this Court held where the candidate was admitted to the Law course by the Law College & the university also permitted



him to appear for Pre-Law and Intermediate Law examinations, the college and the university were estopped from withholding his result on the ground that he was ineligible to take admission in the Law course.

22. Having regard to the above we are of the view that irrespective of the fact that MA (English) (OUS) degree secured by the first respondent from Annamalai University through distance education, may not be recognised as an equivalent to the Master's degree of the appellant University, his admission to the law course should not be cancelled. The appellant University is directed to treat the admission as regular admission and permit the first respondent to appear for the law examination, and if he has already appeared for the examination, declare his result. The appeal is disposed of accordingly.”

7. This Court thus finds that the present case is squarely covered by the judgment rendered by the Hon’ble Apex Court in the case of **Shri Krishnan** (supra). It would also be relevant to mention here that the judgment referred to by the learned counsel for the Respondent-University, rendered in the case of **Sunil Kumar** (supra) is distinguishable



in the facts and circumstances of the present case and moreover, it appears that the law laid down by the Hon'ble Apex Court in the case of **Shri Krishnan** (supra) was not brought to the notice of the said Bench. At this juncture, it would be relevant to state that as per the mandate of Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court of India is binding on all courts within the territory of India. In this regard, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of **South Central Railway Employees Coop. Credit Society Employees Union v. B. Yashodabai & Others**, reported in (2015) 2 SCC 727, paragraph no. 15 whereof is reproduced herein below:-

“**15.** If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said



decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when CA No. 4343 of 1988 was decided [*South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies*, (1998) 2 SCC 580]. If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the subordinate courts would also be violating the provisions of Article 141 of the Constitution of India.”



8. It would also be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of **A.S. Gauraya v. S.N. Thakur**, reported in (1986) 2 SCC 709, paragraphs no. 10 to 14 whereof are reproduced herein below:-

"10. In *B.D. Sethi v. V.P. Dewan* [1971 DLT 162] a Division Bench of the Delhi High Court held that a Magistrate could revive a dismissed complaint since the order dismissing the complaint was not a judgment or a final order. In para 9, the court observes as follows:

"9. As long as the order of the Magistrate does not amount to a judgment or a final order there is nothing in the Code of Criminal Procedure prohibiting the Magistrate from entertaining a fresh application asking for the same relief on the same facts or from reconsidering that order. During the course of the proceedings, a Magistrate has to pass various interlocutory orders and it will not be correct to say that he has no jurisdiction to reconsider them...."

We would like to point out that this approach is wrong. What the court has to see is not whether the Code of Criminal Procedure



contains any provision prohibiting a Magistrate from entertaining an application to restore a dismissed complaint, but the task should be to find out whether the said Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction which he otherwise does not have. It was relying upon this decision that the Delhi High Court in this case directed the Magistrate to recall the order of dismissal of the complaint. The Delhi High Court referred to various decisions dealing with Section 367 (old Code) of the Criminal Procedure Code as to what should be the contents of a judgment. In our view, the entire discussion is misplaced. So far as the accused is concerned, dismissal of a complaint for non-appearance of the complainant or his discharge or acquittal on the same ground is a final order and in the absence of any specific provision in the Code, a Magistrate cannot exercise any inherent jurisdiction.

11. For our purpose, this matter is now concluded by a judgment of this Court in the case of *Bindeshwari Prasad Singh v. Kali Singh* [(1977) 1 SCC 57]. We may usefully quote the following passage at p. 126 of the Reports:

“Even if the Magistrate had any jurisdiction to recall this order, it could have been done



by another judicial order after giving reasons that he was satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in the Code of Criminal Procedure of 1898 (which applies to this case) empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561-A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of the Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision. In fact, after having passed the order dated November 23, 1968, the Sub-divisional Magistrate became *functus officio* and had no power to review or recall that order on any ground whatsoever. In these circumstances, therefore, the order even if there be one, recalling order dismissing the complaint, was entirely without jurisdiction.



This being the position, all subsequent proceedings following upon recalling the said order, would fall to the ground including order dated May 3, 1972, summoning the accused which must also be treated to be a nullity and destitute of any legal effect. The High Court has not at all considered this important aspect of the matter which alone was sufficient to put an end to these proceedings. It was suggested by Mr D. Goburdhan that the application given by him for recalling the order of dismissal of the complaint would amount to a fresh complaint. We are, however, unable to agree with this contention because there was no fresh complaint and it is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. This has been held by this Court in *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar* [AIR 1962 SC 876 : 1962 Supp 2 SCR 297 : 1962 (1) Cri LJ 770] . For these reasons, therefore, the appeal is allowed. The order of the High Court maintaining the order of the Magistrate dated May 3, 1972 is set aside and the order of the Magistrate dated May 3, 1972 summoning the appellant is hereby quashed.”



12. When the matter went before the High Court, the decision of this Court referred above must have been brought to its notice, since the order by the Additional Sessions Judge refers to it. We would have been happy if the High Court had considered the matter in some detail especially when its attention was drawn to this decision instead of dismissing the revision in limine. The observations of the Sessions Judge, extracted above, discloses a confusion of thought about the effect of a decision rendered by this Court and a misreading of Article 141 of the Constitution. There is nothing like any prospective operation alone of the law laid down by this Court. The law laid down by this Court applies to all pending proceedings. If the Sessions Judge had expressed his helplessness because of the earlier order of the High Court binding on him and had allowed the revision on that ground, we could have understood the reasoning behind it. He got rid of the effect of this Court's judgment by observing that a decision by this Court cannot be treated as "a sort of legislation by Parliament" and thus overlooked the binding nature of the law declared by this Court, mandating under Article 141, every court subordinate to this Court to accept it. The High Court could have, if it had examined the matter, corrected the error into



which the Sessions Judge fell.

13. The sweep of Article 141 of the Constitution, so far as the judgments of this Court are concerned, came up for consideration before this Court recently in *Shenoy and Co. v. CTO* [(1985) 2 SCC 512] to which one of us was a party. It is not necessary to refer to the facts of that case, in detail. Suffice it to say that the contention that the law laid down by this Court in an appeal filed by the State would not bind the other parties against whom the State of Karnataka did not file appeals from a common judgment, was repelled by this Court in the following words: (SCC pp. 521-22, paras 22-23)

“It is, therefore, idle to contend that the law laid down by this Court in that judgment would bind only the Hansa Corporation and not the other petitioners against whom the State of Karnataka had not filed any appeal. To do so is to ignore the binding nature of a judgment of this Court under Article 141 of the Constitution. Article 141 reads as follows:

‘The law declared by the Supreme Court shall be binding on all courts within the territory of India.’



A mere reading of this article brings into sharp focus its expanse and its all-pervasive nature. In cases like this, where numerous petitions are disposed of by a common judgment and only one appeal is filed, the parties to the common judgment could very well have and should have intervened and could have requested the court to hear them also. They cannot be heard to say that the decision was taken by this Court behind their back or profess ignorance of the fact that an appeal had been filed by the State against the common judgment.

* * *

To contend that this conclusion applies only to the party before this Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. But setting aside the common judgment of the High Court, the mandamus issued by the High Court is rendered ineffective not only in one case but in all cases."

Normally, when several matters are disposed of by a common judgment, and the defeated party files only one appeal against one such matter and succeeds in



that matter, he would still be faced with the plea of finality of the judgment based on res judicata by those against whom appeals were not filed. But this plea did not find favour with this Court in the above case. It was held that the judgment rendered by this Court in one appeal, took away the finality of the common judgment even against those against whom appeals were not filed because of the all-pervasive operations of Article 141.

14. We do not think it necessary to probe further into the facts of this case and lengthen this judgment, for one good reason; this case has moved along the files of various courts for more than 15 years and it is high time that we give it a decent burial. In view of the law laid down by his Court in *Bindeshwari Prasad Singh* case [(1977) 1 SCC 57 : 1977 SCC (Cri) 33 : AIR 1977 SC 2432 : (1977) 1 SCR 125] we set aside the order of the High Court, allow this appeal and restore the order of the Magistrate, dated January 6, 1972 dismissing the complaint.”

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the Order dated 17.02.2020, passed by the Controller of Examination, Bupendra



Narayan Mandal University, Madhepura, is quashed and the Respondent-University is directed to forthwith publish the result of the petitioner, pertaining to BCA Course for the Session 2011-2014.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	16.08.2021
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