

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....6794..... OF 2013
(Arising out of SLP(C) No. 14896 OF 2013)

Pt. Ravishankar Shukla University & Anr.Appellants

Versus

Gopal MishraRespondent

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.
2. In the judgment under appeal, the High Court of Chhattisgarh framed the following question for adjudication, namely:-

“Whether Pandit Ravishankar Shukla University, Raipur (the University) is liable to issue mark sheet to the students, who are permitted to appear in the examination for improving division of M.Com examination (the subsequent-examination) under Ordinance 24 of the University (the Ordinance), even if the division does not change?”

3. The High Court answered the question in the affirmative. We disagree. Ordinance No.24 of the University does not oblige it to issue a fresh mark sheet to a student who does not improve his division on taking a subsequent examination held for improving the division.

4. The respondent Shri Gopal Mishra completed his two year Master of Commerce course with an aggregate of 49.54% marks. This placed him in the second division as per Ordinance No. 24 of the University which relates to the Master of Commerce examination.

5. The Ordinance is in the nature of a composite scheme for obtaining a degree of Master of Commerce. It provides, *inter alia*, for improving the division obtained by a student based on the aggregate percentage of marks obtained by him/her by taking a repeat examination without attending a regular course of study in a college affiliated to the University or in a teaching department of the University.

6. The relevant clauses of the Ordinance relating to the division that may be obtained by a student and the

procedure for improving the division obtained by him or her are given in Clauses 7, 8 and 9 of the Ordinance. These read as follows:-

“7. For both the Previous and Final examination a candidate will be declared successful if he/she obtains at least 36% of the aggregate marks in the subject.

No division will be assigned on the result of the previous examination. The division in which a candidate is placed shall be determined on the basis of aggregate of marks obtained in both the M. Com Previous and M. Com Final Examination.

8.

Successful candidates who obtain 60% or more of the aggregate marks shall be placed in the First Division, those obtaining less than 60% but not less than 48% in the Second Division and all other successful candidates obtaining less than 48% in the Third Division.

9.

Candidates who have passed the M.Com examination of the University in Third or Second Division and desire to appear at the M.Com examination for improving division may, without attending a regular course of study in a college affiliated to the University or in a Teaching Department of the University be

allowed to appear at the aforesaid examination as non collegiate student on the following conditions.

- (i) There shall be only two division for such candidates i.e. First Division and Second Division. The marks required for obtaining these divisions shall be the same as prescribed in the Ordinance i.e. examinees who are successful in final of the examination and have obtained 60% or more of the aggregate of the marks in Previous and Final of the examinations taken together shall be placed in the First Division and examinees who are successful in Final of the examination and have obtained less than 60% but not less than 48% of the aggregate marks in Previous and Final of the Examination taken together shall be placed in the Second Division.
- (ii) The results of the candidates obtaining less than 48% of the aggregate marks in Previous and Final of the examination taken together shall not be declared.
- (iii) Candidates shall have the option to appear at both the Previous and Final Examination in one and the same year and for being successful at the examination, the candidates shall obtain 48% of the aggregate marks.

Provided that such candidates who opt to appear in Previous and Final Examinations separately shall have to obtain minimum aggregate required for the Previous examination but he will have to obtain at

least 48% in the aggregate of the Previous and Final examinations taken together or else his result will be cancelled.

- (iv) The syllabus for the examinations shall be the same as prescribed for the year in which the examination is held.
- (v) Not more than two attempts shall be allowed to such candidates. Failure or non-appearance at the examination after permission has been accorded by the University, shall be counted as an attempt.

Provided however such candidates who opt to appear at the Previous and Final examinations separately will be allowed one attempt at the Previous examination and two attempts at the Final examination.

- (vi) Candidates who wish to avail the opportunity given in foregoing para's will have to apply for permission as required in the Ordinance relating to Admission of non-collegiate students to the University examination along with requisite Registration Fees.
- (vii) In case a student improves his division under provision of this para, the fresh degree will be issued after cancelling his first degree."

7. As mentioned above, Mishra obtained 49.54% marks which places him in the second division. Since he was

desirous of improving his division by obtaining a first division, he appeared in a repeat examination as a non-collegiate student in March 2010. After he took the examination, his result was not declared. This led him to file a writ petition in the High Court of Chhattisgarh for a declaration of his result and for the issuance of a mark sheet based on the result of the repeat examination. The writ petition was disposed of by a learned Single Judge by an order dated 29th September, 2011 in which it was held, *inter alia*, that in the present age of transparency there is no reason to conceal the marks obtained by Mishra in the repeat examination. Accordingly, a direction was given to the University to supply the marks obtained by Mishra in the repeat examination held in March, 2010.

8. In compliance with the orders passed by the learned Single Judge the University did intimate to Mishra the marks he had secured in the repeat examination, but that was in the form of a letter. No formal mark sheet was issued to him.

9. Mishra was of the view that the University had committed contempt of the orders of the learned Single

Judge by not issuing a fresh mark sheet. Accordingly, he moved a contempt petition which was dismissed by the learned Single Judge on 31st January, 2012 holding that the University was obliged only to intimate the marks obtained by Mishra but was not obliged to issue a fresh mark sheet.

10. In view of the above, Mishra filed another writ petition in the High Court, for the issuance of a fresh mark sheet. That writ petition was withdrawn on 3rd September, 2012 with liberty to take recourse to such other forum as may be available to him under the provisions of law.

11. Mishra then filed an application for review of the order dated 29th September, 2012 passed in the writ petition. The application came to be disposed of by the learned Single Judge on 16th January, 2013, *inter alia*, with the following observations:-

“By this petition, the petitioner seeks modification of the order dated 29.09.2011 to the extent that the respondent University be directed to issue a fresh/new mark sheet to the petitioner for the repeat M.Com (Previous & Final) examination. This tantamount to attempt of the petitioner to seek opportunity to argue the entire case afresh under the garb of review petition, which is not permissible

and tenable in law. This review petition is in the nature of appeal, which cannot be considered and decided by this Court”.

12. Thereafter, Mishra preferred an intra-court appeal against the order dated 29th September, 2012 and the order dated 16th January, 2013. The appeal was disposed of by the Division Bench of the High Court by the order under appeal dated 20th February, 2013.

13. In our view, Ordinance No. 24 prescribes a scheme which, *inter alia* enables a student to improve the division obtained by him or her in the Master of Commerce examination. The Ordinance does not postulate giving the student an opportunity merely for improving the marks without any improvement in the division obtained. Were this so, the language of the Ordinance would have been explicit and would have clearly spelt out that a student could appear in a repeat examination not only for the purposes of improving the division obtained by him or her but even for the purposes of improving the marks.

14. Factually, Mishra improved upon the marks earlier obtained by him. But he did not improve his division despite

the improvement in marks. Since Mishra did not improve his division, he was not entitled to a fresh degree in terms of Clause 9 (vii) of the Ordinance. As mentioned above, the Ordinance does not postulate any obligation on the University to issue a fresh mark sheet.

15. Learned Counsel sought to draw support from the conclusion of the High Court that nothing prohibited the University from issuing a fresh mark sheet. While this may be so, there is equally no obligation on the University to issue a fresh mark sheet, nor does Mishra have any right to obtain a fresh mark sheet from the University merely because his marks had improved in the repeat examination. The submission of learned counsel does not advance Mishra's case in any manner.

16. The High Court concluded that the word "division" includes marks also. We are unable to accept this conclusion. It is quite clear from a reading of Clause 8 of the Ordinance that there are three divisions that a student can obtain on the basis of the aggregate marks: those obtaining more than 60% aggregate marks are placed on the first

division; those obtaining less than 60% aggregate marks but not less than 48% aggregate marks are placed in the second division and all other successful candidates obtaining less than 48% marks (and obtaining at least 36% aggregate marks) are placed in the third division. If the word “division” is to include marks, as held by the High Court, some of the clauses in the Ordinance would lose their substance and meaning and the entire concept of divisions as against marks would be rendered meaningless.

17. Learned counsel for Mishra pointed out that Clause 9 (ii) of the Ordinance provides that the results of candidates obtaining less than 48% of the aggregate marks taken together shall not be declared. It was submitted on this basis that the results of candidates obtaining more than 48% in the aggregate taken together (such as in Mishra’s case) shall be declared. It is difficult to accept the relevance of this contention since it is not in dispute that Mishra’s results were declared in the first instance and the marks obtained by him in the repeat examination were communicated.

18. Ordinance No. 24 entitles a student to take a repeat examination only to improve the division obtained. If there is no improvement in the division after the repeat examination, there is no occasion for the University to issue a fresh degree to that candidate. The question of issuing a fresh mark sheet, if there is an improvement in the marks after the repeat examination, simply does not arise from the plain language and scheme incorporated in Ordinance No. 24.

19. Under these circumstances there is no option but to set aside the Judgment and Order passed by the High Court and allow this appeal. We do so but with no order as to costs.

JUDGMENT

.....J.
(R.M.Lodha)

**New Delhi;
August 16, 2013**

.....J.
(Madan B. Lokur)

SUPREME COURT OF INDIA



JUDGMENT