

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 789 OF 2008

(Sau. Preeti w/o Sanjay Pendharkar vs. Rashtrasant Tukdoji Maharaj Nagpur University and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

CORAM : D.D. SINHA AND
SMT. VASANTI A. NAIK, JJ.

DATED : FEBRUARY 29, 2008

Heard Shri Kilor, learned Counsel for the petitioner, Shri Thakre, learned Assistant Government Pleader for the respondent no.1, and Shri Kulkarni, learned Counsel for the respondent no.2.

Shri Kilor, learned Counsel for the petitioner, states that petitioner completed her graduation (B.A.) in the year 1996 with 44.57% marks as well as post graduation (M.A.) in the year 2000 with 52.37%. It is contended that petitioner was given admission by the Central Admission Committee in the B.Ed. Course for the

academic session 2007-08. However, by the impugned communication dated 15.1.2008 issued by the Assistant Registrar of the respondent University, the petitioner was informed that marks obtained by her at the degree level were less than 45% as prescribed in Clause 8 of Ordinance No.9 of 2005 and, therefore, her form for B.Ed. examination came to be cancelled. It is further submitted that since petitioner has secured 44.57% marks in her graduation, the said marks should have been treated as 45% by rounding up the fraction. It is contended that this issue is no more res integra and concluded by the Apex Court by its judgment in the case of State of U.P. and another vs. Pawan Kumar Tiwari and others {(2005) 2 SCC 10}. It is submitted that this Court disposed of Writ Petition No. 1543/2006 vide order dated 13.4.2006 wherein issue was identical to one involved in the present petition. It is, therefore, contended that in the present case, impugned communication may be quashed and set aside and appropriate direction may be issued to the respondent University.

Shri Kulkarni, learned Counsel for the respondent University, states that examination form of the petitioner came to be cancelled in view of Clause 8 of Ordinance No.9 of 2005, which requires that the candidate must possess not less than 45% marks at the graduation level and since petitioner obtained less than 45% marks, her examination form came to be cancelled.

We have considered the contentions canvassed by the respective Counsel for the parties and perused the order dated 13.4.2006 passed by this Court in Writ Petition No. 1543/2006, which is annexed with the present petition. Perusal of the said order shows that issue involved in the present petition is identical to one involved in the said petition and this Court after placing reliance on the aforesaid decision of the Apex Court disposed of the said petition with direction to the Authorities to accept the admission form of the petitioner in the said petition by treating his percentage, which was 44.92% as 45%.

For the reasons stated

hereinabove, we set aside the impugned communication dated 15.1.2008 and direct the respondent University to treat the percentage of the petitioner at the graduation level, i.e. 44.57% as 45% for the purpose of considering eligibility in view of Clause 8 of Ordinance No.9 of 2005 and permit the petitioner to appear in the examination on completion of other formalities required to be completed by her in this regard. With these observations and direction, the petition is disposed of.

JUDGE

JUDGE

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