
(2009) 09 DEL CK 0152

In the Delhi High Court

Case No : Writ Petition (C.) No. 8846 of 2009

Ambuj Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 09 DEL CK 0152

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Jagat Singh, Ghanshyam Singh and Ambuj Kumar, Petitioner No, for the Appellant; Rattan Lal, for Respondents No. 1 and 2 and Poonam, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—After some arguments, Mr. Jagat Singh, learned Counsel for the petitioners sought a pass over and the matter was passed over. After pass over, Mr. Ghanshyam Singh, Advocate, appeared and argued for some time and again sought a pass over for appearance of Mr. Jagat Singh. Though the matter was not to be passed over again, however, it was passed over as the ensuing examinations for third year are to commence from 14th September, 2009. Petitioner No. 1 who was present also argued for some time and thereafter, Mr. Ghanshyam Singh Advocate appeared again and argued the matter.

2. The plea of the petitioners is that though all the petitioners have failed in five to seven subjects of second year, third and fourth semester, they should be promoted to third year and allowed to take examination for the papers in which they have failed, as in 2002 on the recommendation of Staff Council on the ground of mercy, the Vice Chancellor was pleased to allow the students who had failed in third and fourth semester to be registered in the next year. Learned Counsel for the petitioner also relied on the allegation that the students of B.Sc. (Agriculture Hons.)/B.Sc.(HSC) had also been promoted to next higher class in

2007 and they had been allowed to appear in their failed subjects along with subject of higher class.

3. The allegation of the petitioners, failed students seeking promotion to the next higher class, though failed in five to seven subjects and to be allowed to clear these subjects in which they had failed with the subjects of the higher class, is without any legal basis and right. The petitioners have failed to disclose as to how they can be promoted to the next year, third year after failing in five to seven subjects according to the eligibility conditions.

4. Learned Counsel for the respondent No. 3 College has drawn the attention of this Court to the eligibility condition for promotion pursuant to examination conducted by the college. The relevant eligibility conditions are as under:

The course requirements and examination rules given below are on the basis of the Veterinary Council of India (Minimum Standards of Veterinary Education Degree Course-B. V.Sc & A.H) Regulations, 1993, as published in extraordinary gazette of India Part II Section 3 Sub-section (i) dated 7.2.1993. Every case has been taken to follow the above mentioned regulations while framing these rules for easy and convenient understanding of students, nevertheless, interpretation of the university/its authorities and VCI shall be final and binding in the matter, in accordance to above mentioned regulations.

The degree course of BVSc and AH shall comprise of course of study spread over complete five academic years (four and a half year course work spread over 9 semesters and compulsory internship of 6 calendar months duration).

Each semester will cover 105 days of instructions excluding the time spent for examination.

The distribution of theory marks will be as follows: Mid-term (internal) : 50%

University (External) : 50%

Explanation: Internal evaluation for the course(s) offered in semester I will be conducted at the end of the semester I and for the course(s) offered in semester II will be conducted at the end of the semester II ends. The marks obtained in the examination would be recorded. After the completion of courses in the I & II semesters, a composite annual theory and practical examination would be conducted by the University.

4. Practical Examinations

a) The final practical examination shall be conducted by the Board involving one external examiner.

b) 10 marks may be awarded for day-to-day records including record of case sheets for all courses involved.

c) Remaining marks include spotting/experiments/problem solving and case study, and viva-voce to assess the level of competence and concept of the

subject covered.

5. Evaluation/examination:

a) The examination shall be to assess whether the student has been able to achieve a level of competence. For academic assessment, evaluation of practical aspects of the curriculum should receive much greater emphasis leading to separate examinations and requiring the student to procure a minimum of 50% marks, in theory as well as in practical, in each such examination.

b) For 50% of the total marks and internal assessment will be conducted in theory and practical separately. For the rest 50% marks, examinations will be conducted by a Board appointed by the University.

c) A composite annual examination for a group of courses/a course in a paper as per a schedule of examinations will be conducted.

d) Overall performance of the student in different examinations including the Annual Board examination by procuring 50% marks in Theory and Practical examinations separately is the criterion of passing or failing in the paper and not the internal examination conducted at the end of each semester. Thus a student is required to secure an aggregate of 50% marks in each of the theory & Practical examinations, separately, to be declared passed in a subject.

e) Failure or promotion at each academic year, beginning from I BVSc and AH programme, shall be decided only on the basis of aggregate marks of internal and annual examinations, separately for theory and practical. Student is required to pass separately in both theory as well as practicals.

f) student(s) failing in only one subject after university examination taking into consideration both internal and external marks shall be awarded "compartment..

g) student(s) failing in two or more subjects shall be declared "failed. and shall be required to repeat whole of that particular professional programme in all the subjects of that programme along with immediate preceding junior batch as a regular student.

All the requirements for failed students shall be the same as that of regular students.

A student shall be allowed conditional promotion to the next class provided he/she has failed only in one subject. Such student shall be awarded "compartment" and he has to appear in theory and practical, internal and external examinations scheduled as "compartment examination. in the respective subject. He/She cannot be promoted to the next BVSc & AH class unless he/she has cleared the due subject in the ensuring compartment examination.

j) failed students would register again for professional programme they failed in. Such students would attend all the courses and appear for the examinations for all papers (both theory and practical) as regular student along with rest of the

class.

g) exclusively for those students who are conditionally allowed promotion, the university shall conduct Compartment examination shortly after the declaration of the results of the concerned professional examination. The results of such compartment examination(s) shall be declared soon after the examination is conducted.

h) There is no provision of revaluation of practical and theory examination (Mid-Term (Internal) as well as University (External)).

5. Perusal of the eligibility condition reveals that for a student to be eligible to be promoted to the next year, he is liable to pass all the subjects in internal and external examination. For passing a particular subject, a candidate has to qualify the internal and external examination and theory and practical separately by securing 50% minimum marks.

6. Under the eligibility condition, a candidate can be promoted from second year to third year though he has not qualified all the subjects of second year comprising of third and fourth semester provided he has failed only in one subject and in such a case the candidate is placed in the compartment and promoted to the next year, however, he is required to qualify the subject in which he has failed in the compartment examination.

7. Admittedly the petitioners have failed in five to seven subjects. There is no rule which will entitle the petitioners to be promoted to third year after failing in five to seven subjects of third and fourth semester of the second year.

8. Learned Counsel for the petitioners has relied on an office order dated 9th August, 2002 whereby the mercy plea of the some of the candidates was accepted and though they had failed in third examination, they were promoted to the next class. The learned Counsel for the petitioners is unable to show any provision under the statue or the ordinance authorizing the staff counsel or the Vice Chancellor to exercise such powers. If the students were promoted in 2002 contrary to rules and regulations to the next higher though they had failed according to the rules, that does not vest any right with the petitioners to seek a direction to the authorities to promote them to the next higher class. Mandamus is a discretionary relief which can be exercised for enforcement of a right of the petitioners. If the petitioners do not have any such right as has been claimed by them, they will not be entitled for any directions from this Court. The fact that some others, who are similarly situated, had been granted relief which the petitioners are seeking may be of some relevance, but where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief is not the ground to direct similar relief to him. Such an act would be enforcing a negative equality by perpetuation of an illegality which is impermissible.

9. Before a claim based on equality clause is upheld, it must be established by

the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously No.

10. In *Yadu Nandan Garg Vs. State of Rajasthan and Others*, it was contended that one of the persons whose land was acquired, had the benefit of exemption from the acquisition; writ petition was filed seeking similar benefit. When it was contended that it was violative of Article 14, this Court in para 5 had held that: (SCC p. 336)

the wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination.

11. In *Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others*, , it was held in para 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with the excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of a wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

12. In the circumstances, there is no merit in the pleas and contentions seeking promotion to the third years though they have failed in third and fourth semester of the second year and there is no provision to promote them to the next year. The writ petition is misconceived and is an abuse of process of law and it is, therefore, dismissed. Parties are, however, left to bear their own costs.