
(2014) 12 CAL CK 0092

In the Calcutta High Court

Case No : MAT 2045 of 2014 and CAN 11324 of 2014

Anirudh Mohta

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Citation : (2015) 5 CHN 110

Hon'ble Judges : Tapash Mookherjee, J; Jyotirmay Bhattacharya, J

Bench : Division Bench

Advocate : Kishore Dutta, Mayukh Mitra and Sandip Kundu, Advocate for the Appellant; Subhabrata Datta, Sanatan Panja, Billwadal Bhattacharyya, Arkaprava Sen, S.K. Panja and Tara Prasad Halder, Advs, Advocate for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—This Mandamus Appeal is directed against an order of refusal to grant interim order passed by a learned Single Judge of this Court on 11th November, 2014 in W.P No. 29076(W) of 2014, at the instance of the writ petitioner/appellant.

2. The writ petitioner's prayers for allowing him to attend the classes in the 5th Semester of 3rd year Bachelor in Business Administration Course and for publication of his 4th Semester Examination result were not allowed by the learned Single Judge while entertaining the writ petition.

3. Hence the writ petitioner has come before this Court with this Mandamus Appeal.

4. While considering the writ petitioner's/appellant's prayer for ad interim relief in this appeal, we were invited by the learned Counsel appearing for the parties to decide the writ petition itself. Considering the future academic interest of the writ petitioner/appellant, we heard out the writ petition on merit.

5. Let us now consider the merit of the writ petition in the facts of the present case. The writ petitioner was admitted in 3rd year (6th Semester) BBA (Honours)

Course in JD Birla Institute affiliated to Jadavpur University. He has successfully completed his studies upto 3rd Semester of the said BBA Course in the said institute. He was allowed to attend the classes in 4th Semester by the college authority. On the basis of the recommendation made by the college authority, admit card was issued by Jadavpur University permitting the writ petitioner to participate in the 4th Semester Examination of BBA Course. 4th Semester Examination took place from 2nd July, 2014 to 14th July, 2014. The writ petitioner appeared in the examination in 4th Semester. The college authority promoted him to the next Semester i.e., 5th Semester. He regularly attended the classes of 5th Semester upto 14th September, 2014. Problem started when he was prevented from attending the classes in the 5th semester from 15th September, 2014 and publication of his result in the 4th Semester was withheld by the University authorities. The writ petitioner was informed that since he failed to obtain the qualifying marks in Tutorial Sessional Briefing (hereinafter referred to as "TSB"), publication of his result was withheld by the University authority and he cannot be permitted to prosecute his studies in the 5th Semester. The aforesaid actions of the University authorities and of the college authorities were challenged by the writ petitioner in the said writ petition.

6. Let us now consider as to how far the writ petitioner has succeeded in establishing his right either for prosecuting his studies in the 5th Semester or for publication of his result of the 4th Semester Examination.

7. Let us first of all consider the issue regarding publication of the result of the writ petitioner's 4th Semester Examination with reference to the Jadavpur University Rules & Regulations. Chapter-3 of the said regulation deals with examination Rules and Regulations set up for 3 years (6 Semester) BBA (Honours) Course. Bachelor in Business Administration is a three-year course (namely, 1st year, 2nd year and 3rd year), each year comprises of two Semesters 1st and 2nd Semester. Regulation (iii) provides that all examinations in Bachelor of Business Administration shall be held on the compartmental system, that is to say, each student must pass separately in every paper of the different examinations and those who pass in a paper shall not be - permitted to sit for examination in the paper again. Non-appearance in a paper/papers will count as failure in that paper/papers. Each Semester comprises of 8 papers and the maximum marks in each paper is 100 marks. As per Regulation (V), pass marks in all examinations in the Bachelor of Business Administration Course shall be 50% of the maximum marks in each paper.

8. The following are the course title of 8 papers in the 4th Semester:-

9. Out of these 8 papers six papers i.e., (1) Operations Management, (ii) Personal Management and Industrial Relations, (iii) Business environment, (iv) Ecology and Environment Management, (v) Small Business Management and (vi) Entrepreneurship are all theoretical papers. Rest two, that is, Colloquium and Term Paper and Financial Accounting and Multimedia Lab are practical papers which are commonly known as Tutorial Sessional Briefing ("TSB"). Marks

obtained by a student in TSB papers is the guiding factor for deciding the eligibility of a student to appear in the Semester examination. As per Regulation (XXVI), in order to be eligible for evaluation of Sessional subjects, a student must have attended at least 75% of the classes held in the concerned Sessional subject. If he has not attended the minimum number of classes as stipulated in the said Regulation, he will be declared to have failed in the paper concerned. Regulation (VI) is required to be considered as the said Regulation deals with the eligibility of a student to appear in any examination. Regulation (VI) provides that to be eligible to appear in any examination, each student must satisfactorily complete the Sessional work and must obtain at least 50% marks in each of the Sessional subjects in every year. It is provided therein that this Clause will be taken into account for both the 1st and 2nd Semester Sessional subjects together at the end of each session. It was also provided therein that this Clause, therefore, will not debar any student to appear in the 1st Semester Examination.

10. There was no problem with regard to the writ petitioner herein so far as the 1st Semester of the 3rd year Course was concerned. He was successful in the 3rd Semester.

11. Problem started with regard to his eligibility to appear in the 4th Semester Examination. No doubt he was eligible for evaluation of his Sessional subjects as his percentage of attendance in 4th Semester was between 80-84%. Admittedly, he participated in both the papers of Tutorial Sessional Briefing (hereinafter referred to as "TSB"). He was also assessed by the college authority in respect of both the aforesaid TSB papers. According to the college authority, he has secured qualifying marks in one of such TSB papers, namely, BBA 408, that is, Financial Accounting and Multimedia Lab but he could not obtain the qualifying marks in the other TSB papers BBA 407 i.e., Colloquium and Term Paper. Altogether he got 46 marks out of 100 marks in Colloquium and Term Paper, i.e. BBA 407. The college authority thus, contends that since he failed to obtain the qualifying marks, i.e. 50% marks in the said paper, that is, Colloquium and Term Paper, he was not eligible to appear in the 4th year Semester Examination.

12. In course of hearing of this writ petition, we were informed that in Colloquium and Term Paper (BBA 407), the writ petitioner obtained 10 marks in paper BBA 401, 14 marks in paper BBA 402, 1 mark in BBA 403, 5 marks in BBA 404, 4 marks in BBA 405 and 10 marks in BBA 406. He also obtained 2 marks on the basis of the percentage of his attendance in classes. Thus, he obtained 46 marks. From the marks which the writ petitioner obtained in different papers in the said subject Colloquium and Term Paper, we find that the writ petitioner failed to obtain pass marks, that is, qualifying marks in paper BBA 403, paper BBA 404 and paper BBA 405.

13. Thus, apparently we find substance in the contention of the college authority that the writ petitioner was not eligible to appear in the 4th Semester examination.

14. Let us now examine as to how far our apparent impression about the ineligibility of the writ petitioner to appear in the 4th Semester Examination can be accepted as a factor for excluding him from the 4th Semester Examination process. As per the said regulation of Jadavpur University, eligibility of a student to appear in the Semester examination is required to be considered by the Controller of Examination prior to issuance of the admit card to the students concerned. Regulation (XXX) provides that the Sessional marks will be sent to the Controller of Examination a fortnight before the last theoretical class. It also provides that this will determine the eligibility for issuing admit card to each student. It further provides that all class tests and sessional marks will have to be forwarded under the signature of the concerned class teacher(s) and the Director/Principal. Regulation (VII) provides that on receipt of those details about the sessional marks and the class test of a student, the Controller of Examination shall determine the eligibility of a student to appear at any examination on the basis of statements of sessional/tutorial mark and on the basis of statements of attendance sent by the Principal of the institution. It is only after the Controller of Examination is satisfied about the eligibility of the students to appear in the Semester examination, the University authority, on the application of the candidates for their admission to the University examination, will issue admit card containing the names of the candidates and the examination roll number assigned to him as per Regulation (XI). Regulation (XII) provides that no candidate shall be admitted into examination hall without admit card, provided, the Presiding Officer may, if otherwise satisfied, on the identity of the candidate allow him/her to sit for the examination provisionally with intimation to the Controller of Examination. However, in case any irregularity is detected subsequently justifying candidate's exclusion from examination, the University authority under Regulation (XII) is authorized to withdraw the permission granted to the candidate to appear at any University examination before or during the course of examination. These are the provisions contained in the said Regulation regarding assessment of eligibility of a candidate to appear in the Semester Examination and/or issuance of admit card in favour of an eligible candidate and/or withdrawal of such permission by the University authority before or in course of examination where in the opinion of the Vice-Chancellor exclusion of such candidate from examination is justified.

15. Let us now consider as to how far these regulations were followed by the college authority and/or the University authority in the process of issuance of admit card in favour of the writ petitioner. In this connection we are required to take note of some important events with reference to the date of occurrence thereof. Internal assessment of the 2nd year students, who were due to appear in the 4th Semester examination, on the subject Colloquium and Term Paper i.e., BBA 407 was held by the college authority in June, 2014. Examination of the said paper i.e., BBA 407 was completed on 22nd June, 2014. On the very same day i.e., on 22nd June, 2014, admit card was issued in favour of the writ petitioner. Last theory class was held on 6th April, 2014. Examination of 6 theory papers

i.e., BBA 401, BBA 402, BBA 403, BBA 405 and BBA 406 was held between 2nd April, 2014 and 14th July, 2014. Examination of the BBA paper 408 i.e., Financial Accounting and Multimedia Lab was held on 27th July, 2014. The college authority sent the result of the sessional subjects of the students to the University concerned on 25th August, 2014. Result of 4th Semester was published by the University on 29th August, 2014. Publication of the result of the writ petitioner was withheld by the University for the reasons as mentioned above. If happening of these incidents are considered with reference to the date of their occurrence in the light of the Regulations as aforesaid, we have no hesitation to hold that neither the college authority nor the University authority adhered to the aforesaid Regulations either for judging the eligibility of the writ petitioner to appear in the 4th Semester examination or to allow him to participate in the 4th Semester examination by issuing admit card in his favour. We have already mentioned above that as per Regulation (XXX), sessional marks obtained by the candidates were required to be sent to the Controller of Examination by the college concerned a fortnight before the last theory class. This has not been followed by the college authority. Last theory class in 4th Semester course was held on 6th July, 2014. College authority sent the results of the sessional subjects of the students to the University on 25th August, 2014 in gross violation of Regulation (XXX). Even the admit cards were issued by the University authority on 22nd June, 2014 before the sessional marks obtained by the candidates were sent to the Controller of the Examination by the college concerned. Thus, we have no hesitation to hold that the University authority issued the admit card to the students without examining the eligibility of the students to appear in the said 4th Semester examination. This was a gross violation of the Regulation on the part of the University concerned. Thus, we find that without examining the eligibility of the writ petitioner as per Regulation (VII), not only admit card was issued to the writ petitioner permitting him to appear in the said 4th year Semester examination but also in fact, allowed the writ petitioner to appear in the examination in all the 6 theory papers. Admittedly permission granted to the writ petitioner to appear in the said examination was never withdrawn by the University authority. As such, the right of the writ petitioner to appear in the 4th year Semester examination cannot be denied. There is no Regulation which authorizes the University authority to withhold publication of the result of a candidate who was permitted to appear in the Semester examination. In this regard, reference may be made to the following decisions of the Hon'ble Supreme Court wherein it was held that once a candidate is allowed to appear in the examination, the university authority has no jurisdiction to cancel his candidature for that examination:-

"1. Shri Krishnan Vs. The Kurukshetra University, Kurukshetra,

2. Snatan Gauda v Berhampore University & ors reported in AIR 1990 SC 1975"

16. The University authority, however, withheld publication of the result of the writ petitioner as it was subsequently discovered from the relevant papers sent

by the college authority containing sessional marks of the candidate that the writ petitioner failed to obtain the qualifying marks in one TSB papers i.e., paper BBS 407 i.e., subject Colloquium and Term Paper. Thus, if the entire process is analyzed with reference to the Examination Regulations of the University, we have no hesitation to hold that the college authority and the University authority were responsible for creation of such a situation which might jeopardize the future career of a student. We find that the writ petitioner had neither any role nor he made any misrepresentation and/or committed any fraud in the process of issuance of admit card in his favour by the University authority. As such we feel that the writ petitioner should not be penalized for the lapses on the part of the college authority and/or the University authority.

17. In this context, we enquired from the University authorities about the performance of the writ petitioner in the 4th Semester examination. We are informed by Mr. Bhattacharya, Learned Advocate appearing for the University that he has obtained qualifying marks in all the theory papers expecting one. Thus, we find that the writ petitioner got back in one theory paper in 4th Semester examination. Regulation (XVI) not only permits such a student to be promoted to the next higher class that is 3rd year but also allows such student to clear the back paper in the next examination of 4th Semester along with regular papers in the 5th Semester in the 3rd year BBA Course provided however, he is found to be eligible in appearing in the 4th Semester Examination.

18. Here is the case where we find that though the writ petitioner was not eligible to appear in the 4th Semester but when without judging his eligibility, the University authority allowed him to appear in the 4th Semester examination, publication of his result cannot be withheld by the University, provided however, he can overcome his ineligibility crisis for appearing in the 4th Semester examination. It is true that TSB paper cannot be equated with the other theory paper. As per Regulation (XVI), an unsuccessful student can be permitted to clear his back paper that is the theory paper in the next Semester Examination but a student failing to obtain the qualifying marks in TSB paper cannot be permitted to clear the said paper as a back paper in the next session inasmuch as performance of a candidate in TSB paper is the guiding factor for determining the candidate's eligibility to appear in the Semester Examination. But since due to the gross negligence on the part of the college authority and/or the University authority, such a situation has cropped up which may ultimately jeopardize the future career of the writ petitioner resulting in loss of more than one academic year in case his result in the 4th Semester Examination is not published by the University concerned and if he is not permitted to complete 5th Semester in this academic session and particularly when the writ petitioner was not instrumental in these procedural lapses, we feel that justice will be subserved if by making some departure from the known process, we direct the college authority to conduct a separate test for the writ petitioner in the papers in which he failed to obtain the qualifying marks on the subject colloquium and term paper, that is, TSB 407. We have mentioned above that the writ petitioner could not obtain the

qualifying marks in three TSB papers, that is, BBA 403, BBA 404 and BBA 405 in the subject colloquium and term paper.

19. We thus, direct the college authority to hold a separate examination in those three TSB papers, that is, papers BBA 403, BBA 404 and BBA 405 for the writ petitioner by selecting a topic on each of those papers by the teachers concerned on which the writ petitioner is required to submit a report and presentation before the teacher concerned and if after assessment of the performance of the writ petitioner, in those three papers, he is found successful in obtaining the qualification marks in the TSB Paper No. 407 including those three papers and by adding thereto the marks given to him for his attendance, if he is found eligible for appearing in the 4th Semester examination, then the University authority will publish the result of his examination in 4th Semester, without creating any precedence for the future.

20. This exercise should be completed by the college authority by the 3rd week of December so that the University authority can publish the result of the 4th semester examination of the writ petitioner within a week thereafter, subject to acquiring eligibility by the writ petitioner in the process as mentioned above. Needless to mention here that in the event the writ petitioner succeeds in acquiring eligibility for appearing in the 4th semester examination and the result of the 4th semester examination is published by the university authority, then he will be permitted to appear in the 5th semester examination subject to satisfying the eligibility criteria as per Regulation (VI) along with back paper of his 4th semester examination.

21. We thus, clarify that if he fails to acquire eligibility to appear in the 4th Semester examination, in the test to be held for him separately, then his result in the 4th Semester examination need not be published.

22. Under such circumstances he will be required to clear the 4th semester examination in the next session in terms of the examination regulation of Jadavpur University.

23. While delivering this judgment, we are informed by Mr. Panja, learned Advocate appearing for the college authority that class test-I and class test -II of the 5th Semester have already been taken but since the writ petitioner was debarred from attending the classes in the 5th Semester w.e.f. 15th September, 2014, he was not allowed to appear in either of those two class tests.

24. Mr. Panja, further submits with instruction from his client that separate class tests for the 5th Semester will be taken for the writ petitioner after completion of the 5th Semester Examination.

25. He further submits that the college authority will also hold a separate examination on the colloquium and term paper (TSB paper No. 507) of the 5th Semester for the writ petitioner, after the 5th semester examination will be over.

26. Though we accept the proposal of Mr. Panja of taking separate class tests for

the writ petitioner for the 5th Semester after holding the 5th Semester examination but we cannot accept Mr. Panja's proposal for holding a separate examination of the writ petitioner in colloquium and term paper (TSB paper No. 507) after completion of the 5th semester examination, as the eligibility of the writ petitioner to appear in the 5th Semester Examination depends upon his result of the TSB paper No. 507.

27. Accordingly, we permit the college authority to hold separate class tests for the writ petitioner after completion of the 5th Semester Examination but the examination of the TSB paper No. 507 i.e., colloquium and term paper of the writ petitioner for the 5th Semester should be taken by the college authority before sending his data to the University authority for issuance of the Admit Card for his 5th Semester Examination. Since the writ petitioner was debarred by the college authority from appearing in the classes in the 5th Semester w.e.f. 15th September, 2014 for no fault on his part, we direct both the college authority and the University authority to relax the minimum attendance criteria in the 5th Semester in case he is found short of attendance in 5th Semester.

28. The writ petition and the connected application are, thus, disposed of with above direction.

29. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Tapash Mookherjee, J.

30. I agree.