
(2012) 07 UK CK 0054

In the Uttarakhand High Court

Case No : Writ Petition No. 1158 (M/S) of 2012

Anirudh Sharma and Others

APPELLANT

Vs

H.N.B. Garhwal University and Others

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Citation : AIR 2013 Utt 16 : (2013) 1 ALJ 446

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : M.S. Tyagi, for the Appellant; Paresh Tripathi, Pradeep Kumar Chauhan, Holding Brief and Pawan Mishra, for the Respondent

Judgement

B.S. Verma, J.—By means of this petition, the petitioners have sought a writ, order or direction in the nature of mandamus directing the respondents to declare the result of 5th Semester of petitioner Nos. 1 and 2 and of 7th Semester of petitioner No. 3 and to permit them to appear in examinations of 6th Semester and 8th Semester respectively. According to the petitioners they are the students of B.A. LL.B. in law College of respondent No. 3. The petitioner Nos. 1 and 2 appeared in 5th semester of B.A. LL.B. in the College of respondent No. 3 and submitted the examination forms for 6th Semester. Likewise the petitioner No. 3 appeared in seven semesters of B.A. LL.B. in the college of respondent No. 3 and submitted the examination form for 8th Semester. The respondent No. 3 forwarded the examination forms of the petitioners to respondent Nos. 1 and 2 and admit cards have been sent by respondent Nos. 1 and 2 to respondent No. 3. The examinations of 6th and 8th Semesters are going on. The date sheet of the examination has been annexed along with the urgency application moved by the petitioners. It is further alleged by the petitioners that mark-sheets of four semesters to the petitioner Nos. 1 and 2 and six semesters to petitioner No. 3 have been issued by the respondent No. 1 through respondent No. 3.

2. The grievance of the petitioners is that the respondent Nos. 1 and 2 have not declared the result of 5th semester of petitioner Nos. 1 and 2 and of 7th

semester of petitioner No. 3. The action on the part of respondent University in not declaring the result is arbitrary.

3. The respondent Nos. 1 and 2 filed the counter affidavit and in the counter affidavit it is specifically mentioned that the petitioner No. 1 appeared in fourth semester of B.A. LL.B. examination in the year 2011 and was declared failed as he could secure only 714/1900 marks and petitioner No. 2 also appeared in fourth semester and was declared failed as she could secure only 777/1900 marks. Despite the petitioner Nos. 1 and 2 were failed in fourth semester yet the college gave admission to the petitioners in fifth semester and subsequently forwarded the examination forms of the petitioners to the University, which was legally not permissible and again the college has sent the examination forms of the petitioners of the sixth semester along with other students. Likewise petitioner No. 3 appeared in sixth semester in the year 2011 and was declared failed as he could secure only 801/1900 marks, but despite being failed, the college gave admission to petitioner No. 3 in seventh semester and subsequently forwarded his examination form to the University and again the college sent the examination form of eighth semester of petitioner No. 3 along with other students. The admission to these petitioners 1 and 2 in fifth semester and petitioner No. 3 in seventh semester was given by the respondent No. 3 de hors the Ordinances/ Regulations 11 and 12 of B.A. LL.B. (Five Year Integrated Course) of the University. The above Regulations 11 and 12 have also been quoted in sub-para (g) of para-3 of the counter affidavit. Regulation Nos. 11 and 12 are relevant in the case of petitioner Nos. 1 and 2 and Regulation Nos. 13 and 14 are relevant in the case of petitioner No. 3. As per these Regulations the pre-condition is that the passing marks in each subject is 36% with an aggregate of 45% in all subjects.

4. It is further alleged by the respondents 1 and 2 in the counter affidavit that in December 2011 there was heavy work load due to the fact that LL.B./B. A. L.L.B; B.Sc. Forestry, M.Sc. Forestry, B.Sc. Agriculture, B.Sc. Industrial and M. Sc. Industrial examinations were organized together and it seems that due to the said heavy work load, as an inadvertence, the examination forms of the petitioners were sent with the lots of others but the respondent No. 3 ought to have taken suitable steps by not permitting the petitioners to participate in their examinations for the next semester as they were failed in the earlier semester, but the college deliberately did not restrain the petitioners and nor the college informed the University in that regard and the University cannot be held liable for the illegalities committed by the College.

5. The respondent No. 3 also filed the counter affidavit and alleged that although the admit cards of petitioners have been sent by the respondent Nos. 1 and 2 to the respondent No. 3 College, but since the petitioners could not succeed in their earlier semesters, therefore, the admit cards of petitioners could not be issued to them, on the instructions of respondent Nos. 1 and 2.

6. I have heard learned counsel for the parties and perused the material on

record.

7. This fact is not disputed that petitioner Nos. 1 and 2 were declared failed in fourth semester and petitioner No. 3 was declared failed in sixth semester. This fact is also not disputed that as per Regulation-19 a candidate who has appeared in any semester examination and could not be declared pass or eligible for next semester shall be declared fail and such candidate has to re-appear in all papers of relevant semester/semesters as an ex-student in next academic session by taking casual admission.

8. Learned counsel appearing on behalf of the petitioners has vehemently contended that since the petitioners 1 and 2 had failed in 4th semester and petitioner No. 3 had failed in sixth semester, they could not continue in the next semesters as per University Regulations and they have to appear in all subjects of the relevant semesters in the next academic session by taking casual admission as Ex-students, but since the respondents have admitted the petitioners 1 and 2 to pursue their studies in next semester i.e. 5th and 6th semesters and the respondent No. 3, was admitted to pursue his study in 7th and 8th semester, and in the current academic session examination form of 6th semester of petitioners 1 and 2 and of petitioner No. 3 in 8th semester have been forwarded to university and the admit cards have been issued to respondent No. 3, college to take part in the examination, therefore, the action on the part of respondents not to allow them to appear in the examination is arbitrary and are estopped by the principle of estoppel. In support of his contention learned counsel has placed reliance on the case of Sanatan Gauda Vs. Berhampur University and others, .

9. On the other hand learned counsel appearing on behalf of the respondent Nos. 1 and 2 has contended that since the petitioner Nos. 1 and 2 have failed in fourth semester and petitioner No. 3 has failed in sixth semester, as per Regulation-19 they had to re-appear in all the papers of above semesters as an ex-students in next academic session by taking casual admission and they should not have been given admission in next semester and the action on the part of University in not permitting the petitioners to appear in the examination in 6th and 8th semester, is justified and principle of estoppel is not applicable.

10. It is true that as per University Regulations the petitioners had to re-appear in all the papers of above semesters, in which they were declared failed, as an ex-students in next academic session by taking casual admission and they should not have been given admission in next semester, but in the peculiar facts of the case at hand, the submission of learned counsel for the respondents is not tenable. As stated earlier the petitioners 1 and 2 permitted to participate in 5th semester and they have paid examination fee for 6th semester and petitioner No. 3 was permitted to participate in 7th semester and he has paid examination fee for 8th semester and they have also been issued admit cards by the University.

11. In the cited case of Sanatan Gauda (supra), the appellant in that case while

securing his admission in Law College had submitted his mark sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the pre-law and Intermediate Law Examinations. He was permitted to appear in the said examinations. He was also admitted to final year of the course and the University raised objection of his so called ineligibility to be admitted to Law Course at the stage of declaration of his results of Pre-Law and Inter-Law Examination. The Hon''ble Apex Court has observed that the University is estopped from refusing to declare the results of the appellant's examination or preventing him from pursuing his final year course.

12. The ratio of the judgment is fully applicable to the facts of the case at hand. The petitioners I and 2 were permitted to participate in 5th semester and they have also paid examination fee for 6th semester and petitioner No. 3 was permitted to participate in 7th semester and he has paid examination fee for 8th semester and they have also been issued admit cards by the University to appear in the examination and now the University cannot deny to declare their results of 5th and 7th semester respectively and to participate in the examination of next semesters, i.e. semester 6th in the case of petitioner Nos. 1 and 2 and 8th semester in the case of petitioner No. 3.

13. Therefore, the University is directed to declare the result of 5th semester of petitioner Nos. 1 and 2 and 7th semester of petitioner No. 3 and to allow the petitioner Nos. 1 and 2 to appear in on going examination of 6th semester and the petitioner No. 3 in on going examination of 8th semester.

14. However, it is made clear that the petitioners shall be allowed to pursue their studies in next semesters as per Regulations of the University.

15. With the above directions, the writ petition is disposed of finally. Let a certified copy of this order be supplied to counsel for the petitioners today itself, on payment of requisite fee.