

(2007) 10 GAU CK 0014
In the Gauhati High Court

Chow Pinkkham Munglang

APPELLANT

Vs

Gauhati University and Others

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Citation : (2009) 1 GLR 662 : (2007) 4 GLT 878

Hon'ble Judges : Jasti Chelameswar, C.J.;Hrishikesh Roy, J

Bench : Division Bench

Judgement

Hrishikesh Roy, J.—Heard Mr. A.M. Mazumdar, learned senior counsel for the appellant/writ petitioner. Also heard Mr. L.P. Sharma, learned standing counsel who appears and submits on behalf of the respondent Gauhati University.

2. The present appeal is filed against the judgment and order dt. 31.1.07 rendered in W.P. (C) No. 212/06. The writ petition was filed by the appellant petitioner who was a student admitted to 3 years LL.B. Course in the University Law College affiliated in the Gauhati University in the academic year 1998-99. As per the scheme followed, after each year a law student has to appear in "Preliminary, "Intermediate" and "Final" LL.B. Examination and the student is required to clear his LL.B. degree within 5 years from the date of his first due Preliminary examination. A special chance to clear either of the above three examinations is envisaged within 6 years (i.e. one year beyond normal 5 years), from the date of his first due Preliminary examination as per the new Regulation notified on 13.9.02. The writ petitioner appeared in the preliminary examination held in the year 2000 and passed the said examination in the very first attempt. In so far as the Intermediate examination held in Dec., 2000, the petitioner failed to clear the 6th and 7th paper. In the second attempt at Intermediate examination held in Nov., 2001 the petitioner could clear the 6th paper. In Nov. 2003 he cleared the 7th paper and was declared passed in the Intermediate examination.

The writ petitioner started his final year LL.B Course in the academic year 2001. He first sat for the LLB. Final examination in Dec. 2003 and failed. Thereafter he

appeared second time in the LL.B. Final examination held in Jan., 2004 but failed to clear the 3rd paper.

3. Situated thus when the notification for filling up the LL.B. Final examination due in December, 2005 was published, the writ petitioner approached the authorities to sit in the LL.B. Final examination. However, the University refused to permit the writ petitioner to sit again for the LL.B. Final examination as a view was taken that the writ petitioner had availed of all the chances permissible for sitting in the Law Final examination to complete his law Course.

4. The following chart may be useful to appreciate the number of attempts the petitioner availed at various stages of law examination while he was pursuing his LLB Course under the University Law College:

Mr. A.M. Mazumdar, learned senior counsel submits that in order to appreciate the issues raised in the present case it would be appropriate to refer to Regulation 14 and Regulation 15 and also the notification dtd. 13.9.02 which covers the case of the writ petitioner.

5. The Regulation 14, Regulation 15 and the notification are extracted below:

Regulation 14. A candidate who fails to pass or fails to appear in the first due examination shall have to pass in that examination within the period of holding the next two consecutive examinations.

Regulation 15. A candidate shall be required to clear his/her LL.B degree within five years from the date of his/her first due examination in LL.B preliminary provided that a student shall be allowed to appear in not more than three chances in each part of the LL.B. examination.

Notification dated 13.9.02 provides as follows:

?One special chance will be given to the candidate of any of the three LL.B. examinations (i.e. Preliminary, Intermediate, or Final in which this is required) under new regulation provided that a candidate must complete his/her LL.B. Preliminary examination. This will also be applicable for the candidates having back.

6. By referring to the notification dt. 13.9.02 the learned senior counsel argues that a student of LL.B. Course under the Gauhati University can complete his LL.B. degree within six years from the due date of his first LL.B. Preliminary examination and since the petitioner had appeared in the LL.B. Preliminary examination for the first time in 1999, he could complete his LL.B. Course within six years from the date of first examination i.e. within the year 2005. Accordingly, it is contended that the denial by the Gauhati University to make available one more attempt to clear LL.B. Final examination due in December, 2005 was not justified in law.

7. Mr. L.P. Sharma, learned standing counsel for the Gauhati University argues that under Regulation 15 as quoted above, a student is required to clear his

LL.B., degree within five years from the date of his first due LL.B. Preliminary examination and not more than three chances are permitted to clear each part of the LL.B. examination. Accordingly, it is contended that the writ petitioner had availed of all the permissible chances and he could not have been given a further chance to make an attempt to clear the LL.B. Final examination.

8. It appears that the writ petitioner had availed only two attempts to clear the LL.B. Final examination i.e. in the year 2003 when he failed and also in the year 2004 when he failed in three subjects. Therefore he has not availed the third chance to clear the LL.B. Final examination.

9. As the first Preliminary LL.B. examination of the writ petitioner was due in the year 1999, under the new regulation and the notification dt. 13.9.02, he could complete the LL.B. degree within six years i.e. by year 2005, from the date of preliminary examination which was due in 1999. But the University authorities did not permit him to make the third attempt to clear the LL.B. Final examination due in December, 2005.

The aforesaid refusal by the Gauhati University has been supported by the impugned judgment by referring to the provisions of Regulation 15 and also the notification dt. 13.9.02 quoted above.

10. On close examination of the aforesaid Regulation we find that under Regulation 15, an LL.B. student must invariably complete his LL.B. examination within five years from the Regulation we find that under Regulation 15, an LL.B. student must invariably complete his LL.B. examination within five years from the date of his first due LL.B. Preliminary examination. Thus, under Regulation 15, the writ petitioner was required to complete the LL.B. Course by the year 2004 as his first due preliminary LL.B. examination was scheduled in 1999.

But under notification dt. 13.9.02, a further period of one year is contemplated, making total of six years in all, to complete the LL.B. Course. Again with reference to the first due date of LL.B. preliminary examination which for the writ petitioner was due in the year 1999, the writ petitioner could complete his LL.B. course by the year 2005, taking the outer limit of maximum six years, provided by notification dt. 13.9.02.

As the petitioner can avail only three chances for clearing either part of the three LL.B. examinations and the writ petitioner had availed of only two chances to clear the LL.B. Final examination, the writ petitioner had available with him, the third and final chance to complete the LL.B. Course and the said chance was denied to him for the Final examination due in December, 2005 by the impugned decision challenged in the writ petition.

11. Having regard to the fact that the writ petitioner had availed only two chances to clear the LL.B. final examination and that he had available with him the year 2005 to complete the LL.B. Course as per notification dt. 13.9.02, the denial by the University authorities to permit the writ petitioner to take the final

examination scheduled in December, 2005 was not proper. Accordingly, we allow the writ appeal and set aside the judgment and order dt. 31.1.07 rendered by the learned Single Judge.

12. In view of above, the writ petitioner would be permitted to avail of one more opportunity to clear his LL.B. Final examination and the Gauhati University is directed to do the needful to enable the writ petitioner to avail one more chance to clear the LL.B. Final examination, whenever the next Final LL.B. examination is held, provided of course, the writ petitioner makes the necessary application for the said purpose.

13. Just after the judgment was delivered, it is submitted by the learned Counsel appearing for the appellant/writ petitioner that on the strength of an interim order passed by this Court the appellant/writ petitioner was given one more opportunity to appear in the final LL.B. Examination. However, the result of the said examination has been withheld depending on the final outcome of the present appeal.

14. In view of the Writ Appeal being ordered in favour of the appellant/writ petitioner, we deem it appropriate to direct that the result of the LL.B. Final Examination in respect of the appellant/writ petitioner shall now be announced. We further make it clear that since the appellant/writ petitioner has already been permitted to avail of the last opportunity to take the examination, in the event of his failing in the examination this time, no further opportunity would be provided to him on the strength of the judgment delivered today.

This part of the order should be read as part of the judgment pronounced today.