

(1997) 03 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition Nos. 2507 to 2523 of 1997

Deepa V. Gajare and Others

APPELLANT

Vs

Pre-university Board, Bangalore and Another

RESPONDENT

Date of Decision : 24-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (1997) 4 KarLJ 207

Hon'ble Judges : Tirath S. Thakur, J

Judgement

1. The petitioners in all these writ petitions appeared in their 2nd year P.U. examination held in the year 1996 but failed to qualify. They were admitted to the 2nd year P.U.C. once again in the 2nd respondent-College, who sent up their examination forms in due course for their appearance in the annual examination scheduled to be held in April, 1997. In response the Director, Pre-University Education, Bangalore by his endorsement dated 8th of December, 1996, rejected their applications on the ground that the same were defective. One of the defects pointed out was that the petitioners had failed in the 2nd year P.U.C. examination held in the year 1996, and were not therefore eligible for readmission to the said class as regular students. Aggrieved, the petitioners have come up with the present writ petitions for a writ of certiorari quashing the endorsement issued by the Director and for such other orders as this Court may deem fit in the circumstances.

2. In the statement of objections filed on behalf of the respondent-Board, the rejection of the applications has been justified on the ground that the petitioners having failed in the previous examination were not eligible to be admitted as regular students and also on the ground that since they had studied their 1st year P.U.C. under the old syllabus, they could not be admitted to the 2nd year P.U.C. under the new syllabus.

3. Heard.

4. Conduct of Pre-University examinations is governed by rules framed on the subject, a xerox copy whereof has been furnished to the Court by Mr. Viswanath in the course of his submissions. Rule 6 of the said rules stipulates that persons shall be eligible to appear for examination either as regular candidates or as ex-students. Rule 7 on the other hand stipulates the conditions of ineligibility of candidates and reads thus:

"7. Ineligibility of Candidates.-(i) Regular candidates who have not completed the course of study and have not put in the minimum attendance in recognised institutions as prescribed by the Board for each examination;

Exception.-Candidates taking the Pre-University Course through correspondence at the Institute of Correspondence Course and Continuing Education, Mysore, are not required to put in any attendance;

(ii) Regular or Ex-Student candidates who have not paid the prescribed fees or sent up the applications, after the due date or with incomplete or incorrect entries;

(iii) Candidates who have been debarred from appearing for specified number of examinations for their malpractices in examinations conducted by the Board or any other Examining Body in or outside Mysore State;

(iv) Candidates whose progress and conduct are certified as unsatisfactory, by the Head of the Institution concerned;

(v) Regular candidates who have not sent their examination applications through a recognised institution in which they were studying as regular students of the prescribed course at the time of sending up their applications for admission to the examination".

5. Reference may also be made at this stage to para 14 of a booklet titled and regulations of the two year Pre-University Course, Rules and regulations published by the respondents which runs as under:-

"14. Eligibility for II P.U. Public Examination.-

(a) Admission to II P.U. Public Examination shall be open to candidates who have (i) passed I year P.U. Class examination, (ii) completed the prescribed course of study in the corresponding year, (iii) secured the minimum attendance prescribed under the regulations, (iv) shown satisfactory progress and displayed satisfactory conduct as certified by the Head of the Institution;

(b) Candidates who have not undergone I year P.U. Course are eligible to enroll and appear for II P.U. Public Examination as per the provision made in G.O. No. ED 125 T.P.U. 90, dated 03-07-1992".

6. A plain reading of the above would show that admission to II P.U. Public Examination is open to candidates who have passed the 1st year P.U. Class examination, completed the prescribed course of study in the corresponding year,

secured the minimum attendance prescribed under regulations and shown satisfactory progress and displayed satisfactory conduct as certified by the Head of the Institution. It is not in dispute that each one of the petitioners have passed their 1st year P.U. Class examination and completed the prescribed course of study in the corresponding year besides securing minimum attendance prescribed under the regulations. That their conduct in the course of their studies in the 2nd respondent-Institution has been satisfactory, has also not been disputed. In the circumstances, therefore, the petitioners can be safely said to be eligible to appear in the 2nd Pre-University examination in terms of the provisions of para 14 contained in the hand book mentioned above.

7. Mr. Viswanath, learned Government Pleader, however argued that a student, who had once appeared in a P.U. examination was disentitled to seek readmission to the said class in any Educational Institution. He urged that readmission of the petitioners to the 2nd respondent-Institution even when they had once appeared and failed in the previous examination was illegal. Reliance was in this regard placed by him upon the definition of the expressions "Regular candidate" and "Ex-student" as given in Rule 1(j) and (k) of the rules relating to the conduct of Pre-University Education Examinations. The two expressions relied upon by Mr. Viswanath are defined by the said rules as under:-

"(j) "Regular candidate" means a student who is on the rolls of an Institution and who takes the examination after completing the course (s) of study prescribed by the Board.

(k) "Ex-student" means (i) a candidate who had once taken the examination as a regular candidate and failed therein and takes the examination again otherwise than as a regular candidate; (ii) a candidate who having completed the prescribed course of study and having put in the required attendance in the recognised institution for appearing as a regular candidate, fails to appear for the examination though otherwise eligible and takes the examination, otherwise than as a regular candidate provided, the candidate is not on the rolls of any recognised institution as a regular student on the day of sending the application; (iii) a candidate who has successfully passed the examination in full but desires to improve the results of such examination by taking subsequent examinations".

8. From a bare perusal of the above, it would appear that there is nothing in the definition provided by the rules to suggest that a candidate, who has once appeared in an examination and failed is rendered disentitled or ineligible for seeking readmission. Apart from the definition of the expressions mentioned above, there is nothing either in the rules or in the hand book containing the regulations and the syllabus published by the Department of Pre-University Education to suggest that a candidate, who has once appeared and failed in an examination is rendered ineligible to seek admission to the same course afresh. In the absence of any such specific provision disentitling a candidate from seeking admission to an Institution, it is difficult to hold that the right to pursue one's studies in an attempt to achieve academic excellence can be scuttled by

inferences or assumptions, which have no statutory sanction behind the same. That there is no provision in the rules forbidding the Institutions from readmitting a candidate who has failed, to the same class is apparent even from the circular issued by the Director, Pre-University Education Department, dated 7th of January, 1997, in which he has made the following significant statement:

"There is no provision for a student who had appeared for the Second P.U.C. examination once, to get admission to the Second P.U.C. in the College, and no rules have been framed in this regard anywhere. In spite of this, the admission of a student to the Second P.U.C. again, after he had appeared once for the Second P.U.C. is illegal".

9. It is apparent from the above that the absence of an enabling provision in the rules has been understood by the Director to be enough in itself to constitute a bar against the admission of a failure to the same class. That, however, is not the right perspective from which the situation ought to be viewed. What is important is to note that in the absence of any specific statutory or other provision rendering a failure, ineligible for readmission, the very fact that a candidate has once failed would not by itself constitute a disability for him to seek readmission. While it is open to academic bodies like the respondent-Board to frame a suitable rule forbidding readmission of a candidate, who has once failed, to the same course, yet till such time, a rule to that effect is actually framed, the readmission of candidates, who have taken a chance earlier cannot be termed to be illegal nor can students, who have thus attended the course afresh be denied the permission to appear in the examination.

10. Mr. Viswanath next argued that the provision of para 18 of the hand book published by the Department of Pre-University Education, sufficiently indicated that the scheme of the rules did not envisage readmission of the failures. Para 18 reads thus:-

"18. Rejection of results.-

(a) A candidate who has passed the second year examination in all the subjects may reject at his/her option, the result in a subject/subjects or part or parts. The candidate may opt for the rejection only twice and within three subsequent examinations from the date of II P.U.C. examination in the first instance;

(b) Application for rejection of results in the prescribed form shall be submitted by the candidate within thirty days after the announcement of the results in case of annual examination and fifteen days in case of supplementary examination;

(c) Provided that such an option shall be final and irrevocable subsequently, under any circumstances and there shall be no provision for restoration of marks secured in the earlier examination written by the candidate after the rejection is permitted".

11. It is apparent from a plain reading of the above that the same does not have any relevance whatsoever to the question of admission of a candidate, who has

failed, to the course afresh. What para 18 envisages is, rejection of the result by a candidate, who has passed the examination with a view to improving his performance. Such a rejection as per para 18 is permissible only twice within a span of three subsequent examinations from the date the 2nd P.U.C. examination was first held. That however is not the position in the instant case. Here, the petitioners do not propose nor do they otherwise qualify to improve their performance as a candidate, who has passed the examination alone can exercise that option. Reliance upon para 18, is in these circumstances futile.

12. It was then argued by Mr. Viswanath, that the petitioners were not eligible to appear in the ensuing examination because they had passed the P.U. 1st year examination under the old scheme. It was essential, contended the learned Counsel, for a candidate to study in the same scheme while passing the 1st and the 2nd year of the P.U.C. That being so, argued Mr. Viswanath, the petitioners could not be permitted to appear in the ensuing examination as students under the new scheme. There are two reasons why this submission must also be rejected. Firstly, because the impugned endorsement issued by the Director does not rely upon the so-called discrepancy between the two syllabi as a ground for rejection of the applications of the petitioners and secondly, because there is nothing in the rules governing the conduct of the examinations, syllabus or the scheme of studies to suggest that a candidate, who has passed his 1st Pre-University examination under a particular syllabus is entitled to pass the 2nd year of the said course only under a similar scheme or syllabus and not otherwise. As a matter of fact, on account of a change of syllabus, the students particularly those, who have studied the previous syllabus usually face difficulties in switching over to the new syllabus and are happy, if they are given an option to pass the examination in the syllabus with which they are familiar. Consequently, students seek an opportunity to pass the examination under the old syllabus only. The present, however, is a unique situation where the petitioners have sought and have been granted admission under the new syllabus and do not grudge appearing under the new syllabus. In the absence of any statutory requirement that the 2nd year P.U.C. students must pass the said examination only as per the syllabus prescribed for their 1st year examination, it is difficult to accept the argument that the petitioners cannot be given an opportunity to pass under the new syllabus. I have therefore no hesitation in rejecting even the alternative submission made by Mr. Viswanath.

13. Last but not the least is the fact that the petitioners had been admitted to the course in July, 1996. The respondent-Board did not object to the so called illegality in their admission till December, 1996. They have already studied for nearly 8 months, as regular students of the 2nd respondent-College under the new syllabus. Denying permission to them, at this stage, to appear in the ensuing examination would therefore be wholly unfair.

14. In the result, these writ petitions succeed and are hereby allowed. The impugned endorsement issued by the respondent-Board is hereby quashed and

the Board is directed to permit the petitioners to appear in the ensuing 2nd year P.U.C. examination as regular students, sent up by the 2nd respondent-Institution subject to their fulfilling all other requirements regarding payment of fee etc. In the circumstances, however, the parties shall bear their own costs.