
(1990) 05 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 427 of 1990

Dr. Prasanta Kumar Saws

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 31-05-1990

Acts Referred:

Citation : (1992) 1 GLR 246

Hon'ble Judges : A. Raghuvir, C.J.; S.N. Phukan, J

Bench : Division Bench

Advocate : sic H. Das, N.S. Deka and J. Talukdar, for the Appellant; (sic) P. Prasad, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—An advertisement was issued by the Director of (sic) Education, Assam inviting application for admission in the post (sic) degree or diploma courses in the subject mentioned in the (sic) in 3 medical colleges in Assam during the session (sic) Under Clause 2 of the said advertisement eligibility of candi-(sic) for admission has been mentioned. For the purpose of present (sic) Clause 2(iv)(e) quoted below requires our consideration.

2(iv)(e) - No candidate should be considered for admission to post Graduate Degree or Diploma who has failed more than twice in the subject applied for or more than three (sic) in all the University examinations taken together.

The Petitioner applied for admission, but the Selection Committee (sic) to consider his application on the ground that in view of (sic) Sub-clause 2(iv)(e) he is not qualified to be considered as he (sic) attempts in the 1st and 2nd M.B.B.S. Examination.

2. The Petitioner got himself admitted in the 1st year M.B.B.S. course in Assam Medical College, Dibrugarh in October, 1981, (sic) appeared and passed the 1st professional M.B.B.S. course in (sic) and Physical Chemistry in August, 1982. In regular course he (sic) due to appear in the remaining 3 subjects of 1st

professional M.B.B.S. Examination in July and August, 1983. According to Petitioner (sic) to sudden and serious illness of his grand mother he could not (sic) and he even did not fill up the examination form. He appeared (sic) the remaining subject of 1st professional examination in December (sic) 1983 and passed all the subjects. In the regular course he was (sic) appear in the second professional M.B.B.S. Examination in (sic) 1985 and December, 1985, but he could not do so as he had (sic) take his grand mother to United Kingdom for medical treatment (sic) Petitioner has stated that he is the sole heir of his grand-mother (sic) Petitioner also did not submit his application form for the (sic) examination. He appeared for the 2nd professional M.B.B.S. (sic) Examination in June/July, 1986 and passed 4 subjects out of 5 and (sic) appeared for the remaining subject in the examination held in (sic) month of December, 1986 and passed the same. Petitioner was (sic) to appear in the Final Examination in June, 1987 which he (sic) and passed all the subject in the 1st attempt. The Principal, (sic) Medical College, Dibrugarh issued an attempt certificate dated (sic) September, 1989 vide Annexure-VII indicating that the Petitioner passed 1st M.B.B.S. Examination in December, 1983 in 2nd attempt 2nd M.B.B.S. Examination in December, 1986 in 4th attempt Final M.B.B.S. Examination in June, 1987 in the 1st attempt. And due to Petitioner, the principal committed an error by indicating that he passed 2nd M.B.B.S. Examination in 4th attempt, inasmuch as, he neither filled in the forms nor appeared in the said examination when it was due in regular course as he had to attend his grand-mother and take her abroad for medical treatment. Petitioner further urged that the Selection Committee also wrongly interpreted the above Clause 2(iv)(e) of the advertisement in view of the above facts.

3. We have heard Dr. Das, learned Counsel for the Petitioner and Mr. Prasad, learned Sr. Govt. advocate.

4. The word "fail" has not been defined in the advertisement in question. It is settled principle of interpretation of any statute rules etc. that the general words ought to be construed generally and in doing so help of Dictionary can be taken:

According to Chambers Twentieth Century Dictionary (New (sic) the word "fail" means to fall short or be wanting...(sic) to prove deficient under trial, examination pressure etc. (sic) to declare deficient after examination & failure specially examination.

5. In our opinion a candidate can be treated to have failed (sic) is found deficient after examination. In other words, he has to (sic) otherwise the question of finding him deficient cannot arise. (sic) may make it clear that "appear" does not mean that the candidate (sic) should sit in all the papers. If he appears on the 1st day (sic) the examination and thereafter does not appear in other papers (sic) be treated to have failed in the examination. In the case (sic) the Petitioner not to speak of sitting in any paper he did (sic) even filled up the forms for the reasons stated and by no stretch (sic) imagination it can be said that the Petitioner failed in the examination in question.

6. The Selection Committee presumably refused to consider the (sic) of the Petitioner on the basis of the certificate issued by the (sic) wherein it has been stated that he passed the 2nd M.B.B.S. examination in 4th attempts. We have to consider the meaning of attempt for the present purpose. According to above dictionary the (sic) "attempt" means "to try, endeavour...(sic) make an attempt-(n. an effort)...." So to treat the (sic) to have passed in 4th attempts the 2nd M.B.B.S. Examination (sic) it must be shown that the Petitioner made an endeavour or (sic) or make an effort to appear in the previous examinations. As (sic) above the Petitioner has clearly stated that he did not even (sic) in the forms for the said examination due to illness of his grandmother. The question of making an attempt cannot arise. In our (sic) the certificate issued by the Principal is not sustainable for (sic) has been stated above.

7. On being asked by us Mr. Prasad, the learned Sr. Govt. advocate has informed that the life of the Selection Committee, (sic) survives as it is a standing one. We, therefore, direct the Selection Committee to take fresh interview of the Petitioner in the light (sic) the interpretation of the above Clause 2(iv)(e) given by us and if (sic) is otherwise found qualified he may be admitted in the current (sic) session of the Post Graduate Course. The Selection Com-(sic) shall meet within 15 days for the purpose of interviewing of the Petitioner and Petitioner shall be informed of the date (sic) for interview. We further quash the attempt certificate is (sic) the Principal, Assam Medical College, Dibrugarh on 25th September 1989 (annexure-IV of the petition) and direct the Principal to (sic) diately issue a fresh certificate in the light of our above decision.

In the result, petition is allowed. No costs.