
(2008) 07 AHC CK 0206
In the Allahabad High Court

Gagan Kumar Sharma

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Citation : (2009) 1 UPLBEC 428

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—Petitioner-appellant before this Court was admitted as an student in B.Tech. Four Year Degree Course comprising of eight semester in the year 2003-04. The controversy giving rise to the present special appeal pertains to fifth and sixth semester examination undertaken by the petitioner, referable to third year of the course.

2. The petitioner has admittedly failed in six theory papers and has further failed to achieve the minimum total aggregate pass mark provided qua the examination, namely 50%. The petitioner was, therefore, refused admission in the fourth year. The order so passed by the U.P. Technical University, Lucknow was challenged by the petitioner before the learned Single Judge of this Court by means of the Writ Petition No. 42017 of 2007.

3. The learned Single Judge, after noticing the provisions of the Ordinances, which have been enforced by the U.P. Technical University, found that the petitioner was not entitled for the relief prayed for and, therefore, proceeded to dismiss the writ petition. The order of the learned Single Judge is being questioned before us by means of the present special appeal under Chapter VIII, Rule 5 of the High Court Rules.

4. Sri P.S. Baghel Counsel for the appellant contended that the petitioner having been admitted in the year 2003-04 was entitled to be governed by the ordinances framed by the University as were applicable at the time of his

admission (hereinafter referred to as "old ordinances"), whereunder it is claimed that as per Clause 9.2 of the old ordinances the petitioner was entitled to be promoted in the fourth year even if he has failed in six subjects and also in aggregate. He submits that the learned Single Judge has wrongly applied the new ordinances framed by the University under notification dated 09th November, 2004 (hereinafter referred to as "new ordinances"). In the alternative it has been contended that even if the new ordinances are taken to be applicable qua the 3rd year examination of the petitioner, then in view of Clause 9.2 (b) the petitioner was entitled to be granted provisional promotion with six carry over papers. He contends that the order of the learned Single Judge and of the University be set aside and relief prayed in the writ petition be granted.

5. The contention so raised on behalf of the appellant is opposed by Sri Neeraj Tiwari, Counsel for the University, on the plea that with the enforcement of new ordinances on 09th November, 2004 the old ordinances ceased to exist. More so when two different Clause 9.2 had been provided under the new ordinance, one for students who had been admitted in B.Tech. Course before sessions 2004-05 and students admitted thereafter. Under new ordinances if a student fails in more than six theory papers and further fails to secure minimum total aggregate marks i. e. 50%, he is not entitled to be provisionally promoted to the next year having regard to the provisions of Clauses 9.2. He, therefore, submits that there is no illegality in the order of the teamed Single Judge as well as of the University, which may warrant any interference in the present special appeal.

6. From the facts noticed above, it is apparently clear that the petitioner has failed in six theory papers and has further failed to achieve minimum total aggregate marks i.e. 50%, as prescribed under Clause 8.6 of the ordinances, in the 3rd year of the examination. For the purposes of appreciating the issue as to whether old ordinances would continue to apply to the petitioner or new ordinances of 2004 would apply, suffice is to record that new ordinance of 2004 contain two different Clause 9.2, one for the students admitted prior to 2004-05 and other for students admitted subsequent thereto. The two Clauses 9.2 of new ordinance 2004 read as follows:

9.2. (a) A candidate shall be eligible for provisional promotion to the next academic year of study provided:

(i) he/she fails to satisfy the requirements of Clause 8.4., 8.5 and 8.7 in not more than 4 theory subject and 2 practical/project subjects on the basis of combined result of both semester examinations of a particular academic year.

(ii) he/she fails to satisfy the requirements of Clause 8.4, 8.5 and 8.7 (theory and/or practical/project subjects) in not more than 3 theory subjects and 2 practical/project subjects in addition he/she fails to satisfy requirement of Clause 8.6 (aggregate marks) in the combined result of both semester examinations of a particular academic year. In such a case aggregate marks shall be treated as one theory subject.

(b) ...

9.2. Only For Old Students (Students Admitted Before The Sessions 2004-05):

(a) A candidate shall be eligible for provisional promotion to the next academic year of study provided:

(i) he/she fails to satisfy the requirements of Clause 8.4, 8.5 and 8.7 in not more than 6 subject (theory and/or practical/project subjects) on the basis of combined result of both semester examinations of a particular academic year.

(ii) he/she fails to satisfy the requirements of Clause 8.4, 8.5 and 8.7 (theory and/or practical/project subjects) in not more than 5 subjects and in addition he/she fails to satisfy requirement of Clause 8.6 (aggregate marks) in the combined result of both semester examinations of a particular academic year. In such a case aggregate marks shall be treated as one theory subject.

(b) If a candidate satisfies the requirement of Clauses 8.4, 8.5. & 8.7 but fails to satisfy the requirement of Clause 8.6, he/she shall be eligible for provisional promotion with carry over. He/she may choose upto a maximum of any six theory papers of that particular academic year as per his/her choice to pass the examination of that year.

7. Thus it is apparently clear that new ordinances of 2004 specifically make separate provisions for students like the petitioner who had been admitted to B. Tech. Course before the session 2004-05. The competence of the University to frame such ordinances is not under challenge. We see no reason as to why these new ordinances will not apply to the petitioner specifically in respect of the examinations undertaken subsequent to the notification of the new ordinances on 09th November, 2004.

8. We, therefore, hold that with the enforcement of new ordinances on 09th November, 2004, the old students, who were admitted before academic session 2004-05 are also to be governed in accordance with the provisions of Clause 9.2, meant for students admitted prior to session 2004-05, in view of the specific language of the provision.

9. With reference to the alternative submission of the Counsel for the appellant, we may record that Clauses 9.2 (a)(i) (applicable for students admitted before session 2004-05) takes care of a situation where the student has failed in six theory papers but satisfies the requirements of minimum total aggregate marks i.e. 50% as provided for under Clause 8.6. Similarly, Clause 9.2 (a)(ii) takes care of a situation where a student has failed in not more than 5 theory papers and has also failed to achieve minimum total aggregate marks i.e. 50% as provided for under Clause 8.6. This Clause 9.2(a)(ii) clarifies that failure to achieve minimum total aggregate marks i.e. 50% would be treated as failure in one theory paper.

10. In respect of both the aforesaid category of candidates the ordinance 9.2

provides for grant of provisional promotion in the next academic year with carry over papers.

11. A joint reading of the aforesaid provisions would establish that a student is entitled for provisional promotion to next academic year only if he fails in 6 theory papers but achieves the minimum total aggregate marks provided under Clause 8.6 or else he fails in not more than 5 theory papers and further fails to achieve the minimum total aggregate marks prescribed under Clause 8.6. It is, therefore, apparent that a candidate like the petitioner, who has failed in 6 theory papers and has further failed to achieve minimum total aggregate marks provided under Clause 8.6, is not entitled to the facility of provisional promotion to the next year.

12. Now turning to Clause 9.2(b), we may record that aforesaid Clause 9.2(b) will have no application in the case of the petitioner-appellant inasmuch as the said Clause provides for provisional promotion of candidates who pass all theory and practical papers but fail to achieve the minimum total aggregate marks i.e. 50%. Clause 9.2(b) will not apply to a student who has failed in theory/practical papers individually and has also failed to achieve minimum total aggregate marks i.e. 50%. A simple reading of the Clause would establish that it provides for an opportunity to a student to achieve the minimum aggregate marks as prescribed under Clause 8.6 with an option to choose up to 6 theory papers as carry over papers, although he has achieved the pass marks in those papers individually.

13. We may further record that from the mark-sheets, pertaining to the petitioner, which are enclosed along with short counter affidavit filed before the learned Single Judge by the University in respect of the fifth semester examination of the petitioner of the year 2006-07, it is apparently clear that he had appeared in 5 theory papers and further in respect of sixth semester examination of third year 2006-07 he had appeared in 5 theory papers only. The petitioner had, therefore, appeared in 10 theory papers only in the third year.

14. It is further recorded that except for referring to Clause 9.2(a)(ii) and 9.2.(b) as applicable to the students admitted prior to academic session 2004-05, as quoted herein above, Counsel for the petitioner-appellant has not referred to any other provision of the new ordinance for the purposes of claiming provisional promotion to the next year and for questioning the order passed by the learned Single Judge.

15. In view of the above, for the reasons recorded, we see no ground to interfere with the order of the University as well as that of the learned Single Judge. Appeal is dismissed.