

(2004) 11 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15574 of 2004

Govind Prakash Tripathi

APPELLANT

Vs

Vice-Chancellor, Deen Dayal Upadhyaya University,
Examination Controller, Deen Dayal Upadhyaya University
and Principal, Sant Vinobha Post Graduate College

RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Citation : (2005) 5 AWC 4153

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : K.K. Tiwari, for the Appellant; Sunita Agarwal and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri K.K. Tiwari on behalf of the petitioner and Smt. Sunita Agarwal on behalf of all the respondents.

2. Petitioner, who was a regular student of LL. B. 2nd Year From Sant Vinoba Post Graduate College, Deoria, appeared in the LL. B. 2nd Year Examination, which was held on 10th June, 2000. In the said examination the petitioner was involved in use of unfair means and as a result whereof the Gorakhpur University passed an order dated 23.4.2000, whereby the examination of the petitioner of the year 2001 (excluding the tutorial) was cancelled and further the petitioner was debarred from appearing in the University examination in the next year i.e. 2002. After the aforesaid period was completed, the petitioner was again admitted in 2003 as ex-student in LL. B. 2nd Year. The petitioner deposited requisite fee for appearance as exstudent in LL. B. 2nd Year Examination to be held in the year 2003. Information of the petitioner being an ex-student was communicated by the Principal of the institution vide letter dated 20th January, 2003 to the University, copy whereof has been enclosed as Annexure-6 to the writ petition. The University vide notification dated 10th April, 2003 informed all

the ex-students that the examination for Third Semester and Fourth Semester of 2nd year LL.B. Course shall be held in the month of July and November, 2003 respectively. However,, by means of the impugned order dated 24th June, 2003, the University has cancelled the aforesaid examination of the ex-students, which w|s scheduled to take place in the month of July and November, 2003. Feeling aggrieved by the aforesaid action of the University, petitioner has filed the present writ petition.

3. On behalf of the University a counter affidavit has been filed and reliance has been placed upon the Ordinances relating to Faculty of Law regulating the appearance of students for L.L.B. Examination. On the strength of Clause 13 of the said Ordinances, it is contended that petitioner is not entitled to appear as an ex-student inasmuch as a candidate can be permitted to appear as ex-student only for next to consecutive years after his first failure to pass or to appear at such examination. According to respondents, since the petitioner's examination of year, 2001 has been cancelled and he debarred for the year 2002, the restriction of two consecutive years, as applicable under Clause 13 was attracted and, therefore, petitioner cannot be permitted to appear as ex-student and writ petition filed by the petitioner be dismissed.

4. I have heard learned counsel for the parties and have gone through the records of the writ petition.

5. For the purposes of appreciating the controversy raised in the present writ petition, it would be necessary to refer Clause 13 of the Ordinances relied upon by the counsel for the University, copy whereby has been enclosed as Annexure-CA-1 to the counter affidavit. Relevant Clause 13 reads as follows:

"A candidate for LL.B. Part I, II and III examinations who, has fulfilled the required attendance at lectures in each paper and tutorial separately, and has failed to pass or appear in that year may be allowed to appear as an ex-student for the next two consecutive years after his first failure to pass or to appear at such examination. "

7. From the aforesaid, it is apparently clear that a candidate is entitled to appear as ex-student only in two consecutive years following the examination in which he had failed to pass or to appear, According to petitioner, the aforesaid clause is not attracted in his case inasmuch as neither he failed to pass the examination as an ex-student in the year, 2002 nor he has failed to appear in such examination Inasmuch as he was debarred by the University itself from appearing in the said examination of the year, 2002.

8. Having regards to the provisions relied upon by the counsel for the University and having regard to the fact that University itself by means of the order of punishment dated 23rd April, 2004 had cancelled the 2001 examination of the petitioner (except the tutorial) and debarred the petitioner from appearing in the 2002 examination, meaning thereby that the University itself was of the opinion that the petitioner was entitled to appear in the L.L.B. 2nd Year Examination

subsequent to 2002. Further, on the basis of Clause 13 no student should be permitted to avail more than three chances for passing a particular examination and in the aforesaid three chances, he entitled to appear at least in two examinations as ex-student. Since the petitioner was restrained under the order of punishment dated 23.4.2004 from appearing in the 2002 examination of L.L.B. 2nd Year, it cannot be said that the petitioner has failed to pass the said examination or he failed to appear in the examination of 2002.

9. The provisions of Clause 13 cannot be interpreted in the manner as suggested by the counsel for the University. As per the provisions of Clause 13 it would be fair that the student, who was debarred from appearing in the particular examination under the order of the University itself, should not be treated to be failed in the examination or failed to appear in the said examination, otherwise it would amount to double jeopardy. The contention raised by the counsel for the University cannot be legally sustained.

10. In view of the above, writ petition is allowed. The University is directed to consider the claim of the petitioner to appear as ex-student in the forthcoming examination of L.L.B. 2nd Year in light of the observations made herein above within three weeks from the date a certified copy of this order is filed before the Controller of Examination of the University.