

(2003) 03 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4895 of 2002

Inder Singh Gehlot

APPELLANT

Vs

Vice Chancellor, Jai Narain Vyas University and Others

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Citation : (2003) 4 RLW 21512 : (2003) 4 RLW 2151 : (2003) 3 WLC 246

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : Himanshu Shrimali, for the Appellant; D.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—Brief facts of the case are that the petitioner, after passing the degree of Bachelor of Arts from the Jai Narain Vyas University, Jodhpur in the year 2000, took admission in the three years LL.B. Course. There were nine papers for the LL.B. Ist Year Examination. The petitioner appeared in the final examination of the LL.B. Ist Year. The petitioner though secured the minimum pass marks or more than the minimum pass marks in all the nine papers but the petitioner failed to obtained the prescribed aggregate percentage which is 48%, to declare the candidate pass in the final examination of the LL.B. Ist Year, There is a provision for giving opportunity to the candidates to appear in supplementary examination for which certain instructions have been issued. The instruction is as under :-

"Candidates who failed at the immediately preceding First or Second Examination in two papers only and obtained 48% marks in the aggregate to the seven papers in which they have passed, or in the case of the candidates failing in the aggregate only and secured 48 percent marks in the aggregate of the seven papers excluding the paper in which they have secured lowest marks shall be permitted to appear in that/those paper in which they have failed or obtained lowest marks."

2. According to the petitioner, though he secured minimum marks or more than than minimum marks in each paper but since he did not secure aggregate marks, therefore, he was denied the opportunity to appear in the supplementary examination by the respondent-University.

3. The grievance of the petitioner is that the candidate who failed either in one subject or in two subjects by not securing minimum marks prescribed for each individual paper and also failed to obtain aggregate marks in all nine papers, were provided opportunity to appear in the supplementary examination. Therefore, according to the petitioner, the said instruction or rule is inconsistent. (?).

4. The petitioner submitted a representation dated 11.10.2002 addressed to the Dean, Law Faculty, Jai Narain Vyas University, Jodhpur and put his case before the University with the request to permit the petitioner to appear in the supplementary examination but no reply was given by the respondent-University.

5. It is relevant to mention here that the petitioner in prayer No. 1 prayed that "rule, instruction be declared illegal and be quashed or alternatively, it may be interpreted as such so as to provide chance of supplementary to candidate who has been declared pass in all individual papers." The learned counsel for the petitioner vehemently submits that, by application of this procedure, a discrimination has been caused between the two sets of students of the same class. In cases where the candidate failed to obtain minimum marks in two subjects then he is permitted to have a chance to appear in the supplementary examination even he has not secured 48% marks in rest of the papers, whereas the petitioner and like persons who secured more marks by getting more than the minimum prescribed marks in each individual paper, is not provided this opportunity of supplementary examination on the ground that they have not having aggregate 48% marks in rest of papers, thereby the petitioner and like students are discriminated from the students who are having even less merit.

6. This Court also directed the petitioner to amend the writ petition to include the particular of the rule which he wants to challenge: The petitioner submitted that the petitioner could not find out the relevant rule and he tried to get the relevant rule from the respondents by submitting an application but still the said rule was not provided to the petitioner. The petitioner submitted an application on 18.2.2003 seeking relief and direction against the respondents for providing a copy of the relevant ordinance, upon which this Court by order dated 24.2.2003 issued notice of the application to the respondent- University by which the petitioner sought relief of getting the relevant rule from the respondents. The copy of the writ petition was also sent to the respondents in pursuance of the order dated 24.2.2003. The respondents submitted reply to the writ petition but no rule was provided to the petitioner. The learned counsel for the petitioner submits that in view of the above and as per their knowledge, no other rule is available except Condition No. 8 reference above and the provisions contained in Ordinance 306 which provides provision of supplementary examination in law.

The Ordinance 306 is as under :-

Ordinance 306. Candidates who fail at the immediately preceding First, Second or Final Examination and only such candidates as have failed in one paper only or in the aggregate or in both and have obtained not less than 48% marks in the aggregate of the five papers in which they have passed, or in the case of candidates failing in the aggregate only, 48% marks in the aggregate of the five papers excluding the paper in which they have secured the lowest marks, shall be permitted to appear in one paper only in which they have failed or in the case of candidates failing in the aggregate only, 48% marks in the aggregate of the five papers excluding the paper in which they have secured the lowest marks, shall be permitted to appear in one paper only in which they have failed or in the case of the candidates failing in the aggregate only, in the paper in which they have obtained the lowest marks.

7. From a bare perusal of above two, the Condition No. 8 and the Ordinance 306, it is crystal clear that the opportunity to appear in the supplementary examination has been provided to only those candidates who secured 48% marks in aggregate irrespective of the fact whether the candidate failed in any paper or though secured minimum or more than minimum marks in all papers but failed to obtain 48% marks in aggregate. The above both the sets of the rule, if considered, it is clear that :-

(1) a candidate who failed in one paper/two papers and have obtained not less than 48% marks in aggregate of five/seven papers in which they have passed, or

(2) in the case of candidates failing in aggregate only, 48% marks in the aggregate of the five/seven papers excluding the paper in which they have secured the lowest marks; shall be permitted to appear in the supplementary examination, in which they have failed or in the case of candidate failing in aggregate only, in the paper in which they have obtained the lowest paper.

8. It appears that the basic reason is that the opportunity of supplementary examination is available to the only those students who secured at least 48% marks in rest of the subjects excluding the subjects in which they can be permitted to take supplementary examination.

9. In view of the above, it appears that the petitioner has mis-interpreted the clause providing provision for supplementary examination and the petitioner is under wrong impression that the students, who are having less than 48% marks in remaining papers and failed in two subjects, are permitted to take supplementary examination and the petitioner is denied opportunity of supplementary examination only on the ground that he has not secured 48% marks in rest of the papers excluding two papers.

10. Therefore, in view of the above reason, there is no force in the writ petition and the writ petition of the petitioner is dismissed.