
(2010) 11 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2585 of 2010

Kailash Chand Verma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2011) 1 RLW 864

Hon'ble Judges : Munishwar Nath Bhandari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—With the consent of learned Counsel for the parties, matter has been heard finally at the stage when it is listed on applications.

2. By this writ petition a challenge has been made to the action of the Respondent University, for not permitting Petitioner to appear in due papers for BAMS. First Year Examination. This is a case where Petitioner appeared in BAMS. First Year examination after completing his required studies. Petitioner failed in all papers except one. The actual appearance for due papers was subsequently on one occasion wherein again Petitioner was declared failed. In between, on one occasion, Petitioner was not allowed to appear in the examination for want of attendance. On few occasions, Petitioner did not appear in the examination for due papers.

3. Referring to Ordinance 329-N-19(j), it is submitted that one is allowed to have three attempts and for counting three attempts, actual attempt is taken into account. Petitioner has attempted due papers only on one occasion after declaring failed in the main examination. Respondents, however, counted his attempts when he was not permitted to appear in the examination due to short attendance and on same point of time, Petitioner himself did not appear. Pursuant to the interim order of this Court, Petitioner appeared in the due papers, result thereof has not been declared by the University.

4. Learned Counsel for the University submits that Petitioner is not entitled to undertake further attempts in view of the Provisions of Ordinance 329-N-19(1), which provision has even been referred in the reply. Reference to the judgment of the co-ordinate bench in *Desh Raj Dagur v. State of Rajasthan and others*, Writ Petition No. 5446/2009 decided by Principal Seat at Jodhpur on 26.5.2009 has been made.

5. I have considered the rival contentions made by counsel for the parties and scanned the material carefully.

6. The matter pertains to appearance in due papers for First Ayurvedacharya (Bachelor of Ayuvedic Medicine & Surgery) Examination. It is not in dispute that Petitioner appeared in the aforesaid examination and failed in all the papers except one. Thereafter, he actually attempted one chance for all the papers of First Year Examination.

7. According to Ordinance 329-N-19(j), a candidate is entitled to have three attempts. Note below clarifies as to what is the meaning of "attempt". For ready reference, the aforesaid Ordinance is quoted thus: =

O. 329-N-19(j)

Candidates who fail to pass the First Ayurvedacharya (Bachelor of Ayurvedic Medicine & Surgery) Examination in three attempts shall not be allowed to continue their studies in a college.

N.B. For the purpose of this Ordinance actual attempt availed of by the candidate will be taken into account provided that cancellation of the examination for using unfair means shall be treated as an attempt.

8. Perusal of aforesaid provision shows that for the purposes of counting three attempts, it is the only actual attempt availed by the candidate, is to be taken into consideration.

9. The case in hand shows that Respondents even have counted those attempts which have not been actually availed by the Petitioner. This is under the misguidance on account of reference of Ordinance 329-N-19(1), which has otherwise been quoted in the reply to the writ petition. For ready reference, the aforesaid ordinance is also quoted:

O.329-N-19(1):

(1) A candidate who has failed in one or more subjects at the Second or Third Ayurvedacharya (Bachelor of Ayurvedic Medicine & Surgery) Examination may at his option take the examination in parts in one or more subjects in which he has failed or in whole provided he passes in all the subjects prescribed for the examination in favour consecutive examinations held there after including the examination at which he first appeared. If he does not pass the full examination within the period as mentioned above, he shall have to take the whole examination with all the subjects at the time when he next appears at the

examination.

(2) At the expiry of each period of four consecutive examinations including the examinations at which the candidate appeared at all the subjects prescribed for the examination another period of the same duration will follow during which the provisions of Clause (1) above shall be applicable as regards passing the examination. N.B. Non-appearance at an examination shall be treated as a failure for the purpose of this Ordinance.

10. The provisions of Ordinance 329-N-19 (1) no doubt provides a note below showing that none appearance at an examination shall be treated as a failure for the purpose of this Ordinance. This is, however, applicable to second and third examination whereas ordinance 329-N-19(j) is applicable to First Examination and this case is of First Examination. Accordingly, by invoking wrong provisions of ordinance, the Respondents have restrained the Petitioner to undertake actual attempt for first Ayurvedacharya (Bachelor of Ayurvedic Medicine & Surgery) Examination). Petitioner is entitled to take actual three attempts to clear the aforesaid examination. Accordingly, action of the Respondents can not be said to be legal.

11. At this stage, it is necessary to clarify that Ordinance 329-N-19-(e) has no application in the present matter i.e. regarding how many attempts one can undertake to pass out the said examination. The aforesaid provision is to provide eligibility criteria. This is only when the candidate has undertaken regular course of study in an affiliated College at least for one and half academic years. The provisions of Order 329-N-19(e) has no application in the present matter yet referred by the University at the time of arguments.

12. Now comes the judgment of the co-ordinate bench. It is tried to be focused that similar issue has been decided by the co-ordinate bench. However, perusal of that case shows it to be absolutely on different facts. The learned Single Judge therein taken note that one can undertake three attempts only. The controversy as to whether the three attempts should mean actual attempts or the attempts which were not undertaken, has not been decided. In the light of the aforesaid, the judgment referred has no application to the facts of this case.

13. In view of the discussions made above, the action of the Respondents to debar Petitioner to undertake three attempts in First Ayurvedacharya (Bachelor of Ayurvedic Medicine & Surgery) Examination, is not proper and accordingly, interim order permitting the Petitioner to appear in the said examination, is made absolute and Respondents are accordingly directed to declare his result.

14. With the aforesaid, the writ petition is allowed.

15. Costs made easy.

16. In view of the above, application stands disposed.