
(2009) 08 GAU CK 0092
In the Gauhati High Court
Case No : Writ Petition (C) No. 5194 of 2008

Miss Smita Baruah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Dibrugarh University Regulations, 2001 — Regulation 15

Citation : (2009) 1 GLD 490 Supp : (2010) 6 GLR 376 : (2010) 1 GLT 565

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Heard Mr. EC. Dey, learned Counsel for the petitioner as well as Mr. K. Agarwal, learned Standing Counsel, Dibrugarh University. I have also heard Mr. M.K. Misra, learned Standing Counsel, Education Department.

2. The petitioner is aggrieved by the decision of the university authority to withhold her B.A. Part-III result in which she appeared in the year 2006.

3. The petitioner was admitted to Three-Year-B.A. (TDC) Course of the university in the year 2002. She was admitted in Jorhat College. Her subjects of studies are -English, Assamese, Education and Sociology.

4. In 2003, the petitioner appeared in the B.A. Part-I examination but failed. The petitioner again appeared in the said examination in the year 2004 and passed the same.

5. In 2005, the petitioner appeared in B.A. Part-II examination but could not clear two papers namely English and Sociology. She was allowed to get herself admitted in the Three-Year B.A. Course i.e. Part-III.

6. In 2006, the petitioner appeared in the B.A. Part-III examination and simultaneously, she was also allowed to appear in the aforesaid papers i.e. English and Sociology pertaining to B.A. Part-II examination, which she could not

clear earlier.

7. Out of two papers in B.A. Part-II i.e. English and Sociology, the petitioner cleared English paper. In 2007, she appeared in the remaining paper i.e. Sociology and cleared the same. However, the problem for the petitioner started when her B.A. Part-III result was withheld, in which she appeared in 2006.

8. It is the case of the petitioner that the university authority itself having allowed the petitioner to appear in the said examination, cannot now withhold the B.A. Part-III examination result on the ground of committing procedural irregularity. The petitioner has placed reliance on the Annexure 2 notification 4.10.2004 annexed to the affidavit in reply which reads as follows:

NOTIFICATION

As recommended by the 83rd (Emergency) Meeting of the Under-Graduate Board of Dibrugarh University held on 29.9.2004 the Hon'ble Vice Chancellor, Dibrugarh University is pleased to approve under report to the Academic Council that the Dibrugarh University B.A./B.Sc./B.Com Three Year Degree Course Regulations, 2003 be modified to include the following provision(s) for allowing progression of a student from the First Year to the Second year and from the Second year to the Third year giving provided he/she:

(i) passes in all the papers, or

(ii) fails in not more than two papers, under the condition that the student must pass the paper(s) of B.A. B.Sc. B.Com Part-I/Part-II examinations in which he/she has failed in the next Part-I/Part-II examinations.

The above modification in the Regulations have been given effect for the students admitted from the session 2003-2004.

Sd/- (Dr. Rajib Handique) Deputy Registrar (Academic), Dibrugarh University.

9. The respondent-university has filed its counter-affidavit. Its basic plea is that the petitioner could not have appeared in two papers i.e. English and Sociology pertaining the B.A. Part-II examination inasmuch as per the university Regulations of 2001 and 2003, it is only in respect of one paper, a candidate is allowed to clear the same in the subsequent examination.

10. Mr. K. Agarwal, learned Standing Counsel, Dibrugarh University, who was requested to obtain instructions in respect of the aforesaid notification dated 4.10.2004 in terms of which a candidate is allowed to progress to the next year even in case of failure in two papers, submits that the aforesaid notification dated 4.10.2004 is not applicable to the case of the petitioner because, firstly, the petitioner having been admitted in the B.A. Course in the year 2002, the University Regulation of 2001 will be applicable to the candidate and not the subsequent regulation. The second submission is that as per the said notification dated 4.10.2004, a candidate who is allowed to progress to the next year will have to clear all the papers of the earlier examination. He submits that the

petitioner having failed to clear the papers in English and Sociology in Part-II examination in the next year i.e. 2006, but having cleared only Sociology paper, the petitioner is not entitled to benefit of the modified regulation as envisaged under the said notification.

11. I have considered the submissions made by the learned Counsel for the parties as well as the materials on record. It is true that as per the earlier regulation of 2001, it was only in one paper in respect of which a candidate could appear in subsequent years. Same is the position in the regulation of 2003, but the same was modified by the above-quoted Annexure-2 notification dated 4.10.2004. As per the said notification, a student can progress to the next year of the course even if fails in two papers. It is the true that there is a condition that the student must pass the papers of B.A. Part-I and Part-II, as the case may be in which he or she failed. However, this clause will have to be read alongwith Clause 15 of the University Regulations of 2003. Clause 15 is reproduced below:

15 (a) A student shall be entitled to a maximum of seven chances to clear all the Part-I, Part-II and Part-III examinations. A student shall be entitled to clear a particular Part-I/Part-II/Part-III examination in two chances. Provided that a student may avail a special chance (third chance) only once in any of the Part-I/Part-II/Part-III examinations. (b) Not appearing in an examination by a candidate after obtaining eligibility to appear in the examination amounts to losing a chance.

12. As per the aforesaid Regulation 15, a student is entitled to a maximum of seven chances. A student shall also be entitled to clear Part-I/Part-II/Part-III examinations in two chances with another special chance (third chance). In the instant case, the petitioner cleared all the papers in B.A. Part-II examination in three chances by appearing in the said examination in 2005, 2006 and 2007.

13. Mr. Dey, learned Counsel for the petitioner has placed reliance on a decision of the Apex Court reported in *Sanatan Gauda Vs. Berhampur University and others*, . As in the instant case, in the said case also, the petitioner was permitted to take Law course. It was the contention of the university that the petitioner was not eligible to get himself admitted into the Law course. The Apex Court considering the fact that the petitioner had already undergone the course observed that the law of estoppel will operate against the respondents. As in the instant case, in the said case also, the rules were not very clear and accordingly, direction was issued to suitably amend the rules.

14. On the other hand, Mr. K. Agarwal, learned Standing Counsel, Dibrugarh University has placed reliance on the decision of the Division Bench reported in 1995 (1) GLJ 251 (*Rajesh Sundaram and Ors. v. Dibrugarh University and Ors.*) in which it was held that the candidate cannot be allowed to appear in the examination in violation of the regulation and that the specific provision in the regulation will have to be followed.

15. In the instant case, it is not a case of violation of any specific provision of the

regulation. The university authority itself allowed the petitioner to take all the examinations and the petitioner had no hand in appearing in the said examination. The aforesaid notification dated 4.10.2004 also allows progression of a student from first year to second year and thereafter, to third year, even if he fails in two papers (not more than two papers). It is true that same is subject to the condition that the student must pass the papers in which he had failed in the next Part-I/II examination. However, the regulation is not specific that in the event of failure to clear in one of the papers (which is the present case), a candidate will have to abandon the course and/or will not be entitled to proceed to the next year with the disentitlement to appear in the next examination.

16. Regulation 15, as also noted above, also permits a student to clear B.A. examination altogether in seven chances. It is not the case of the respondents that the petitioner has exceeded the prescribed seven chances.

17. As regards the plea of the respondents that the Regulation of 2003 along with the modification vide notification dated 4.10.2004 will have the prospective application and cannot cover a student who got admitted in 2002, I am of the considered opinion that such a plea is not at all tenable. A student is to get himself/herself admitted to the next course afresh in all the three years leading to the B.A. Part-I, Part-II and Part-III examinations. It was only after the Regulation of 2003 was adopted, the petitioner got herself admitted to B.A. Part-II in the year 2004. Further, it is also not the case of the respondents in the counter-affidavit that it is the Regulation of 2001, which will govern the case of the petitioner and not the Regulation of 2003. In fact, the respondents never brought to the notice of the Court that in 2003, the Regulation was modified vide the aforesaid notification dated 4.10.2004, which fact has been brought to the notice of the Court by the petitioner himself.

18. For all the aforesaid reasons, the writ petition is allowed with a direction to the respondent authority to declare the Part-III examination result of the petitioner pertaining B.A. Course in which she appeared in 2006. Consequently, the impugned corrigendum vide Annexure-M dated 12.11.2003 issued by the Controller of Examinations of Dibrugarh University is set aside and quashed. The petitioner shall be deemed to have been passed B.A. Part-II examination and accordingly, the results pertaining B.A. Part-III examination, in which she appeared in 2006 shall be declared.