

(2007) 10 BOM CK 0098
In the Bombay High Court
Case No : Writ Petition No. 3542 of 2007

Nandlal Sabe

APPELLANT

Vs

Maharashtra State Examination Council and Another

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Citation : (2008) 2 MhLj 563

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : B.G. Kulkarni, for the Appellant; P.B. Patil and S.W. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—Rule. Rule is made returnable forthwith by consent of the parties.

2. We have heard Advocate Shri B.G. Kulkarni for the petitioner, and Advocate Shri P.B. Patil for respondent and Smt. S.W. Deshpande Advocate for the respondent No. 2.

3. The petitioner had enrolled for D.Ed., "1993 Course" in respondent No. 2's College in March, 2001, as a regular student, and cleared the first year D.Ed. examination held in April-May, 2002 with 64.16% marks. He was eligible for appearing in the second year D.Ed., examination in May, 2003, but could not appear at the said examination, due to his financial difficulties. He could not appear for subsequent examination in October, 2003 and April, 2004 as well, for a variety of reasons.

4. The D.Ed., syllabus was changed in the year 2004. In the new syllabus, there is a condition that the candidate would be allowed to appear for the final D.Ed., examination at maximum three consecutive examinations. According to the petitioner, this condition, however, did not apply to him since he was enrolled under 1993 Syllabus.

5. By a circular dated 16-7-2007, respondent No. 1 directed that November, 2007 would be the last examination for the candidates who had enrolled under D.Ed. 1993 Course. The petitioner approached the respondents No. 1 and 2 for accepting his examination form to enable him to appear at the November, 2007 examination. His request was, however, turned down making him approach this Court by the present writ petition, with a prayer to direct respondent No. 1 to accept his examination form, and to permit him to appear in November, 2007 examination of D.Ed., second year.

6. In the submissions filed on behalf of respondent No. 1 Maharashtra State Examination Council, it is pointed out that since the petitioner had not appeared for B.Ed., second year examination since October, 2003 at about nine intervening occasions, he was not entitled to appear for November, 2007 examination since a candidate could avail only three attempts to appear for the examination. Respondent No. 1, therefore, prayed for dismissal of the petition.

7. We have heard the learned Advocates for the parties and have gone through the relevant circulars issued by the respondents. We are afraid that the interpretation of the respondent No. 1 about three attempts is thoroughly unwarranted. A plain reading of the relevant clauses of various letters and circulars issued by the respondent No. 1 would show that the restriction of three attempts is only for availing of benefit of exemptions in the subject in which a candidate had passed. The letter dated 16-3-2004 issued by the respondent No. 1 contains the clause to the following effect:

"The Syllabus for the new course prescribes that a candidate failing in the first examination for the second year would have a chance to appear only for two subsequent examinations." This obviously pertains to the new Syllabus, and therefore, does not apply to the petitioner's case. In any case it would be necessary to actually see the words of the Syllabus rather than interpretation of those words in the letter dated 16-3-2004.

8. Letter dated 16-7-2007 recites in para 2 that it was decided by the Committee that 1993 Course was closed from November, 2005, and November, 2007 would be the last examination of this Course. Now if the rules were to prescribe that a candidate would be entitled to appear only at three examinations, holding one last examination in November, 2007 for a course which was closed down in November, 2005 makes no sense. Even if it is presumed that a candidate would appear for the first time for the second year examination in November, 2005, his next two attempts would be in May, 2006 and November, 2006. May, 2007 will be the 4th and November, 2007 would be the 5th attempt. Therefore, permitting the candidates to appear in the examination in November, 2007 as a last chance would itself indicate that three attempts' restriction was not to apply to repeaters of 1993 Course.

9. Respondent No. 1 has annexed with their written submissions, the relevant extract of 1993 Syllabus. It contains a clause to the following effect.

If any candidate fails in written examination in some subjects, he would have the concession to appear only in those subjects. Such an opportunity would be restricted to the subsequent two examinations. However, such a candidate would not be entitled to be placed in first or second division. For getting division, he would have to appear in all papers again.

10. It is thus, clear that the restriction for appearing at only two examinations applies only to a candidate who wants to avail the benefits of exemption from appearing in the subjects which he had cleared. Thus, there was no restriction whatsoever about number of attempts at which a candidate who had enrolled under 1993 Syllabus could appear. The clarification dated 2-8-2004 also does not convey any other meaning. In view of this, we see no reason why the petitioner should have been denied opportunity to appear as the last chance for the second year examination under 1993 Syllabus in November, 2007.

11. We, therefore, allow the petition in terms of prayer Clauses 1 and 2. Rule is made absolute in above terms. No order as to costs.