
(1988) 01 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 1257 of 1986

Nazibul Haque Mazorbhuiya

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 19-01-1988

Acts Referred:

Citation : (1988) 1 GLJ 207

Hon'ble Judges : K.N.Saikia, C.J. and J.M.Srivastava, J

Bench : Division Bench

Advocate : M.H.R.Bhuiyan, H.R.A.Choudhary, R.L.Yadav, N.K.Singh, Advocates
appearing for Parties

Judgement

Saikia, C. J.

1. The petitioner, a regular student of the Regional Engineering College, Silchar, after he completed the 6th Semester of the FourYear Bachelor of Engineering Degree Course in Semester System, was provisionally promoted to the 7th Semester wherein he attended 75% of the classes and completed the prescribed course work. When the result of his 6th Semester examination was announced in September, 1986, the result sheet showed a mark indicating his ineligibility to promotion to the next higher semester.

2. The petitioner admits that at that time he was yet to clear one arrear subject pertaining to his 4th Semester, and four arrear subjects in his 6th Semester examinations. Thus he had five arrear subjects of previous semesters when he was attending the 7th Semester ^ classes, which fell in the ?even group? semester (4th and 6th) and there was no arrear subject in the ?odd? group (3rd and 5th). It may be noted that as per the Regulation notified by the Principal the Semester examinations are divided into two groups, namely, odd group (1st, 3rd, 5th and 7th) and even group (2nd, 4th, 6th and 8th) and each group examination is held once in an academic year except the 8th Semester examination, which is held twice in an academic year. The 7th Semester

examination was scheduled to be held from 711987 and last date for filling up the examination form in the College and in the University had been fixed on 12.12.86 and 20.12.86, respectively. The petitioner was not allowed to fill up the examination form on the ground that his marksheet of 6th Semester examination was started. The petitioner submitted a petition to the University to allow him to appear treating him equally with others who were allowed to appear in the Semester examinations, Receiving no reply he filed this writ petition on 13.12.86 but moved it on 18.12.86 whereupon a Notice of Motion was issued returnable by 22.12.86. A notice was also issued to the respondents in the connected Misc. Case No. 133 of 1987 on 6.2.87 returnable by 9.2.88. Meanwhile it was left open for the petitioner to approach the University authorities and pray that he be allowed to appear in the examination by virtue of the Admit Card issued to him, after the Civil Rule was filed. The petitioner appeared at the 4th Semester examination in May, 1987 and 6th Semester examination in July, 1987. The result of the 7th Semester examination was announced on 23.6.87 ; but the petitioner's result was withheld and he was informed on 1.8.87. The petitioner has completed the attendance and course works of the 8th Semester and he intended to appear at the examination, but his application form was not accepted on the ground that the question of his 7th Semester examination was yet to be finally decided by this Court. Meanwhile, the results of the 4th and 6th Semester examinations showed that he cleared all the arrear subjects of his 4th Semester but could not clear two subjects of his 6th Semester. Therefore, for all practical purposes the question to be decided in this petition is whether the petitioner's result of 7th Semester examination, which is being withheld by the University, should be announced,

3. Dr. N. K. Singh, the learned counsel for the petitioner, submits that the University in several cases allowed students with similar arrear subjects to appear and their results were announced. In para 8 of the writ petition it has been stated that Shri Naba Ranjan Poddar (Examination Roll No. Sil. 220, Registration No. 021745/7677) appeared at the 3rd and 5th Semester in 1985 ; he got compartment in 3rd Semester in one subject (MathematicsII) and 5th Semester 3 subjects (P. S., IME, MI), but he was allowed to appear in the 6th Semester and was also allowed to appear in the 7th Semester. Similarly, Shri N. K. Mohanty (Examination Roll No, SiM3, Registration No. 015245 of 8085) appeared at the 4th and 6th Semester examination in the year 1984. He got compartment 4th Semester 2 subjects and 6th Semester 3 subjects, but he was allowed to appear at the 7th Semester in the year 1985. In para 8 of the affidavit in opposition filed by the University it is admitted that the above two candidates were not eligible for appearing in the 6th and 7th Semester examination but through bonafide mistake they were admitted and that subsequently the mistake was detected and that a mistake should not be taken as a precedent.

4. Mr. R.L. Yadav for the University submits that the aforesaid two students were allowed to appear by 'mistake' but he does not know whether there were other

mistakes committed in this regard. Be that as it may, the submission the petitioner being discriminated against, has been substantiated.

5. Dr. Singh next submits that the petitioner having completed the course work of the 7th Semester and having completed the examination there is no law authorising the University to withheld his result Mr. Yadav answers that the University regulation disqualified the petitioner from appearing at the 7th Semester examination he having had five arrear subjects of earlier semesters and he was allowed to appear at the examination only by order of this Court. Now that he has cleared the arrear subjects of the 4th Semester and has only two arrear subjects of 6th Semester he has now become eligible to appear at the 7th Semester examination, which he can do and, therefore, not entitled to the result of the 7th Semester examination.

6. To decide this question the University Regulations may be conveniently referred to. Admittedly the Gauhati University Regulation for FourYear Bachelor of Engineering Degree Course in Semester System, is applicable. Under Regulation 1 the Bachelor of Engineering Course (B.E) shall comprise of four academic years and each academic year shall consist of two semesters. Each semester shall consist of approximately 15 weeks of (teaching and 6 weeks of academic and other formalities at the end, including the semester examination. Regulation 2 deals with eligibility for admission. Regulation 3 deals with subjects and their parts. Regulation 4 provides that semester examinations are divided into two groups, odd (i.e. 1st, 3rd, 5th and 7th) and even (i e. 2nd, 4th, 6th and 8th). Each group of examination will be held once in academic year except the 8th semester examination which will be held twice in an academic year. Regulation 5 deals with eligibility to appear at the semester examination, as follows :

"5. (a) A student is eligible to appear in the Semester examination for which the student studies (hereafter called the current semester) after satisfactorily completing the course work pertaining to all the subjects offered in that semester.

"Satisfactory completion of course work" for the purpose of this regulation means requisite minimum attendance of classes as per Gauhati University norm (75% and above) and obtaining at least the pass marks in the sectionals. At the time of applying for permission to sit in an examination the student must produce a certificate, from the Principal of the College to the effect that the student has satisfactorily completed the course work.

Arrear subject (s)" hereafter would mean a subject (s) in which a candidate fails or subject (s) in which the candidate has not appeared in a lower semester examination (s) but has satisfactorily completed the relevant course work of the semester concerned.

(b) A student having no arrear subject (s) of the same group is eligible for promotion from the current semester to the next higher one on passing all the subjects of the current semester.

(c) A student having no arrear subject (s) of the immediate lower semesters of the same group is eligible for provisional promotion from the current semester to the next higher one on satisfactory completion of the course work relating to the current semester.

(d) A student is eligible for provisional promotion from the current semester if the student keeps in arrear not more than three subject of the current semester and the immediate lower semester of the same group taken together."

Thus clause (a) makes it clear that after satisfactorily completing the course work pertaining to all subjects offered in the current semester a student is eligible to appear in the current semester examination. While applying for permission to appear in an examination he must produce a certificate from the Principal of the College to the effect that he has satisfactorily completed the course work. Under clause (b) a student having no arrear subject of the same group is eligible for promotion from the current semester to the next higher one on passing all the subjects of the current semester. Clauses (b) and (c) are admittedly not applicable to the petitioner's case. Under clause (d) a student is eligible for provisional promotion from the current semester if he keeps in arrear not more than three subjects of the current semester and the immediate lower semester of the same group taken together. The question is whether the petitioner was eligible for provisional promotion from the 6th Semester to the 7th Semester. As he had one subject of the 4th Semester and four subjects of the 6th Semester, both of the even group, he could not be eligible for provisional promotion. However, admittedly the petitioner was not only given provisional promotion but was also allowed to complete the course work of the 7th Semester and this ought not to be wiped out. If the petitioner was not eligible for provisional promotion he ought not to have been promoted. Mr. Yadav explains that the promotion had to be given in the interest of the petitioner himself as the result of the 6th Semester examination was still awaited on the date of promotion. To our mind it was reasonable to have done so. However, having done so and enabling the petitioner to complete the course work and thereby to qualify himself to appear at the examination of the 7th Semester under Regulation 5 (a), it would not be reasonable to put back the petitioner and make him repeat the 7th Semester course work twice over. It was precisely for this reason that this Court directed the petitioner to be allowed to appear at the 7th Semester examination, and his result to abide by the decision in the Civil Rule. Meanwhile, we are told, the petitioner has also completed the work of the 8th Semester. Under the fact and circumstances we do not find sufficient ground for withholding the petitioner's result of his 7th Semester examination in which he appeared by virtue of the Admit Card issued to him. The maxim of *factum valet* would be applicable in this case. That which ought not have been done is valid when already done. Violation of a rule, which regulates mere matters of form and is only directory in its nature and does not go to the essence of a transaction, does not, if the act, has been completed, result in its invalidity. If the act is void in law, there is no room for the application of the maxim: In the

instant case the petitioner having five subjects in arrear ought not to have been provisionally promoted to the 7th Semester. The fact that the petitioner was provisionally promoted shows that the Regulation was directory and not mandatory. That having been done and the petitioner having been allowed to promote his attendance and course work in the 7th Semester, the maxim of ? factum valet? will make it valid. The petitioner having been given the Admit Card and allowed to complete his examination the same would also be equally valid. There is, therefore, no reason for withholding his result. We accordingly direct the respondents to declare the petitioner's withheld result of the 7th Semester examination forthwith.

7. (This petition is accordingly allowed to the above extent. No costs.)