
(2014) 03 GAU CK 0049
In the Gauhati High Court
Case No : WP(C) No. 6069 of 2012

Nishamoni Saikia

APPELLANT

Vs

Gauhati University

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Citation : (2014) 3 GLD 372 : (2014) 2 GLT 438

Hon'ble Judges : Tinlianthang Vaiphei, J

Bench : Single Bench

Advocate : M.A. Sheikh, Mr. N.M. Sarkar and Mr. M. Hussain, Advocate for the Appellant; S. Chakraborty, SC, Gauhati University, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tinlianthang Vaiphei, J.—Before proceeding further, I may straightaway record the undisputed facts on record. The petitioner was admitted to LL.B course for the 2005-06 session at Dispur Law College, Dispur under the University of Gauhati in the year 2005. She appeared in the Preliminary Examination of LL.B. Examination in March, 2007, but could not clear three papers. She was, however, allowed to clear the arrear subjects, which she did and cleared in the month of December, 2007. She was in the meantime allowed to move to LL.B. Intermediate Examination which was held in November, 2007, but she did not pass. She again made another attempt for the Intermediate Examination in November, 2008, which she did not make it as she did not clear 3 papers. She appeared again for clearing the three back papers of the Intermediate Examination in October, 2009 and managed to clear all these papers this time. She then appeared for the LL.B. Final Examination in January, 2009, but could not make it as she got back papers in three papers. She again appeared in the LL.B. Final Examination in December, 2009 to clear the three back papers, but managed to clear only two papers. She accordingly found her name among the list of unsuccessful candidates. She again appeared in the LL.B. Final Examination in the month of December, 2010 to clear the back paper, but did not

pass. She then made another attempt to clear the back paper in the Final Examination held in the month of December, 2011, but again could not make it. Thereafter, she filled up the application form for the Final LL.B. Examination to be held in September, 2012 to clear the back paper, but was not allowed to do so as she was not longer eligible to sit for the ensuing examination on the ground that her last chance for the said examination, as per the LL.B. regulation, had already expired in the last Examination held in the month of December, 2011. Aggrieved by this, she filed a representation to the Controller of Examination on 27.7.2012 for allowing her to sit for the said Examination. The Controller responded to her representation by his letter dated 14.8.2012 reiterating that she was not eligible for the Examination on the ground already stated earlier. The notification dated 13.9.2002 issued by the Gauhati University is in the following terms:

GAUHATI UNIVERSITY NOTIFICATION

Dated the 13th September, 2002

In continuation of circular No. Ex/LL.B./2/2002/7619-dated 6.9.2002 issued from this office, the para? "Further, no special chance for LL.B. Preliminary examination under new syllabus will be given" has been modified and a decision for special chance for the examination under LL.B. regulation has been taken under the following conditions:-

One special chance will be given to the candidates of any of the three LL.B. examination (i.e. Preliminary, Intermediate or Final in which this is required) under new regulation provided that a candidate must complete his/her first due LL.B. Degree within six years from the date of his/her first due LL.B. Preliminary examination. This will also be applicable for the candidates having back.

Sd/-P. Deka, Controller of Examination, Gauhati University.

The aforesaid regulation was once again amended by the subsequent notification dated 27.9.2007 as under:

GAUHATI UNIVERSITY NOTIFICATION

Dated 27th September, 2007

In continuation of circular No. Ex/LL.B./2/2002/8611-24 dt. 1.3.02 clause 15 of LL.B Regulation has been partially modified by the Standing Committee and a decision for special chances for the LL.B. Examination (under Regulation as passed by the Academic council on 9.3.99 has been taken under the following conditions.

One special chance (4th) each will be given to the candidates of any two of the three LL.B. Examinations (i.e. Preliminary, Intermediate or Final in which this is required) under the regulation mentioned above provided that a candidate must complete his/her LL.B. degree within six years from the date of his/her first due examination in LL.B. Preliminary. This will also be applicable for the following candidates having back.

Further individual applications of such candidates must be submitted through the concerned Principals by giving individual undertaking that the candidates shall not ask for any more chances in future.

Sd/- S.P. Deka, Controller of Examination, Gauhati University.

2. Assailing the decision of the respondent-University, the submission of Mr. M.A. Sheikh, the learned counsel for the petitioner, runs along the following line, namely, the respondent-University in terms of the notification issued by it on 13-9-2002 stipulated that a candidate must complete his/her LL.B. degree within six years from the date of his/her due LL.B. Examination. The petitioner took admission for 2005-06 and her first LL.B. Preliminary Examination was due in the year 2006, but the Examination came to be held only in the year 2007 and, as such, her six years would be completed by 2013 and even if the limit of six years is calculated from 2006 also, her six years would be completed by 2012. As her examination was held in 2007, the petitioner cannot be faulted with by the respondent-University. The impugned letter dated 14.8.2012 is, therefore, arbitrary and illegal and is liable to be quashed. The learned counsel further contends that the facts in this writ petition and those in WP(C) No. 5546/2012 and WP(C) No. 5548/2012 are on all fours, and similar reliefs can, therefore, be granted in this writ petition as well.

3. Refuting the contentions of the learned counsel for the petitioner, Mr. N.N. Sarma, the learned standing counsel for the respondent-University, submits that the learned counsel for the petitioner has completely misread the notification dated 27.9.2007 and has in process come to the wrong conclusion that the petitioner has not exhausted her chance to complete the final examination of the LL.B. According to the learned standing counsel, the impugned decision of the respondent-University is completely in accord with the latest amendment of the Regulation: so considered, the petitioner has already exhausted all her chances to appear in the LL.B. Examination. He, therefore, submits that this writ petition is bereft of merit and is, therefore, liable to be dismissed.

4. Under the notification dated 13.9.2002, it is clear that a candidate was granted one special chance (4th chance) to appear in the Preliminary Examination or Intermediate Examination or in the Final Examination in which such examination is required provided that he/she completes his/her first due LL.B. degree within six years from the date of his/her first due LL.B. Examination: this will be applicable for candidates having back papers. The Division Bench of this Court has on an occasion construed the notification dated 13.9.2002 in *Chow Pinkkham Munglang Vs. Gauhati University and Others*, and held as follows:

(10) On close examination of the aforesaid Regulation, we find that under Regulation 15, an LL.B. student must invariably complete his LL.B. examination within five years from the date of his first due LL.B. examination. Thus, under Regulation 15, the writ petitioner was required to complete the LL.B. course by

the year 2004 as his first due preliminary LL.B. examination was scheduled in 1999. But under notification dt. 13.9.02, a further period of one year is contemplated, making total of six years in all, to complete the LL.B. course. Again with reference to the first due date of LL.B. preliminary examination which for the petitioner was due in the year 1999, the writ petitioner could complete his LL.B. course by the year 2005, taking the outer limit of maximum six years provided by notification dt. 13.9.02. As the petitioner can avail only of three chances for clearing either part of the three LL.B. examinations and the writ petitioner had availed of only two chances to clear the LL.B. Final examination, the writ petitioner had available with him, the third and final chances to complete the LL.B. course and the said chance was denied to him for the Final examination due in December, 2005 by the impugned decision challenged in the writ petition.

5. That is the construction placed by this Court with respect to the notification dated 13.9.2002. However, the aforesaid notification has been amended by the notification dated 27.9.2007. In terms of this new amendment, one special chance i.e. the 4th chance, is given to any candidates of any two of the three LL.B. Examinations i.e. Preliminary, Intermediate and Final in which this is required subject to the condition that the candidate must complete his LL.B. degree within six years from the date of his first examination due in the Preliminary course of the LL.B. In my judgment, what the amendment says is that the special chance i.e. the 4th chance is available to the candidate in any two, and not all, of the three examinations. For example, the 4th chance will be available in the Preliminary LL.B. examination as well as in the Intermediate Examination or in the Intermediate and the Final Examination or in the Preliminary LL.B. Examination and in the Final Examination and not in all the three Examinations, namely, Preliminary Examination the crucial words are any two of the three LL.B. Examinations (i.e. Preliminary, Intermediate or Final in which this is required). Even then also, the candidate, in order to avail of these chances, must complete her final Examination within six years from the date of her first Examination due in the Preliminary Examination of the LL.B. course. Thus, the outer limit is 6 years from date of her first Examination due in the LL.B. Preliminary within which she must avail of one special (4th) chance.

6. In the instance case, the admitted position of the parties is that the petitioner first appeared in the LL.B. Preliminary Examination in the year 2007, though admittedly such Examination was due in 2006, but she did not make it and accordingly had three back papers. She cleared all these three back papers in December, 2007. For the LL.B. Intermediate Examination held in November, 2007, she had appeared but then she failed to pass the Examination. She again appeared in the LL.B. Intermediate Examination in the month of November, 2008, but she did not pass and had three back papers. She again took part in the LL.B. Intermediate Examination held in October/November, 2009, and managed to clear all the back papers, and was declared successful in the said examination. She appeared for the Final examination of the LL.B. course in January, 2009, but she did not pass and got three back papers. In the month of December, 2009,

she sat for the Final examination to clear the three back papers, but managed to clear two of the three back papers she had. Naturally, she was declared unsuccessful. She again appeared in the Final examination held in December, 2010 to clear the only back paper left, but she did not make it again. Another attempt was made by her in Final examination held in December, 2011 to clear the back paper (Civil Procedure Code, 1908 and Limitation Act, 1963), but she was unsuccessful again. She again made another attempt to appear in the Final examination being held in the month of September, 2012 to clear the back paper. She was informed, as already noted, that she was ineligible for the ensuing LL.B. Examination on the ground that she had already exhausted all the chances available to her.

7. From the above admitted facts, it is seen that the petitioner made two attempts in the Preliminary examination of LL.B. course in the year 2007; she made three attempts in the Intermediate examination from 2007 to 2009 to clear all the papers. She also made three attempts to clear the Final examination of LL.B. from 2008 to 2012, but she has not been successful till now. She was, therefore, found to have been ineligible for the Final Examination to be held in the month of December, 2012. In my opinion, on the facts found, the petitioner has already exhausted her special (4th chance) by the year 2011 and has been rightly held by the University to be ineligible for the Final Examination of the LLB. to be held in December, 2012. No interference is, therefore, called for in the impugned action of the University-respondents. For what has been said in the foregoing, there is no merit in this writ petition, which is, accordingly, dismissed. There shall, however, be no order as to costs.