
(2012) 02 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition C No. 3850 of 2010

Rahul Sahu and Others

APPELLANT

Vs

Pt. Ravishankar University and Others

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Citation : (2012) 02 CHH CK 0015

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K Agnihotri, J.—By this petition, the petitioners seek a direction to the respondents to allow them to appear in both the examinations of the third year and the fourth year together, which was scheduled in September, 2010; and compensate the petitioners adequately.

2. The facts, in brief, as projected by the petitioners, are that the petitioners were the students of the second academic year, prosecuting Four Year Bachelors Degree in Dental Surgery in Maitry College of Dentistry and Research Centre, G.E. Road, Anjora, Durg. According to the petitioners, the petitioners were not allowed to appear in the third year examination, which was held from 26 March, 2010 to 05 April, 2010.

3. The respondent-University, by order dated 22.09.2009 (Annexure P/1) granted special permission for the batch of the third year and the fourth year examinees of 2005-2006 to appear in the main examination held in September, 2009. In the said order, it was made clear that this facility would not be applicable for the batch of 2007 and afterwards. Accordingly, the petitioners made a representation to the Dental Council of India, on 26.03.2010 (Annexure P/2) stating that they have completed 240 days teaching in academic session 2008-2009 in the third year, thus, they may be permitted to appear in the examination held in March, 2010. Similarly placed students of other Dental Colleges affiliated with the

respondents have been permitted to appear in the third year examination held from 26.03.2010 to 05.04.2010. Therefore, the petitioners be permitted to appear in the third year as well as the fourth year examinations together scheduled in September, 2010.

4. Shri Tamaskar, learned counsel appearing for the petitioner, would submit that on account of illegal decision taken by the authorities, the petitioners have lost their one year, therefore, they may be compensated accordingly and the petitioners be treated with similarly situated students and they may be permitted to appear in both the examinations of the third year and the fourth year scheduled in September, 2010.

5. On the other hand, Shri Choubey & Shri Patankar, learned counsel appearing for the respondents No.1 & 2, respectively, would submit that the petitioners were not eligible to appear in fourth year examination held in September, 2010 unless they have cleared their third year examination in all the subjects and have completed minimum 240 days of teaching period for the fourth year academic session.

6. Shri Choubey & Shri Patankar, would further submit that the petitioners appeared in first year examination held in September, 2007. Out of seven petitioners, only two petitioners passed the examination and remaining five petitioners failed. They appeared in supplementary examination in March, 2008 and passed. Thereafter, the petitioners appeared in September, 2008 annual examinations for the second year, but all the seven petitioners failed. Six petitioners failed in three subjects and one petitioner namely; Sandeep Porte failed in two subjects. They were allowed to appear in supplementary examination held in March, 2009, though, they could not succeed in the said examination. Afterwards, in September, 2009, the petitioners had passed second year examination except one petitioner namely Virat Patel who failed in one subject in the examination held in September, 2009. As per the scheme of BDS course, the candidate is required to attend minimum 240 days teaching in the academic session. Since the petitioners have not completed the required period of 240 days, they were not permitted to appear in the examinations held in March, 2010.

7. Learned counsel would next submit that since the petitioners have failed in more than one subject in second year BDS course, they were not eligible for ATKT (Allowed To Keep Terms) benefits and were not allowed to appear in the third year examination before clearing second year BDS course. The circular dated 31.12.2008 of the Dental Council of India provides that the regulation must be followed strictly and for examination, it was directed that any candidate who fails in one subject in an examination is permitted to go to the next higher class and appear for the subject and complete it successfully before he is permitted for the next higher examination.

8. Learned counsel would lastly submit that the respondent college had informed

to the University that the petitioners were not eligible to appear in the examination held in March, 2010, as they could not complete 240 days attendance as required for appearance in the examination and they will only be eligible during the examinations held in September, 2010. The petitioners have already appeared in third year examination and the result of the same shall be declared, however, the petitioner may be permitted in the fourth year examination after they complete the required attendance of 240 days in the fourth academic year.

9. Ms. Fouzia Mirza, learned counsel appearing for the respondent No. 3 would submit that the scheme of the examination envisages that in case the petitioners have failed in one subject, they can be promoted to the next higher class and appears for the subject in which they have failed and complete it successfully before they are allowed to appear for further next higher examination. However, in case the petitioners have failed to more than one subject, they cannot be promoted to the next higher class.

10. Shri Tamaskar, in rejoinder, would submit that the petitioners had made allegations of forgery in the documents and further submitted that since the same were not denied by the respondents by filing additional affidavits, the averments made in the petition be accepted as truth. The petitioners have also filed several affidavits stating that the petitioners were attending regularly third year class throughout the year and they were not allowed to appear in the examination held on 26.03.2010.

11. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

12. The contention of Shri Tamaskar, learned counsel appearing for the petitioners, that the affidavits are forged, as averred in the rejoinder needs denial and in absence of the same, the allegation has to be accepted, does not merit acceptance. The allegations are not based on any substantive documents or evidence except mere averment in the rejoinder affidavit. Thus, it is difficult to reach to a conclusion that the documents, as pleaded by the petitioners, are forged.

13. So far as holding of examination in September, 2010 for the third year as well as the fourth year together is concerned, the same cannot be permitted, as it is found that the petitioners have not completed 240 days of minimum teaching in the fourth year academic course and thus, the petitioners do not have any legal right to appear in the fourth year examination without having attended the mandatory classes, as required under the Regulations for the Degree of Bachelor of Dental Surgery (Annexure R-2/1). The scheme of examination of the said regulations reads as under:

SCHEME OF EXAMINATION:

The scheme of examination for B.D.S. Course shall be divided into 1st B.D.S.

examination at the end of the first academic year, 2nd B.D.S. examination at the end of second year, 3rd B.D.S. examination at the end of third, 4th B.D.S. at the end of 4th and final B.D.S. at the end of 5th year. 240 days minimum teaching in each academic year is mandatory. The examination shall be open to a candidate who satisfies the requirements of attendance, progress and other rules laid down by the University.

(1). Universities shall organize admission timings and the admission process in such a way that teaching starts from the 1st day of August in each academic year.

14. With regard to grant of permission to appear in the higher examination, the circular dated 31.12.2008 (Annexure - R-2/2) issued by the Dental Council of India provides as under:

Any candidate who fails in one subject in an examination is permitted to go to the next higher class and appear for the subject and complete it successfully before he is permitted for the next higher examination.

(underline portion is for emphasis)

15. In view of the above, it is not in dispute that the requirement of 240 days minimum teaching in each academic year is mandatory, and the petitioners have not done. The petitioners have filed some affidavits of fellow students and according to them the petitioners have attended the third year classes regularly. There is no mention of attendance with regard to the fourth year classes.

16. So far as third year examination is concerned, the petitioners have already appeared and the result, if not declared, the same shall be declared. However, in respect of direction to the authorities to permit the petitioners to appear simultaneously in the fourth year examination cannot be granted, as it is not established by the petitioners that they have attended 240 days minimum teaching in the fourth academic year. The petitioners may not be entitled to compensation for the loss of year, as the same was on account of their own failings.

17. For the reasons mentioned hereinabove, there is no merit in this petition. Even otherwise, the prayer for permitting the petitioners to appear in the examinations held in September, 2010 has also become infructuous, as the examinations have already been over.

18. As an upshot, the writ petition fails and is hereby dismissed, leaving the parties to bear their own costs.