

(1994) 12 GAU CK 0014

In the Gauhati High Court

Case No : Civil Rule No. 3348, 424 and 3095 of 1993

Rajesh Sundaram : Pubali Bordoloi : Ganesh Chandra Mandal	APPELLANT
Vs	
Dibrugarh University and Ors.	RESPONDENT

Date of Decision : 22-12-1994

Acts Referred:

Citation : (1995) 1 GLJ 251 : (1995) 1 GLT 259

Hon'ble Judges : D.N.Baruah, J and B.N.Singh Neelam, J

Bench : Division Bench

Advocate : R.L.Das, N.C.Phukan, G.Uzir, G.N.Sahewalla, G.Gopal, B.Buragohain, A.K.Goswami, Advocates appearing for Parties

Judgement

DN Baruah, J.—All above three Civil Rules involve common questions of law and similar facts and, therefore, we propose to dispose of all the Civil Rules by a common judgment.

2. Writ petitioner in Civil Rule No. 3348 of 1993 was a student of DHSK Commerce College, under first respondent and completed three years Degree Course in Commerce Group leading to B. Com. Degree. He appeared in Part I of B. Com. examination on 25.5.90 conducted by the first respondent. The petitioner could not clear all the subjects and failed in 3 subjects, namely, Principles of Economics, Business Mathematics and Statistics and in Business Organisation and Management. In June, 1991 he appeared in the arrear subjects mentioned above. However, this time also he could clear only two subjects but failed in Business Mathematics and Statistics. In 1992 he appeared in Business Mathematics and Statistics subject. He appeared in B. Com. Part II examination which commenced from 24.7.92. The petitioner, however, could not pass the arrear subjects of B. Com. Part I and as such, the respondents withheld the result of the Part II examination. In 1993 he was allowed to sit in the B. Com. Part I examination to clear the arrear subjects. The said examination commenced on 5.5.93 and the petitioner appeared in the said arrear subject. Thereafter, on 27.9.93 the respondent issued mark sheet which showed that the petitioner had

passed the arrear subjects i.e. Business Mathematics and Statistics of B. Com. Part I. But a cross mark had been put in the result column of the B. Com. Part I mark sheet. Situated thus, the petitioner brought the matter to the notice of the Principal, DHSK Commerce College, Dibrugarh and also to the respondents and submitted a representation requesting the authorities to announce the result of the Part II examination. Petitioner also wanted to know why he was not declared as "Pass" as he had already passed the Part I examination as mentioned earlier. The respondents did not do anything. Hence the writ petition.

3. The case of the petitioner Pubali Bordoloi in Civil Rule No.424 of 1993 is that she was a student under the respondent No. 1. She studied B.A. 3 years" Degree Course. She first took honours and appeared in Part I examination in the year 1989, but as she could not clear the honours papers, she gave up honours and subsequently she appeared in Pass Course examination conducted by the respondent No. 1 in 1990 and she cleared all the papers except Alternative English and in that respect mark sheet was also issued by the University. Thereafter, the petitioner again appeared in the subject (Alternative English) in 1991. She could not clear the same. The petitioner also appeared in the subsequent year i.e. 1992 and cleared the same and in this respect a mark sheet was also issued by the Dibrugarh University respondent No. 1. Thereafter, the petitioner approached the respondent for declaration of the result of the petitioner in respect of Part I BA examination inasmuch as she cleared all the subjects. But the respondents refused to issue such consolidated mark sheet or pass certificate.

As the petitioner cleared all the subjects inasmuch as she cleared the remaining subjects in the year 1990 and cleared Alternative English in 1992, she was entitled to get the result of Part I examination, but the respondents arbitrarily refused to give the results. In the meantime, she appeared in the examination of Part II also. According to this petitioner she duly appeared in the examination conducted by the University for which Admit Cards were issued and after appearance mark sheets were also issued by the respondents. But the respondents refused to issue a consolidated mark sheet showing the result of the petitioner which according to the petitioner is absolutely arbitrary, illegal and unjust. Hence the present petition.

4. Petitioner in Civil Rule No.3095 of 1993 also was a student of 3 years Degree Course in Arts Group and he was studying in Dhemaji College, Dhemaji under respondent No. 1. Petitioner appeared in BA Part I examination of 3 years" Degree Course in the year 1990. However, he failed to clear the subjects of Political Science and Economics. In the next year ie 1991 the petitioner could not appear in the arrear two subjects. However, he appeared in BA Part II examination in that year. But petitioner could not clear the two subjects, namely, Political Science and Economics of Part I examination. Result of the Part II examination was withheld. Petitioner later on in the year 1992 appeared in the examination and cleared the two subjects, namely Political Science and

Economics of Part I. Petitioner intimated the matter to the Principal, Dhemaji College and the Principal advised him to approach the respondent Nos. 1 and 2. Accordingly, he went to the respondent No. 1 from Dhemaji and made several requests to the respondent No. 1, but failed to get any response from them. Thus he did not get any reply from the respondents regarding withholding of his result of Part II examination and the cross mark shown in the result column of Part I mark sheet. Ultimately, the petitioner submitted a representation dated 26.7.94 before the Registrar, Dibrugarh University respondent No.1 praying for a clarification in this respect. But the petitioner is yet to get a reply from the Registrar, Dibrugarh University. Hence the present petition.

5. Respondents have filed affidavit in opposition in each case. In Civil Rule No. 3348 of 1993, respondents have stated, inter alia, that the results could not be announced due to the noncompliance of clause 11 of the B. Com. (Three Year Degree Course) Regulation, 1988 (for short, the Regulation) and, therefore, the respondents rightly refused to declare the petitioner's result. According to the respondents as per clause 11 of the Regulation, a student who has failed in not more than two subjects in B. Com. Part II examination provided he has completed the prescribed course of study in the third year as indicated in clause 9 (b) of the Regulation. Such a student is required to appear in B. Com. Part II examination simultaneously with the arrear subjects of B.Com. Part I examination. His results in B. Com. Part II shall be kept withheld till he passes arrear subjects in Part I examination as provided under clause 9 (b) of the Regulation. Therefore, the respondents have rightly withheld the results of Part II examination of the petitioner as the petitioner himself has stated in the petition that he appeared in B. Com Part II examination in 1992 and also appeared in Part I examination in 1992 to clear his arrear subjects, but he could not pass in the arrear subjects. According to these respondents the petitioner failed to clear the Part I examination in his third appearance in 1992 and he therefore, forfeited his chances of passing the Part I examination of 1988-89. The only course left to him was to attend the regular course of study for another year and thereafter appear in all subjects in Part I examination. The respondents have stated that as per clause 11 of the Regulation if a candidate fails to pass in the arrear subjects of Part I within the period mentioned in clause 9 (b) of the Regulation, his admission to the Part I as well as Part II examination shall automatically be cancelled.

6. In Civil Rule No. 424 of 1993 also the respondents filed similar affidavit in opposition. In the said affidavit in opposition the respondents have stated that due to noncompliance of clause 10 of the Regulation and clause 6 (a), (b) of the Examination Ordinance, 1972 (for short, Ordinance), the respondents have rightly refused to declare the petitioner's results and to issue any consolidated mark sheet or pass certificate.

7. As per clause 10 of the Regulations and clause 6 (a) and (b) of the Ordinance, a student of the 2+1 system under the Dibrugarh University, on failing in the

Part I examination, shall have to pass the subjects in which he or she failed, by appearing as a noncollegiate student in any of the two examinations following the examination held immediately after the completion of the course, failing which he or she shall be required to attend a regular course of study in second year for an academic year and, thereafter appear afresh in all the subjects of Part I examination. In this case, according to the respondents, the petitioner appeared in BA Part I examination with major in Education in 1989 under Roll No. 2330, but failed. Thereafter appeared in 1991. She again appeared in 1992 and for the third time she appeared in Part I examination. This time she appeared only in the failed subject, namely, Alternative English, but once again failed. So, as per the said provisions of the Regulations and the Ordinance, the petitioner should appear afresh in all the subjects in Part I examination by attending a regular course of study for an academic year, but instead in 1992, the petitioner without attending a regular course, appeared in only the previously failed subject, namely, Alternative English. As this was not in conformity with the said Regulation and Ordinance which guide the University, the respondents rightly withheld the results of the petitioner.

8. In Civil Rule No. 3095 of 1993 also the respondents have reiterated the same stand and have stated that the petitioner appeared in the examination in 1989, thereafter in 1990, 1991 and 1992. These were his 2nd, 3rd and 4th chances and he could pass only in 1992. As per clause 10 of the Regulations as well as clause 6 (a) and (b) of the Ordinance, the petitioner must pass within the 3rd chance. As he failed to pass within the 3rd chance he cannot appear for the 4th chance. He was not entitled to sit in the examination and because of this his results were also withheld.

9. Heard both sides.

10. The only question that falls for determination is that when the petitioners failed to clear the subjects within 3rd chance whether they would be entitled to sit for the 4th chance in their respective arrear subjects.

11. Learned counsel for the respondents has drawn our attention to clause 9 (b) and clause 10 of the Regulations. Clause 9 (b) and clause 10 of the Regulations provides as follows :

"9. (b) Provided that a student who fails in not more than two subjects in the B. Com. Part I Examination may also be allowed to proceed to the B. Com. Third Year. But such a candidate must pass in the arrear subject (s) in any of the two examinations following the first examination held immediately after the completion of the course, failing which he shall be required to appear afresh in all the subjects of B. Com. Part I examination.

10. A student who fails in the Part I Examination, shall have to pass in the subjects in which he/she failed appearing as a Noncollegiate student in any of the two examinations following the examination held immediately after completion of the course, failing which he/she shall be required to attend a

regular course of study in the Second Year for an academic year and thereafter appear afresh in all the subjects of the Part I at any of the next two examinations."

The Regulations and the Ordinance are very clear. As per the provisions of the Regulations as well as the Ordinance, a student of 2+1 system under Dibrugarh University, on failing in Part I examination shall have to pass the subjects in which he or she fails by appearing as a noncollegiate student in any of the two examinations following the examination held immediately after completion of the course, failing which he/she shall be required to attend a regular course of study in the 2nd year for an academic year and thereafter appear afresh in all the subjects of Part I examination at any of the next two examinations. Under clause 10 of the Regulations a student is to appear in all the subjects by attending a regular course of study in the Second Year for an academic year. But in the present cases, the petitioners could not clear the subjects in two next successive examinations after the first examination where he should have appeared. Therefore, under the Regulations the petitioners are not entitled to appear after two next examinations. Learned counsel for the petitioners have urged before us that once University having accepted the application for sitting in examination of the arrear subjects and having issued Admit Cards and allowing them to appear in the examination their examinations cannot be withheld. The respondents are estopped from doing so. In this connection learned counsel for the petitioners have drawn our attention to the decision of the Apex Court in *Sanatan Gauda vs. Berhampur University & others*, reported in AIR 1990 SC 1075. The Apex Court in the said decision observed thus :

"7. What is further, Regulation 10 in Chapter V of the Regulations which prescribes marks for passing MA, M. Com and M.Sc. examinations states that the minimum marks required for a student to pass the said examinations is 36 percent in the aggregate of all the theory papers taken together in case of MA and M. Com. examinations, and in the case of M. Sc. examination, 36 percent in the aggregate of the theory papers taken together and 40 percent in the aggregate of all the practical papers taken together. I am not concerned here with the marks of M. Sc examination. The proviso to the said Regulation 10, further states that no minimum pass marks shall be required in any paper. But if in any paper a candidate obtains less than 25 percent of marks, those marks shall not be included in the aggregate. In other words, in the case of the appellant, who has obtained 364 marks out of 900 on the aggregate, his 13 marks in one of the papers being less than 25 percent have to be excluded. His aggregate marks, therefore, come to 351 out of 900 marks according to this Regulation. They are admittedly more than 36 percent as required by the said Regulation for passing the M.A. examination. I may reproduce the said Regulation here:

10. The minimum marks that a candidate shall obtain to have passed shall be thirty six percent in the aggregate of all the theory papers taken together in the case of M. A. /M. Com. and in the case of M. Sc. thirty percent in the aggregate

of all the theory papers taken together and forty percent in the aggregate of all the practical papers taken together.

Provided further that no minimum pass marks shall be required in any paper but if in any paper a candidate obtains less than twenty five percent of marks then these shall not be included in the aggregate."

The Apex Court further observed that for admission to the law course there is no requirement of any particular marks for postgraduate students like that of the appellant and the appellant was entitled to be admitted under Regulation 1.

In view of the above, our opinion the facts of the present cases are widely different from the facts which were dealt with by the Apex Court in the aforesaid decision.

12. It is well settled that there cannot be any estoppel against a statute. The requirements of Regulations being that a candidate who fails in not more than two subjects may appear in the subsequent examinations to clear up the arrear subjects only in the next two chances and the petitioners having failed to clear up those subjects within that period the petitioners are not entitled to appear in the subsequent examination after the two examinations immediately following the first examinations they appeared. Therefore, we are of opinion that there was no infirmity in the action of the respondents.

13. In view of the above, the writ petitions fail. Accordingly, they are dismissed. In the facts and circumstances of the case we make no orders as to costs.