

(2004) 03 AHC CK 0192

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10344 of 2001

Ram Bahadur

APPELLANT

Vs

Vice Chancellor, Allahabad University and Others

RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Citation : (2004) 5 AWC 4287 : (2004) 2 UPLBEC 1755

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Mohd. Khalil and Party in Person, for the Appellant; R.G. Tripathi, A.B.L. Gaur and P.S. Baghel and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

2. The petitioner alleges to have appeared in B.A. Part I Correspondence Course Examination for the year 1998. He failed in the subject of Medieval History. However, he was permitted to appear in back paper examination of B.A. Part I and was admitted in B.A. Part II Course. He qualified his B.A. Part II Examination in 1999. The result of the back paper examination was declared in February, 2000 in which the petitioner failed. Learned Counsel for the respondents has urged that as per the rules of the University only one chance is given to a student to appear in back paper examination. This rule appears to be arbitrary. Once the University permits a student to appear in B.A. Part I back paper examination and admits the student in B.A. Part II Course who appears in B.A. Part II examination and is declared successful but fails in back paper examination of B.A. Part I, it results in loss of minimum two to three years of the student and he/she is required to study again in B.A. Part I and thereafter in B.A. Part II. The rule permitting a student to appear only once in back paper examination appears to be harsh and arbitrary. The Petitioner has urged that in the State of Maharashtra five chances are given to a student by the Pune University for clearing the back paper. He further urged that the students of Allahabad

University be also allowed five chances to clear their back papers and prayed for two weeks" time to file amendment application challenging the rule of the University. He is allowed two weeks" time to file amendment application.

3. It will be reasonable that the University should permit the students to appear in back paper examination and more than one chance be allowed to them to clear their back paper. If only one chance is permitted to them and their result of B.A. Part II stands cancelled then they will again have to sit in B.A. Part I examination. This results in loss of two or three years of a student. The University can withhold the degree and insist that till the student clears his/her back paper he/she would not be awarded the degree unless he/she clears the back paper.

4. At the time of admission this Court directed the respondent-University to permit the petitioner to appear in B.A. Part III Correspondence Course Examination scheduled to commence from 23.3.2001 provisionally. The respondent No. 3 was directed to get the admission form of the petitioner of B.A. Part III correspondence Course filled and issue admit card to him on or before 22.3.2001 permitting him to appear in B.A. Part III Correspondence Course Examination and any shortage in his attendance shall stand condoned. It was further directed to permit the petitioner provisionally to appear in the forthcoming examination of back paper of Medieval History of B.A. Part III Correspondence Course.

5. The petitioner appeared in person and submitted that he had passed in Medieval History of B.A. Part I examination and the University has deliberately misplaced his answer book.

6. This Court directed the University to produce the answer book of Medieval History of the petitioner of the B.A. Part I Examination for the year 1998. In the modification application filed on behalf of the respondent-University it has been stated that the answer book is not traceable as on account of paucity of space the University does not keep the answer books of an examination for more than two years. The concerned official of the respondent-University is stated to have informed the University authorities that it is impossible to trace out the answer book from the godown and in this view of the matter the University offers sincere apology for having not been able to produce the answer book before this Court. It is stated that there are about six lac answer books of all examinations in a year.

7. The respondent-University contends that the petitioner Ram Bahadur was a student of B.A. Part I and appeared in the examination of B.A. Part I in 1998. He failed in Medieval History and was eligible for second examination of B.A. Part I. In the mean-time as per practice of the University he was allowed to pursue his study in B.A. Part II since the result of second examination of B.A. Part I was not declared by that time. He appeared in second examination and got 25 and 16 marks in First Paper and Second Paper respectively in Medieval History and thus

he failed again in B.A. Part I second examination. He passed B.A. Part II Examination in 1999 provisionally and on the basis of B.A. Part II provisional marks sheet he took admission in B.A. Part III in 2001, which is not permitted under the ordinance and appeared in the examination by provisional roll number PBA 3C/159. The result is still pending since he appeared in Part III Examination without clearing B.A. Part I. The petitioner once again appeared in B.A. Part I Second Examination, 2001 in second paper only of Medieval History. His examination form and permission to appear in B.A. Part I Second Examination, 2001 in Medieval History Second Paper have not been received from the Director of the Correspondence Course. There is no provision to appear twice in the second examination in the University in a particular class when the candidate was already declared failed in the second examination of B.A. Part I in 1998 when he appeared first time in Medieval History Paper I and Paper II.

8. In view of the fact that the University has accepted that the said answer book of the petitioner is not traceable and it cannot be produced before the Court, adverse inference has to be drawn and the contention of the petitioner, who appears in person, that the University is deliberately not producing his answer book of IInd paper of Medieval History of B.A. Part I to establish that he has failed while in fact he has passed the same, has force.

9. For these reasons the writ petition is allowed. The University is directed to give average marks to the petitioner in IInd Paper of Medieval History of B.A. Part I and declare his result.