
(2003) 02 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5512 of 2002

Ram Ratan Nagar

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Rajasthan University Ordinances, 2009 — Ordinance 278H(6)

Citation : (2003) 2 RLW 846 : (2003) 2 WLC 434

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Aradhana Sharma, for the Appellant; I.R. Saini and Dalip Singh, for the Respondent

Judgement

Misra, J.—All the petitioners in this batch of writ petitions had been admitted into the Course of Diploma in Pharmacy Part-I for the session 1 999-2000. The examinations of all the papers for Part-I Diploma in Pharmacy was scheduled to be held in the year 2000, but due to late session prevailing in the University, the examination for Part-I Course was held in August 2001 and the results for this examination were declared in November 2001. The petitioners admittedly were declared unsuccessful in this examination as they had failed to clear more than two papers in Part-I examination. The University of Rajasthan in view of Ordinance 278-H (VI)(d) does not permit admission to students in Part-II of the Diploma Pharmacy Course as it envisages that only those candidates who had cleared all the subjects and passed the Diploma in Pharmacy Part-I Course, are entitled to be admitted in Part-II. It further lays down that failure in more than two subjects (each Theory paper or Practical examination in Part I) shall not make the candidate eligible for admission in Part-II class as only those candidate who have failed in less than two subjects are eligible to be promoted to Part-II. Since the petitioners admittedly had failed in more than two papers/subjects in Part-I examination, they could not have been legally admitted in Part-II Course.

2. Strangely enough, the College authorities inspite of the Ordinance had

permitted the petitioners to continue with the classes of Part-11 Diploma in Pharmacy Course although they had not cleared all the papers of Part-I Course, but the University refused to endorse this action of the College authorities and also denied permission to the petitioners to appear in the examination for Part-11 of the Pharmacy Course in view of the bar imposed by the provision in the Ordinance.

3. The petitioners at this stage therefore thought it proper to file these writ petitions challenging the restraint imposed on them to appear in Part-II examination. An interim order was passed by a Bench of this Court in favour of the petitioners permitting them to appear in Part-II examination of Diploma in Pharmacy Course, which was *ex parte* in nature. It is on account of this interim order that all the petitioners appeared in Part-II examination of Diploma in Pharmacy Course and in the meantime the petitioners had also cleared the un-cleared papers of Part-I for which they had taken the supplementary examination. The results of the petitioners for Part-II examination however has not been declared as yet since this Court had not permitted the declaration of result without hearing the counsel for the respondent University.

4. The respondents' advocate has appeared after service of notice on them through Shri Dalip Singh who contended on behalf of the University of Rajasthan that in view of Ordinance 278- H(VI)(d), the petitioners could not have been permitted by the College authorities to attend the classes of Part-II of the examination of Diploma in Pharmacy Course since they had not cleared all the papers of Part-I of the said course by that time. Nevertheless the fact remains, that the petitioners were permitted by virtue of an interim order passed by a Bench of this Court to appear in Part-II examination also and the University did not take any steps to get that order vacated by filing a proper application for this purpose with the consequence that the petitioners appeared in all the papers of Part-II examination of the Course although they were not eligible to do so. This gave rise to an anomalous situation as the petitioners have now cleared all the papers of Part-I of Diploma in Pharmacy Course examination and have also appeared in all the paper of Diploma in Pharmacy Course Part-II and yet their results are held-up on the ground that they were wrongly permitted to appear in Part-II examination. Learned counsel for the University also realised this situation and hence he submitted that although the University would not have any objection in declaring the results of the petitioners, yet they cannot be treated as students for the session 2000-2001 of the Diploma in Pharmacy Course, but they will have to be treated as the students for the session 2001-2002 since they were eligible to be admitted into Part-II examination of Diploma in Pharmacy Course in the year 2002 only after they had cleared all the papers of Part-I Course. It was further explained that in case it is not done, the Ordinance of the University will have the effect of becoming redundant and in-applicable in case of the petitioners which would be setting up a wrong precedent. This argument in my opinion has substantial force for the petitioners admittedly were eligible for attending the Part-II Course only after clearing all

the papers of Part-I Course and merely because their results for supplementary examination was published late, they could raise the plea that the Ordinance of the University could be given a go-bye so that they could be permitted to appear in Part-II examination although they had not cleared more than two papers of Part-I Course.

5. It is obvious that the College authorities without seeking the permission of the University in this regard could not have permitted the petitioners to attend the classes of Part-II examination as admittedly they were not eligible to do so at the relevant time. What weighed with the College authorities and what promoted the College authorities to permit the petitioners to continue with the Part-II Course even though they were in eligible to do so as per the Ordinance is difficult to understand. Therefore, it will have to be inferred that this was clearly an illegal action on the part of the College Authorities as the petitioners should not have been allowed to attend the classes before clearing the due papers. However, since the petitioners were able to obtain an ex parte order for taking the examination of Part-II Course also, although they were in- eligible to do so, the same is not fit to be disturbed in the interest of justice and hence it is ordered that the results of these petitioners for all the papers of Part-II of Pharmacy Course be declared expeditiously. However, after declaration of their results, they will have to be treated as students for the session 2001-2002, the results of which is due for declaration in 2003 for the other regular students and the results of the petitioners (who belong to previous batch) shall be declared now in february 2003.

6. It is expected of the University to declare the results of the petitioners expeditiously, but not later than a period of one week.

7. All these writ petitions in terms of the aforesaid direction, be treated as disposed of.