
(2012) 03 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2455 of 2012

Ravi Kant Goswami

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2012) 6 ADJ 26

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : S.K. Mishra and Nikhil Agrawal, for the Appellant; Neeraj Tiwari and Sujeet Kumar, C.S.C., for the Respondent

Judgement

Hon''ble V.K. Shukla, J.—Petitioner has rushed to this Court with request to issue writ of mandamus commanding respondent Nos. 2 and 4 to declare the results of the petitioner of Specially Carryover Examination for 5th and 6th semester examinations. Further prayer has been made for commanding the respondents to admit the petitioner in B. Tech 4th year degree course for the session 2011-12. Brief back-ground of the case is that the petitioner was admitted to B. Tech. Course with Civil Engineering branch in the academic session 2006-07 in Hindustan College of Science & Technology, Mathura affiliated to Gautam Budh Technical University, Lucknow. The petitioner passed the 1st year B. Tech. Degree Course- 2006-07. Thereafter, petitioner was admitted to 2nd year for the session 2007-08. The petitioner finally could not clear the four papers of 3rd semester as also the two papers of 4th semester for the session 2007-2008 2nd year degree. After re-admission in 2008-09 session, petitioner appeared as regular student and continued his studies and wrote the examination for 3rd and 4th semesters course were taken into consideration, the petitioner was given promotion and was admitted as regular student for session 2009-2010 in 3rd year B. Tech course. The petitioner failed to clear 3rd year examination as his aggregate marks were less than 1000 when both 5th and 6th semesters marks were taken into consideration. The petitioner was again readmitted in the session 2010-2011

as ex student of 3rd year and was entitled for his studies as per old syllabus. In the meantime a special scheme was formulated by the University for conduct of examinations of carryover students, who were admitted for session 2004-05 to 2007-08 in B. Tech. and B. Pharma Courses. Said carryover examination was to be conducted in the month of September/ October, 2011 at examination centres situated in Lucknow. The petitioner applied under the said scheme, his application was duly considered and he was issued admit card for the subjects TAS 301, TCE 301, TCE 303, TCE 501, TCE 502, TCE 503, TCE 605 and TME 303. The result for 2nd year Carryover subjects have already been declared by the University and the petitioner has succeeded in clearing three papers out of four carryover papers for which he reappeared in re-examination. Since the result of 3rd year carryover papers had not been declared by the University, the petitioner wrote a letter to the additional Controller of Examination requesting him to declare the result as soon as possible. Since nothing has been done by the University on the letter of the petitioner, he has rushed to this Court with the prayer already mentioned above.

2. Counter-affidavit has been filed and therein stand has been taken that the petitioner was not at all fulfilling the terms and conditions entitling him to appear in the special carryover examination as per Circular letter dated 21.1.2012, which contained eligibility criteria, conditions and restrictions also, which were to be followed by the respective colleges. In this background, it has been stated that the petitioner was not at all eligible and entitled to appear in the special carryover examination. The institution has also filed counter-affidavit. Rejoinder-affidavit has also been filed to the counter-affidavit filed on behalf of the University.

3. After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

4. Sri Nikhil Agrawal, learned counsel for the petitioner, contended with vehemence that in the present case, petitioner had been permitted to undertake special carryover examination, then in all eventuality, result was liable to be declared, as such writ petition deserves to be allowed.

5. Countering the said submissions, Sri Neeraj Tiwari, Advocate, representing the respondent University, on the other hand, contended that the petitioner was not entitled to undertake the special carryover examination, and in view of this by no stretch of imagination, his result could be declared as prayed by him.

6. In order to appreciate the respective arguments, the Ordinances of the University approved by the Academic Council in its meeting dated 20.9.2006 are being looked into, and the Ordinances Nos. 8, 9, 10, 11, 12 and 23 of the Ordinances are being quoted below:

8. Examination :

8.1 The performance of a student in a semester shall be evaluated through

continuous class assessment and end semester examination. The continuous assessment shall be based on class tests, assignments/tutorials, quizzes/viva-voce and attendance. The marks for continuous assessment (Sessional marks) shall be awarded at the end of the semester. The end semester examination shall be comprised of written papers, practicals and viva-voce, inspection of certified course work in classes and laboratories, project work, design reports or by means of any combination of these methods.

8.2 The distribution of marks for sessional, end semester theory papers, practicals and other examinations, seminar, project, industrial training and general proficiency shall be as prescribed.

8.3 The marks obtained in a subject shall consist of marks allotted in end semester theory paper, practical examination and sessional work.

8.4 The minimum pass marks in each theory subject (including sessional marks) shall be 40% with a minimum of 30% marks in each theory paper in the end semester examination. If there is no provision of sessional marks in any subject, the minimum pass marks in that subject shall be 30% in the end semester examination.

8.5 The minimum pass marks in a project/practical subject (including sessional marks if any) shall be 50%.

8.6 A candidate, in order to pass, must secure 50% marks in the aggregate in a particular academic year inclusive of both semesters of the academic year subjected to conditions as clause 9.2(a).

8.7 The minimum pass marks in Seminar, Industrial Training and Educational Tour, Viva-Voce etc. shall be 50%.

8.8 There shall be no pass marks in General Proficiency (G.P.) However, marks of General Proficiency shall be added in the result.

9. Promotion :

9.1 A candidate satisfying all the requirements under clause 8 shall be promoted to the next academic year of study.

9.2. (a) A candidate shall be eligible for provisional promotion to the next academic year of study provided :

(i) he/she fails to satisfy the requirements of clause 8.4, 8.5 and 8.7 in not more than 4 theory subject and 2 practical/ project subjects on the basis of combined result of both semester examinations of a particular academic year.

(ii) he/she fails to satisfy the requirements of clause 8.4, 8.5 and 8.7 (theory and/or practical/project subjects) in not more than 3 theory subjects and 2 practical/project subjects in addition he/she fails to satisfy requirement of clause 8.6 (aggregate marks) in the combined result of both semester examinations of a particular academic year. In such a case aggregate marks shall be treated as

one theory subject.

(b) If a candidate satisfies the requirement of clauses 8.4, 8.5 and 8.7 but fails to satisfy the requirement of clause 8.6, he/she shall be eligible for provisional promotion with carry over. He/she may choose upto a maximum of any four theory papers of that particular academic year as per his/her choice to pass the examination of that year.

9.2. ONLY FOR OLD STUDENTS (STUDENTS ADMITTED BEFORE THE SESSION 2004-05):

(a) A candidate shall be eligible for provisional promotion to the next academic year of study provided :

(I) he/she fails to satisfy the requirements of clause 8.4, 8.5 and 8.7 in not more than 6 subject (theory and/or practical/ project subjects) on the basis of combined result of both semester examinations of a particular academic year.

(ii) he/she fails to satisfy the requirements of clause 8.4, 8.5 and 8.7 (theory and/or practical/project subjects) in not more than 5 subjects and in addition he/she fails to satisfy requirement of clause 8.6 (aggregate marks) in the combined result of both semester examinations of a particular academic year. In such a case aggregate marks shall be treated as one theory subject.

(b) If a candidate satisfies the requirement of clauses 8.4, 8.5 and 8.7 but fails to satisfy the requirement of clause 8.6, he/she shall be eligible for provisional promotion with carry over. He/she may choose upto a maximum of any six theory papers of that particular academic year as per his/her choice to pass the examination of that year.

9.3 A candidate shall not be promoted to third year unless he/she passes all the subjects of first year. Similarly, a candidate shall not be promoted to fourth year unless he/she passes all the examinations of second year.

9.4 All other candidates who do not satisfy conditions laid down in clause 9 shall be declared fail and shall be required to repeat the whole academic year after taking re-admission. This facility is, however, subject to the time limits stipulated in clause-4.

10. Carryover System:

10.1 (a) A candidate who satisfies the requirements of clause 9.2 (a) will be required to appear in those theory papers/practicals in which he/she failed. However, a candidate of first year will be allowed to appear in the second semester examination in those theory/practical subjects in which he/she failed in the first semester examination, provided examination of those theory/ practical subjects are held in second semester.

(b) A candidate satisfying clause 9.2 (b) shall be required to exercise his/ her choice upto a maximum of four theory papers in which he/she desires to appear

in the examination to fulfill the requirements of clause 8.6. He/ she shall inform the college about his/ her choice within 15 days after the start of new session.

ONLY FOR OLD STUDENTS (STUDENTS ADMITTED BEFORE THE SESSION 2004-05):

(b) A candidate satisfying clause 9.2 (b) shall be required to exercise his/ her choice upto a maximum of six theory papers in which he/she desires to appear in the examination to fulfill the requirements of clause 8.6. He/ she shall inform the college about his/ her choice within 15 days after the start of new session.

10.2 The highest marks secured in any subject in various attempts (end semester and carryover examinations) shall be considered.

11. Ex-studentship :

11.1 A candidate opting for ex-studentship shall be required to appear in all the theory & practical subjects in the end semester examinations of both semesters of the same academic year. However, the marks pertaining to Sessional, Industrial Training, Seminar and General Proficiency shall remain the same as those secured earlier.

11.2 A candidate opting for ex-studentship shall be required to apply to the college by paying only examination fee within 15 days from the start of new session.

12. Re-admission in the Institution/ College :

A candidate may be allowed for re-admission provided he/she satisfies one of the following conditions:

12.1 A candidate is declared fail.

12.2 A candidate did not appear in a semester examination/or he/she was not granted permission to appear in the examination.

12.3 A candidate has been detained by the institute and subsequently has been permitted to take re-admission.

12.4 A candidate as an ex-student passed the examination of the academic year or qualified for carryover system.

12.5 A candidate promoted with carry over subjects and he/she opted for re-admission.

23. The Academic Council shall have the power to relax any provision provided in the ordinance in any specific matter/situation subject to the approval of Executive Council of the University & such decision(s) shall be reported to the Chancellor of the University.

7. In the aforesaid Ordinances, Ordinance No. 8 deals with Examination, Ordinance No. 9 deals with Promotion, Ordinance No. 10 deals with Carryover

System, Ordinance No. 11 deals with Ex-studentship, Ordinance No. 12 deals with re-admission in the Institution/College and Ordinance No. 23 provides that the Academic Council has the power to relax any provision provided in the Ordinances in any specific matter/situation.

8. On the parameters of the provisions quoted above, it is clearly reflected that Ordinance No. 9, deals with promotion to the next academic year of study of a candidate who fulfills requirement of Clause 8, and clause 9.2 (i) provides that a candidate shall be eligible for promotion to the next academic year of study provided he/ she fails to satisfy the requirements of clause 8.4, 8.5 and 8.7 in not more than 4 theory subjects and two practical/project subjects) on the basis of combined result of both semester examinations of a particular academic year, and further clause 9.2 (ii) provides that if he/she fails to satisfy the requirements of clauses 8.4, 8.5 and 8.7 (theory and/or practical/project subjects) in not more than 3 subjects and 2 practical/project subject, and in addition he/she fails to satisfy requirement of clause 8.6 (aggregate marks) in the combined result of both semester examinations of a particular academic year. Clause 9.2 (b) provides that if a candidate satisfies the requirement of clauses 8.4, 8.5 and 8.7 but fails to satisfy the requirement of clause 8.6, he/she shall be eligible for provisional promotion with carry over. Clause 9.4 is specific, that candidates who do not satisfy conditions laid down in clause 9 shall be declared failed, and shall be required to repeat the course after taking re-admission.

9. Thus, this much is writ apparent that under the ordinance benefit of carryover system has been extended to only those students, who are eligible for promotion to the next academic year of the study provided for and no one else. In the present case, accepted position is that at no point of time, petitioner had been accorded provisional promotion and to the contrary, as the petitioner did not satisfy the conditions laid down in clause 9, he was declared failed in terms of clause 9.4 and was required to repeat the whole academic year after taking re-admission. In view of this factual situation petitioner was ineligible to undertake carryover examination and the matter of taking special carryover examination, letter dated 14.8.2011 clearly proceeded to mention that the said benefit would be extended to those students, whose papers has been left out, and who are eligible to undertake the said examination. This particular sentence is the key to the issue, as eligibility is a condition precedent for enabling a candidate to undertake the special carryover examination as mentioned in the letter dated 14.8.2011. In the present case accepted position is that the petitioner is not at all eligible to undertake the carryover examination, as the petitioner had not been found eligible for being provisionally promoted to the next year of the study, in view of this, no relief or reprieve can be accorded to the petitioner. At last petitioner has requested that directives be issued to the Director, Hindustan College of Science and Technology, Mathura to consider the petitioner's request for admission as ex-student. In this direction liberty is given to the petitioner to approach the aforesaid authority, and the said authority concerned is directed, in the event of any such claim being set up by the petitioner, to take appropriate

decision in the matter in accordance with law, within next eight weeks from the date of receipt of a certified copy of this judgment.

In view of above discussion, present writ petition stands disposed of.