
(1983) 04 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 9144 of 1982

Shibu

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 07-04-1983

Acts Referred:

Citation : (1983) KLJ 350

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : George Varghese Kannanthanam and Abraham Vakkanal, for the Appellant; V. Bhaskaran Nambiar and M. Vijaya Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhaskaran, J.—The petitioner passed his Pre-Degree examination held in April 1982 by the Kerala University. Ext. P-I is the copy of a representation made by the petitioner to the Registrar of the 1st respondent, the University of Kerala, to permit him to reappear for Part II of the examination - II year Pre-Degree examination, as contemplated in rule 28 of the Regulation and Scheme of Examination for the Pre-Degree Course introduced from 1979-80 admission. It is the admitted fact that the petitioner appeared for and passed the 1 year Pre-Degree examination held in 1981 and that he had passed the II year Pre-Degree examination held in 1982, thus securing him a pass in the Pre-Degree Examination.

2. To Ext. PI representation submitted by the petitioner, the University has taken objection to his eligibility on the ground that he had in the year 1982 reappeared for the 1 year Pre-Degree examination for improving his marks. On this question, as to whether the petitioner had reappeared for the 1 year Pre-Degree examination for improving in 1982, there was slight controversy between the petitioner on the one hand and the 1st respondent University on the other. In as much as the pleadings in that behalf were not clear and were not free from vagueness, the parties were directed to file affidavits to state the correct

position. Both sides have filed affidavits pursuant to this direction, and as a result of that, it is not clear that the petitioner had sat for examinations in Paper I of Part III of 1 year Pre-Degree examination, that is to say in Physics Chemistry and Biology.

3. The stand taken by the University is that in view of the restriction contained in the proviso to Regulations 28(a) of the Regulations, the petitioner was not entitled to exercise the right for reappearing for the Pre-Degree examination to improve the marks already obtained. Regulation 28(a)(i) lays down as follows:-

28(a) A Candidate who passes the whole Pre-degree examination at his first appearance shall be allowed to reappear for the whole Part division(s) of the Pre-degree examination to improve the marks already obtained by him provided that:

(i) He She has not exercised the option to reappear for the first year Pre-degree examination.

Clause (ii) of Regulation 28(b) provides as follows: -

(ii) a candidate shall not be permitted to reappear for the examination with a view to improve his results more than once.

As far as the prohibition under Regulation 28(a)(ii) is concerned, the counsel for the petitioner submitted that in as much as the petitioner had not availed of an opportunity to improve his marks already obtained in his II year Pre-Degree Examination, that bar would not operate against him. As for the bar under Regulation 28(a)(i) is concerned the petitioner seeks to meet it by saying that the petitioner had not reappeared for the entire I year Pre-Degree examination, but only for the subjects in Part III namely, Physics, Chemistry and Biology. The submission made on behalf of the University is that once the candidate has availed of the opportunity for re-appearance of the I year Pre-Degree Examination, whether for all the subjects or for some of them it would not make any difference as far as the operation of the bar is concerned. The counsel for the petitioner also placed reliance on the provisions contained in Regulations 6, 7 and 8 in a bid to establish that where the reappearance is only for a part of the examination, the candidate would not be precluded from exercising his option to write for improving the marks already obtained in the examination at the first instance. Regulations 6, 7, 8 and 9 read as follows:-

6. A candidate for the First Year Pre-Degree examination or Second Year Pre-Degree Examination shall be required to present himself for the whole examination at his first appearance.

7. A candidate who registers himself but does, not appear for the First Year Pre-Degree Examination will be allowed to take the First Year and Second Year Pre-degree Examinations together at the end of the Second Year.

8. A candidate who has appeared for the first year Pre-Degree examination at the end of the first year will be allowed to appear again for the first year

examination along with the Second Year examination with a view for improving the marks of the First Year examination. Such a candidate may reappear for the whole of the first year examination or for any one part or for any one or more of the optional subjects at his option. Such candidates shall be awarded better of the two marks secured by him at the first or second appearance in the respective subjects.

9. A Candidate shall be declared to have passed the Pre-Degree examination if obtains not less than

(i) 40 per cent of the total marks in Part I - English.

(ii) 40 per cent of the total marks in Part II - Additional Languages.

(iii) 30 per cent of the marks in each subject and 40 per cent of the aggregate marks for the three subjects taken together in Part III - Optional subjects. However, a candidate who secures a minimum of 40% marks for any subject under Part III shall be declared to have passed in that subject.

A candidate who obtains the minimum marks prescribed for a pass in Part I Part II Part III shall be declared to have passed in that part of the examination.

On a close analysis of the provisions contained in Regulations 6 to 9 I am of the view that the restriction in regard to the requirement of the candidate to present himself for the whole examination is confined to his first appearance. That has no application to his right for reappearance as is made clear in Regulation 8 itself. To recall Regulation 8, it provides - "A candidate who has appeared for the first year Pre-Degree examination at the end of the first year will be allowed to appear again for the first year examination along with the second year examination with a view for improving the marks of the First year examination. Such a candidate may reappear for the whole of the first year examination or for any one part or for any one or more of the optional subjects at his option." Even if a candidate reappears only for any one part or any one or more of the optional subjects at his option, it shall be treated as a reappearance for the 1 year examination with a view to improve the marks of the 1 year examination. Regulation 28(a) also does not give any other indication. It permits a candidate who passed the whole of the Pre-Degree examination at his first appearance to reappear for the whole part division(s) of the Pre-Degree Examination to improve the marks already obtained by him provided that "(i) He/She has not exercised the option to reappear for the first year Pre-degree examination." Having exercised his option to reappear for the first year Pre-Degree examination, and having sat for the examination in the three subjects of Physics, Chemistry and Biology, falling under Part III of the First Year Pre-Degree examination, he could not maintain that he did not exercise the option to appear for the first year Pre-Degree examination. There appears to be no rational basis for the contention that unless the candidate reappeared for all the parts and for all the subjects, he should be deemed to have not exercised the option to reappear for the first year Pre-Degree examination. In this case, as already noticed, in exercise of his option he had sat

for the First Year Pre-Degree examination in Physics, Chemistry and Biology, in Part III, the very subjects for the second Paper, for which he wants to reappear again, purporting to claim that privilege under Regulation 28(a) (i) of the Regulations. The counsel for the petitioner submitted that the wording of the Regulation 28(a) (i) is not free from doubt, and in cases where there is ambiguity or lack of clarity, the benefit should be given to the person for whose benefit the Regulations have been made. I do not think there is any ambiguity in the matter, particularly in the light of the provisions contained in Regulation 8 on which the petitioner himself places reliance. The purpose of the proviso to Regulation 28(a) appears to be not to allow the repetition of the performance of reappearance more than once, and it is for the candidate to exercise that option whether for the first year subjects or the second year subjects, in whole or in part. That object would be defeated if, out of misplaced sympathy, the Court inclined to read into the proviso expressions so as to read it " He/She has not exercised the option to reappear for the first year Pre-Degree examination as a whole and not for all the subjects in that examination."

For the foregoing reasons I do not find my way to interfere with the stand taken by the University that the petitioner was not, on the facts and in the circumstances, entitled to reappear for the Pre-Degree examination so as to improve the mark he had already obtained. The writ petition is dismissed, however, in the circumstances of the case, without any order as to costs.