
(2009) 07 MP CK 0034
In the Madhya Pradesh High Court

Sudheer Singh Tomar

APPELLANT

Vs

Jiwaji University and Another

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Ordinance 38(10), Ordinance 38(9)

Citation : AIR 2010 MP 29 : (2009) ILR (MP) 3254 : (2010) 1 MPJR 292 : (2009) 4 MPLJ 395

Hon'ble Judges : A.K. Patnaik, C.J;S.M. Samvatsar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.

This appeal u/s 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 is against the order dated 6th July, 2009 passed by the learned single Judge in Writ Petition No. 2670 of 2009, under Article 226 of the Constitution.

The facts in brief are that the appellant is a student of M.Sc. Computer Science at S.M.S. Government Model Science College, Gwalior. In the second semester of the course," he secured less than 36% in the aggregate in both theory and practical courses separately as well as less than 26% in the subject of Data Base Management Systems. He was, however, promoted to the third semester and he took the examination of the concerned" second semester in the subject of Data Base; Management Systems and secured 26% marks in the second semester. After completing the third semester examination, he was not allowed to sit in the fourth semester examination by the Jiwaji University, Gwalior keeping in view the provisions of Clause (9) and (10) of the Ordinance 38 made under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as the

Adhiniyam, 1973). Aggrieved by the action of the respondent/University, the appellant filed W.P. No. 2670 of 2009 and the learned single Judge by the impugned order has dismissed the writ petition after holding, that the clauses 9 and 10 of the Ordinance 38 made under the Adhiniyam, 1973 did not permit appearance of the petitioner in the fourth semester examination.

We have heard Mr. M. P.S. Raghuvanshi, learned Counsel for the appellant and Mr. Tapan Trivedi, learned Counsel for the respondent/university and we find that the learned single Judge has rightly taken a view that the appellant could not be permitted to appear in the fourth semester examination.

Clause (9) and (10) of the Ordinance 38 made under the Adhiniyam, 1973 are quoted below:

The minimum pass marks will be 36% in aggregate in both theory and laboratory courses separately, provided the candidate obtains at least 26% in each course of the University examination.

Provided further that a candidate passing separately in all the papers but not securing the aggregate shall be promoted to next semester and shall appear in one paper of his/her choice as an ex-student along with the examination of next semester to make up the aggregate.

A candidate failing in any of one course paper laboratory work of first semester examination shall be allowed to continue in the second semester. In second semester, he/she will be allowed to appear in that course of first semester (in which he/she failed in first semester) as an ex-student along with the examination of second semester. For each additional attempt, the University shall charge additional examination fee as certified.

Provided further that candidate failing in any one course of the second semester, shall be promoted to third semester, subject to the condition that he/she has passed all the courses of first semester.

Provisions of this clause shall be applicable to third and fourth semester also. The candidate will be allowed to appear as an ex-student in the whole examination of that semester in which he/she failed. Such candidate if passed in that examination will be entitled for admission as regular student in the next semester, if any.

From a perusal of the provisions of the Ordinance 38 of the Adhiniyam, 1973 quoted above, it is very clear that the minimum pass marks are 36% in aggregate in both theory and laboratory courses separately provided the candidate obtains at least 26% in each course of the University examination. The first proviso further states that a candidate passing separately in all the papers but not securing the aggregate shall be prompted to next semester and shall appear in one paper of his/her choice as an ex-student along with the examination of next semester to make up the aggregate. The second proviso further states that candidate failing in any one course of the second semester,

shall be promoted to third semester, subject to the condition that he/she has passed all the courses of first semester and the provisions of this clause shall be applicable to third and fourth semester also.

It appears that as per second proviso the appellant has cleared the course in Data Base Management Systems after he was promoted to the third semester and, therefore he can be taken to have obtained 26% or above in the course of Data Management Systems in the second semester. But, admittedly, he got less than 36% in aggregate in both theory and laboratory courses in the second semester and therefore, he is also required to make up the aggregate by appearing in one of the papers of his choice as ex-student in accordance with the first proviso to the Ordinance 38 and until he secures the aggregate 36% by appearing in one of the papers of his choice as an ex-student of the second semester, he cannot be said to have secured the minimum pass marks of 36% in aggregate in the second semester. In such circumstances, the appellant cannot be allowed to sit in the fourth semester examination.

We therefore agree with the view taken by the learned single Judge that unless the appellant clears the second semester examination by obtaining 36% in aggregate in both, theory and laboratory courses separately he cannot be permitted, to appear in the fourth semester examination, Hence, we are not inclined to admit this appeal and we accordingly dismiss the same.