
(2011) 10 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (Civil) No.4007 of 2011

Suraj Kumar Chakma

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 24-10-2011

Acts Referred:

Regulation for B.A., TDC 1 + 1 + 1 Pattern (2003-04) — Regulation 12(a), 12(h)

Citation : (2013) 3 GLR 368

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : Mr. N.N. Jha for the petitioner.??Mr. L.P. Sharma , Mr. B. Choudhury for the respondents., Advocates appearing for Parties

Judgement

1. Heard Mr. N.N. Jha, learned counsel for the writ petitioner, and Mr. B. Choudhury, learned counsel, appearing for respondent No.1. Head also Mr. L.P. Sarma, learned counsel for respondent Nos.2 and 3.

2. The writ petitioner's case is, in brief, thus: The petitioner was admitted into three years B.A. degree course (TDC) in the academic session 200304 under the Gauhati University ("respondent University"). The petitioner appeared in B.A. PartI examination in the year 2004 and passed. In the academic session 20042005, the petitioner did not appear I in B.A. PartII examination, which was held in the year 2005. The petitioner, however, appeared in the B.A. PartII examination held in 2006, but failed to pass. The petitioner, then, once again, appeared in 1 the B.A. PartII examination in the year 2007, but failed to pass. I Thereafter, the petitioner appeared in the B.A. PartII examination in the year 2008 and passed.

3. Close on the heels of the his results of the B.A. PartII examination, I as indicated hereinbefore, the petitioner appeared in the B.A. PartIII (final) examination in the year 2008, but his result was withheld. According to the respondent University, the result of the petitioner's B.A. PartIII (final) examination was withheld on the ground that the petitioner had already

exhausted, by the year 2007, three consecutive chances, which were made available to him for passing the B.A. PartII examination, and, hence, the petitioner could not have appeared and passed his B.A. PartII examination in the year 2008.

4. Aggrieved by the action of the respondent University, whereby the petitioner's result has been kept withheld, the petitioner has come to this court with the present writ petition, made under article 226 of the Constitution of India, seeking issuance of appropriate direction to the respondent University to declare his result of the third year (PartIII final) examination.

5. Resisting the present writ petition, the respondent University, as mentioned above, as mentioned above, has contended, inter alia, that the petitioner has already exhausted, by the year 2007, three consecutive chances of passing the B.A. PartII examination and, hence, the petitioner could not have been allowed to appear nor could he have passed the B.A. PartII examination in 2008. It is the correctness of the respondent University's decision, which has fallen for determination in the present writ petition.

6. In order to decide the question, which has arisen, one has to take into account regulation 12 of the "regulation for B.A. T.D.C. 1+1+1 Pattern (20032004)" ("the University Regulation") of the respondent University. Regulation 12(a) lays down that if a candidate fails to pass or present himself/herself in not more than one subject, including the Major subject in the PartI examination, he/she may be allowed to sit for the arrear subject at the next PartI examination held by the University. Thus, regulation 12(a) shows that there is no difference between a candidate, who fails to pass, and a candidate, who fails to appear in an examination. A candidate has to necessarily, therefore, not only appear in the examination, which may be due for him, but must also pass in such examination. Regulation 12(h) of the University Regulation, which is also very relevant for the purpose of deciding the question, reads as under :

"12(h) A candidate must pass the PartI, PartII, and PartIII examinations within three years of completion of PartIII course. In each part maximum of three chances each will be available for a candidate subject to the conditions laid down above."

7. A careful reading of regulation 12(h) makes is abundantly clear that a student of three years degree course (TDC) would receive three chances to pass each of the three examinations, (i.e., PartI, PartII and PartIII) subject to the condition that the candidate has to pass all the three examinations, (i.e., PartI, PartII and PartIII) within three years of completion of his PartIII course.

8. What Regulation 12 clearly shows is that for the purpose of clearing every part of the three years degree course (TDC), a candidate will get three chances, but if he/she fails to pass, or does not appear in three chances, which may be made available to him/her, he/she would not be allowed any fourth chance.

9. In the present case, the petitioner was, admittedly, in the second part of his three years degree course in 2004-2005. His first examination in Part II fell due in the year 2005; but the petitioner did not appear in his Part II examination held in the year 2005. The petitioner, thus, exhausted his first chance for passing the Part II examination. The petitioner, thereafter, got two more chances for passing his Part II examination, the second chance being in the year 2006 and the third chance being in the year 2007. Though the petitioner appeared in the Part II examination in the year 2006 and, then, once again, in the year 2007, he could not pass. Thus, all the three chances, which the petitioner was entitled to receive, in terms of regulation 12(h), had been received by the petitioner.

10. Situated thus, it is clear that the petitioner could not have appeared in B.A. Part II examination held in the year 2008, for, his appearance in the B.A. Part II examination, in the year 2008, was his fourth appearance; whereas, he was, in terms of Regulation 12(h), to be allowed only three chances to pass his B.A. Part II examination.

11. The respondent University, thus, acted against the Regulation 12(h) in allowing the petitioner to appear and/or pass in Part II examination in the year 2008. However, this mistake was realized by the respondent University and, as the petitioner ought not to have been allowed to appear and/or pass in the Part III examination, 2008, the respondent University did not declare the result of the petitioner for his Part III examination. One argument, which has not been raised, but one could have, perhaps, raised, is that the respondent University, having passed the petitioner, in B.A. Part II examination, could not have, subsequently, taken the plea that the petitioner ought not to have been allowed to appear in the B.A. Part II examination in the year 2008. However, suffice it to point out, in this regard, that against law, there is no estoppel. Logically, therefore, when the Regulations of the respondent University did not empower the respondent University to allow the petitioner to appear in B.A. Part II examination in the year 2008, the fact that the petitioner had been allowed to appear in B.A. Part II examination, held in the year 2008, and had obtained qualifying marks, was immaterial and has to be treated as a ground non est in law. Thus, the plea of estoppel, even if raised, could not have been sustained.

12. What emerges from the above discussion is that the action of the respondent University in not declaring the petitioner's result cannot be said to be contrary to the respondent University's regulations and cannot, therefore, be interfered with.

13. In the result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed.

14. No order as to costs.