

(1994) 07 GAU CK 0001

In the Gauhati High Court

Case No : Writ Appeal No. 412 (T) of 1994

Syed Nazrul Islam

APPELLANT

Vs

Gauhati University and Ors.

RESPONDENT

Date of Decision : 25-07-1994

Acts Referred:

Gauhati University (Modified Regulation for Four Year BE Degree Course, in Semester System) Regulations — Regulation 2(b), 2(b), 6(a), 6(a)

Citation : (1994) 2 GLJ 420

Hon'ble Judges : V.K.Khanna, C.J. and S.N.Phukan, J

Bench : Division Bench

Advocate : T.Khero, H.Das , G.Uzir, B.Buragohain, Advocates appearing for Parties

Judgement

V.K. Khanna, C.J.—This appeal has been filed against the judgment of the learned Single Judge dated 7.4.94 in Civil Rule No. 1134 of 1994.

2. We have heard Mr. Uzir, learned counsel appearing for the petitionerappellant and Dr. H. Das learned counsel appearing for the University. It may be stated that the Principal of the Assam Engineering College, Gauhati has appeared in person and also has argued the case and has also filed an affidavit in this appeal. After hearing the learned counsel for the parties the present appeal is being disposed of.

3. The brief facts for the purposes of deciding the present appeal are that the petitionerappellant admittedly passed the Civil Engineering Diploma course conducted by the State Council for Technical Education, Assam. Under the Modified Regulation for Four Year BE Degree Course in Semester System of the Gauhati University it is provided under Regulation 2 (b) as follows :

"2. (b) A candidate, who has passed the FINAL DIPLOMA examination in a branch of study conducted by the State Council for Technical Education, Assam will be eligible for admission to the THIRU SEMESTER of that particular branch of study

after passing the first and Second semester Theory (written) papers in Mathematics, Physics and Chemistry of the BE course of the Gauhati University."

4. It is not disputed that the petitioner-appellant passed the 1st and 2nd Semester theory (written) papers in Mathematics, Physics and Chemistry of the BE course of the Gauhati University from the Jorhat Engineering College and was thereafter admitted in Jorhat Engineering College to the 3rd Semester of the BE course. Thereafter, petitioner-appellant applied for transfer in the Assam Engineering College from the Jorhat Engineering College where he was duly admitted. After the admission on the basis of the aforesaid transfer, the Gauhati University directed the petitioner-appellant to appear in the 1st and 2nd Semester examination in the three subjects Physics, Chemistry and Mathematics again. The petitioner appeared in the 1st and 2nd Semester as per direction of the Gauhati University and was able to clear one subject. The petitioner was, however, allowed to continue his studies for the 3rd and 4th Semester and was even allowed to sit in the examination. However, the result of the petitioner for 3rd and 4th Semester was withheld and not declared, It is at this stage petitioner-appellant approached this Court for issuing a writ of Mandamus directing the respondent University to declare the result of the petitioner's examination of the 3rd and 4th Semester and also to allow him to sit in the 5th Semester examination.

5. Before the learned Single Judge, Dr. Das learned counsel appearing for the Gauhati University had placed reliance on Regulation 2 (b) of the Gauhati University (Modified Regulation for Four Year BE Degree Course in Semester System) and on the basis of the aforesaid Regulation it was urged that the petitioner was not entitled to sit in the 5th Semester as he had not cleared all papers of Physics, Chemistry and Mathematics of 1st year BE Degree Course as required under the aforesaid Regulation of the Gauhati University.

6. The learned Single Judge relying on the provisions of Regulation 2 (b) and Regulation 6 (a) of the aforesaid Regulations held that the view taken by the Gauhati University was correct as the petitioner having not cleared all six papers of Physics, Chemistry and Mathematics pertaining to 1st and 2nd Semester of BE course was not entitled to appear in the 5th Semester.

7. Mr. Uzir, learned counsel appearing for the petitioner has urged that the appellant's case is distinguishable inasmuch as he was not seeking fresh admission to the Assam Engineering College but got himself transferred from Jorhat Engineering College to the Assam Engineering College.

8. The relevant provision of Regulation 6 (a) provides as follows:

"6, (a) A student, failing to pass all the subjects of FIRST semester in three consecutive examination from his/her admission into the course, shall not be allowed to continue studies by the concerned college."

9. A bare perusal of Regulation 2 (b) would clearly indicate that a person having

passed final Diploma examination is eligible for admission for 3rd Semester after passing the first and second semester Theory (written papers in the subjects Mathematics, Physics and Chemistry of BE course of the Gauhati University. On the basis of the undisputed facts it is clear that the petitioner after passing the final diploma examination" got admission in the Jorhat Engineering College in 3rd Semester after he had passed 1st and 2nd Semester theory (written) papers in Mathematics, Physics and Chemistry. It is thus clear that as far as the admission is concerned petitioner appellant had not sought his direct admission to the Assam Engineering College and as stated above Had not been admitted under Regulation 2 (b) to the Assam Engineering College. In Jorhat Engineering College he had cleared the 1st and 2nd Semester theory (written) papers in Mathematics, Physics and Chemistry of that College. It is pertinent to note that the admission to the 3rd Semester is only available to the candidate only after he clears the aforesaid condition. The petitioner became a student of the Assam Engineering College not on the basis that initially he was directly admitted in the aforesaid college but on the basis of the transfer, as it was allowed by the competent authority. If that be so, then in our opinion the provisions of Regulation 6 (a; of the Regulations will not be applicable in the case of the appellant petitioner as the petitioner does not fall in the category of one seeking direct admission under the Regulation 2(b)in the Assam Engineering College.

10. It may be noted that the Principal of the Assam Engineering College, who has appeared in person before us in this case, has made a statement that the objection which has been raised by the Gauhati University is not correct as the petitionerappellant has passed the first and second Semester Theory (written) papers in Mathematics, Physics and Chemistry before he was admitted to third Semester in BE Course in Jorhat Engineering College.

11. On a bare perusal of the letter dated 30th December, 1993 vide Annexure E to the Principal of Assam Engineering College addressed to the Academic Registrar, Gauhati University, makes it clear that so far as Assam Engineering College is concerned it was not necessary for the petitionerappellant to appear in 1st and 2nd Semester theory (written) in Mathematics, Physics and Chemistry of the BE course as he has cleared all these subjects while he was a student of the Jorhat Engineering College. We are, therefore, of the opinion that the Modified Regulation for Four Year BE Degree Course in Semester System for students for admission under Gauhati University will not apply again in the case of the petitioner appellant as he became student of Assam Engineering College on the basis of transfer from Jorhat Engineering College. It was not case of initial admission to Assam Engineering College. In our opinion, the provisions of Regulation 2 (a) have not to be applied again.

12. For the reasons stated above, we are of the opinion that the impugned order dated 27.12.93 passed by the Controller of Examination, Gauhati University contained in Annexure D to the memo of appeal is liable to be quashed, which we hereby do. In our opinion, the order of the learned Single Judge taking a view to

the contrary is not correct and the judgment of the learned Single Judge is liable to be set aside which we hereby do.

13. For the reasons stated above, the present appeal is allowed. The respondent University is directed to declare the remit of the petitioner for the 3rd and 4th Semester and also to allow him to appear in the 5th Semester examination. The appellant is allowed to attend the 6th Semester Classes. Looking to the facts and circumstances of the case, the parties shall bear their own costs.