

**(2009) 03 GAU CK 0011**

**Gauhati High Court**

**Case No:** None

Ranjit Chandra Biswas

APPELLANT

Vs

Gauhati University and Others

RESPONDENT

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**Date of Decision:** March 26, 2009

**Acts Referred:**

- Gauhati University Regulations - Regulation 14, 15, 16

**Citation:** (2009) 6 GLR 303 : (2009) 4 GLT 177

**Hon'ble Judges:** Amitava Roy, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Amitava Roy, J.

Grieved by the results of his LL.B. Final (New) Examination declared by the Gauhati University (hereafter referred to as the University) showing him to be unsuccessful therein, the petitioner is before this Court assailing the same and seeking an appropriate writ to declare him to have passed the said examination.

2. I have heard Mr. M.A. Sheikh, Learned Counsel for the petitioner, Mr. B. Chakraborty, learned Standing Counsel, Gauhati University and Mr. C.K. Sharma Baruah, learned senior Counsel appearing for the respondent No. 3.

3. The pleaded versions of the parties need be outlined at the threshold. According to the petitioner, after graduating himself, he took admission in the three years LL.B. course of the University in Dhubri Law College ("the College") and duly appeared in the Preliminary examination thereof in the year 2001. He having failed in the first attempt appeared both in the Preliminary as well as Intermediate Examinations in the next year. Though this time he cleared the Preliminary Examination, he could not pass in all the papers of the Intermediate Examination and was awarded back in three subjects. In the year 2003, he appeared in the LL.B. Final Examination with Roll No. 425 and also in three back papers namely Paper II, V

and VII of the Intermediate Examination. Though he cleared two of the three arrear papers in the Intermediate Examination, he could not pass in the theory papers of the Final Examinations but secured 70 and 71 in the Practical Papers thereof being Paper No. IX and X. He repeated his endeavour to pass both the examinations in the year 2004 and did clear his only back paper in Intermediate but was unsuccessful in two papers in the Final Examination. In the mark sheet that was issued, however, he was shown to have secured 48 and 50 in Final Practical Examinations in paper IX and X. In the year 2006, he passed in both the two back papers in LL.B. Final Examination, i.e., Paper IV and VII obtaining 42 and 40 marks respectively. According to the petitioner, though he had not appeared in practical papers namely paper IX and X in the Final Examination of 2004 held in the month of March 2005, he was purportedly shown to have taken the said examination in the said year and having been awarded 40 and 50 respectively, he was declared to have failed in the Final Examination for not being able to secure the aggregate pass mark of 450. The petitioner has asserted that as he had not appeared in the LL.B. Final Examination of 2004 as above his marks of 70 and 71 therein awarded in his attempt in the year 2003 ought to have been assimilated with his marks in the other subjects to be totalled to 485 and consequentially he should have been declared to have passed the LL.B. Final Examination eventually in the year 2006. The petitioner has also referred to an application filed by him for re-examination/re-evaluation of his answer scripts of the LL.B. Final Examination (New) in the year 2006 and has contended that though necessary fees therefore has been deposited by him, the exercise as was obliged to be; undertaken by the University was not resorted to. He categorically denied to have appeared in the Final Practical Papers Paper No. IX and X in the year 2005.

4. The University in its affidavit filed through its Controller of Examinations has pleaded that the petitioner had appeared in the Practical Papers aforementioned for the second time in the LL.B. Final Examination 2004 held in January 2005 and had secured 48 and 50 respectively out of a total of 200 marks. According to it, he was not entitled to have his results declared on the basis of earlier marks in the said papers secured by him in the year 2003. The University has asserted that in view of the marks obtained by the petitioner in the two practical papers his aggregate being 442 he was rightly declared to have failed in the LL.B. Final Examination.

5. The College abstained from filing any affidavit.

6. In his affidavit in reply, the petitioner reiterated his averments in the writ petition and maintained that as he had not reappeared in the practical papers IX and X in the year 2005, his marks of 70 and 71 thereof ought to have been taken into account for his final results. By an additional affidavit filed by him he has brought on record two letters dated 30.7.2007 and 2.8.2007 of the Deputy Controller of Examinations, Gauhati University and the Principal of Dhubri Law College respectively to bolster his stand.

7. Mr. Sheikh has persuasively argued that as it is patently clear from the pleadings of the parties as well as the documents available on record that the petitioner had not appeared in paper IX and X of the LL.B. Final Examination, 2004 held in the month of January, 2005, the University was obviously in error in compiling his results by integrating 48 and 50 as marks awarded to him in the said papers by disregarding his score of 70 and 71 earned by him in the LL.B. Final Examination, 2003. Referring to the letter dated 2.8.2007 of the Principal of the College, the Learned Counsel has insisted that it being apparent therefrom that the petitioner had not appeared in the viva examination of the Final LL.B. Examination, 2004, which is an integral segment of the practical examination for papers IX and X, the action of the University in purportedly accepting 48 and 50 to be the marks secured by him in these papers in the said examination is grossly arbitrary, unfair and unjust. Mr. Sheikh has reiterated that the letter dated 2.8.2007 of the Principal of the College makes it abundantly clear that the marks shown to have been secured by the petitioner in the practical papers IX and X in the LL.B. Final Examination 2004 were an yield of typing mistake(s) and, therefore, the University ought to have declared him as passed by taking note of his marks in the said papers secured by him in the LL.B. Final Examination of 2003. Mr. Sheikh has further urged that in absence of any affidavit by the Principal of the College to the contrary, the pleadings of the parties and the correspondences annexed to the writ petition demonstrate in clear terms that the petitioner had not appeared in the practical papers namely paper IX and X in the LL.B. Final Examination of 2004 and, therefore, a writ of mandamus ought to be issued to the respondents to declare him as having passed the course.

8. Mr. Chakraborty in turn has urged that as the results of the petitioner had been compiled on the basis of the marks secured by him, the plea to the contrary is obviously untenable in law and is liable to be rejected. As the petitioner's marks in paper IX and X in the LL.B. Final Examination 2004 furnished by the College are 48 and 50 for papers IX and X respectively, the University was perfectly justified in declaring him to have failed in the LL.B. Final Examination, he having secured only 442 which is less than the aggregate pass marks of 450.

9. Mr. Sharma Baruah while endorsing the above has referred to the Regulation 16 of the New Regulation and Syllabus of the LL.B. Course of the Gauhati University ("the University") to contend that as admittedly the petitioner has failed in more than three subjects in Final LL.B. Examination, 2003, he was bound to appear in all papers including the practical papers in his subsequent attempt and, therefore, his contention of not appearing in paper IX and X is flippant and unacceptable. The learned senior Counsel relied on the tabulation chart and the practical books of the petitioner to maintain that intact he had appeared afresh in paper DC and X in the LL.B. Final Examination 2004 and that therefore the University was fully justified in compiling his results by taking into account his marks as 48 and 50 in these papers. As admittedly the aggregate marks secured by the petitioner including those in

paper IX and X obtained by him in LL.B. Final Examination 2004 fall short of the aggregate pass marks, he was rightly declared to have failed, he urged.

10. I have extended my thoughtful consideration to the rival pleadings and the arguments advanced. Admittedly the petitioner had passed the Preliminary and Intermediate Examinations by December, 2004. In his first attempt to clear the LL.B. Examination, 2003 with Roll No. 235, he was unsuccessful having failed in Paper IV, V, VII and VIII. In that examination, however, he secured 70 and 71 in paper IX and X respectively. In the mark sheet issued to him for the LL.B. Final Examination, 2004, in which he had appeared with Roll No. 473, he was shown to have been awarded marks different from those secured by him in all the papers in the LL.B. Final Examination, 2003, except that in paper III. Even in the LL.B. Final Examination, 2004, he could not clear two of the Papers in which he had failed in the earlier endeavour. The bone of contention, however, by is that he had been awarded 48 and 50 in Paper IX and Paper X in the said Examination though the petitioner contends that he had not appeared in those papers in that outing.

11. The petitioner in his representation dated 2.6.2007 before the Controller of Examination of the University routed through the Principal of the College seems to have admitted to have appeared in all papers in 2004 but had not submitted his practical books. According to him, the marks secured by him in the year 2004 being higher than those in the earlier year ought to be reckoned for his results. Though he had mentioned therein to have been awarded 70 and 71 in Paper IX and X in the Examination of 2003, he did not in categorical terms state of not having appeared in the said papers in the LL.B. Final Examination 2004. The parties are not in conflict vis-a-vis the marks secured by the petitioner in other subjects. Therefore, whereas the petitioner claims to have secured 485 with 70 and 71 in papers IX and X respectively, according to the University, his tally is 442 with 48 and 50 in those two practical papers.

12. The letter dated 30.7.2007 of the Deputy Controller of Examinations, Gauhati University, addressed to the Principal of the College, posed a query to the latter as to how the petitioner was shown to have been awarded 48 and 50 in Papers DC and X in the LL.B. Final Examination, 2004, with Roll No. 473 in the face of his stand of not having submitted practical papers therefor. The Principal of the College in his letter dated 2.8.2007 in reply pleaded that his marks in Paper IX and X for the year 2004 were typing mistakes. While affirming that the petitioner had secured 70 and 71 in the year 2003, the College Authority clarified that he had not appeared in the viva examination held in the year 2004. A request was made by the Principal of the College to add his practical marks secured in the year 2003 to those in his papers of the Final Examination of 2004 for his results.

13. The curriculum for paper IX and X under the Regulations being Professional Ethics, Accountancy for Lawyers and Bar-Bench Relations and Drafting, Pleading and Conveyancing disclose the prescription of viva voce examination for the marks

allotted for both the papers. In other words, viva voce under the Regulations is an inseverable segment of the process of evaluation of the performance of a student in these two practical papers. This assumes vital significance in view of the categorical assertion of the Principal of the College in his letter dated 2.8.2007 that the petitioner had not appeared in the viva examination for these papers in the LL.B. Final Examination, 2004.

14. The charts of marks secured by the candidates in the LL.B. Final Examination, 2004 in Paper DC and X disclose that the petitioner had secured 48 and 50 respectively. These two documents, however, reveal erasures and effacements with white ink vis-a-vis the entries relating to the petitioner in both the papers. Noticeably the interferences of the kind as decipherable qua the petitioner have not been effected for others. Most intriguingly, the overwritings on the erased entries lack the initials of the maker. No reason for these interventions is forthcoming.

15. As alluded hereinabove, the respondent No. 3 has not filed its affidavit. The clarification of the Principal of the College in his letter dated 2.8.2007 that the petitioner's marks of 48 and 50 in paper IX and X were typographical mistakes therefore cannot be lightly brushed aside. Except the inscription of Roll No. 473 in the two practical note books certified by the Principal Teacher cum Guide in-charge of the College, there is no other material to testify that he was awarded the marks thereon as incorporated in the aforementioned charts. In the backdrop of the petitioner's persistent plea that he had not appeared in these two papers in the LL.B. Final Examination of 2004 and the admission of typing mistakes pertaining to the marks in those papers furnished by the College to the University, in the estimate of this Court, the charts of marks and the practical note books produced before this court do not assuredly clinch the issue in favour of the University. Regulation 16 which deals with different fact situations under which an unsuccessful candidate is accorded further opportunities to clear the failed subjects in the LL.B. course. The same per se unequivocally does not mandate that such a candidate if he is unsuccessful in more than three subjects in any of the examinations would be obligatorily required to appear in all subjects thereof in his next attempt. This indeed is not the pleaded case of the University as well. It is also not the avowal of the University that if the petitioner's marks of 70 and 71 in Paper IX and X secured by him in the LL.B. Final Examination, 2003 are retained, he still cannot be declared to have passed the LL.B. Course in view of the limited chances prescribed by Regulation 14 and 15.

16. On a totality of the considerations as above, I am of the unhesitant opinion that in the singular facts and circumstances of the case and evaluating the materials available on record that the petitioner's challenge ought to be sustained. In the above view of the matter, the results of his LL.B. Final Examination declaring him to have failed the same ought to be interfered with. Ordered accordingly/The University would compile and declare his results for the aforementioned

examination by reckoning 70 and 71 to be the marks secured by him in Paper IX and X respectively. It is made clear that this direction has been issued in the facts and circumstances of the case and would not be construed to be a precedent for the future.

The petition is thus allowed. No costs.