

(1995) 06 GAU CK 0012

Gauhati High Court

Case No: Civil Rule No. 1085 of 1993

Archana Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: June 2, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1998) 1 GLT 188

Hon'ble Judges: V.D. Gyani, J

Bench: Single Bench

Advocate: B.K. Bhattacharjee, for the Appellant; H. Das, H. Das and J. Talukdar, for the Respondent

Judgement

V.D. Gyani, J.

By this petition under Article 226 of the Constitution, the Petitioner who was a regular student of 3 years Degree Course in Arts of L.C. Bharali College, Maligaon, Guwahati appeared in the B.A. Part I examination conducted and held by the Respondent University in the year 1988, was allowed to appear at the B.A. Part II examination in the year 1989 on condition that she would clear her two arrear subjects of Part I namely, English and Economics in which she had failed in the year 1988 having passed in all other subjects. She was allowed to prosecute her studies further. As per notification No. M/I 4/90 dated 20.2.90 issued by the Respondent University, the Petitioner was required to pass in the arrear subjects at any of the three examinations immediately following the original examination. Unfortunately, instead of three, the Petitioner passed the arrear subjects in the 4th chance and has in tact cleared the arrear subjects as per the mark-sheet (Annexure-F). The Petitioner moved an application dated 13.2.93 filed as Annexure - H praying for a formal declaration of result and issue of mark sheet of Three Years Degree Course (Arts) of Part II examination which was withheld by the Respondent- University.

2. The Respondent-University by its letter dated 22.2.93 (Annexure-I) informed the Petitioner as follows:

With reference to above, she is informed that as per T.D.C. (Arts) Regulations No. 19, her chance for clearing the arrear subject (s) of Part - I has already been expired in the year 1991. As such, her admission and examination to the arrear subjects in 1992 and the W 1 Result of B.A. Part-II, 1989 have automatically been treated as cancelled.

It is this letter, which is sought to be quashed in the present petition.

3. The learned Counsel appearing for the Petitioner contended that the University having allowed the Petitioner to appear at the examination which under the Rules, she could not have, can not now turn around and say that her result can not be declared as she was not eligible to appear. The Rule, it was submitted, works a great deal of hardship more so, in case of candidates who have cleared the examination. It is also the Petitioner's case that she had no role in forwarding the application form for examination or scrutiny thereof.

4. learned Counsel appearing for the Respondent University on the other hand submitted that through agency of some private College, a candidate not otherwise eligible manage to get their forms forwarded and it virtually operate as a racket thus, polluting the academic atmosphere of the University. He invited attention to para 4 of the return which clearly averts as to how the application forms are filled and forwarded and how such candidates at times succeeds in misleading the authorities in planned manner.

5. It was also urged by the learned Counsel for the Respondent that if such petitions are allowed it would throw open the floodgate for further petitions. learned Counsel appearing for the Petitioner, placing reliance on a proforma application form of the Respondent-University pointed out that so far entries required to be made in the column filled up in the application, it is entirely to be done by the forwarding authorities of the University. A candidate has nothing to do if the forwarding authority derelict in their duties. The Petitioner can not be blamed as indicated by the return, particularly para 4 thereof.

6. Placing reliance on a judgment of the Supreme Court as reported in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, it was argued that once a candidate is allowed to appear in an examination rightly or wrongly, the candidate can not be refused admission nor can his or her result be withheld. The case relied upon relates to a teacher in a Govt. High School who had joined Law classes for three years degree course. His admission to the Law course was under dispute as a result of complaint from the District Education Officer and apart from that he was also falling short of lectures as notified by the Head of Department of Law. All the same he was allowed to appear in the LL.B Part II examination. Although there were certain allegation of malafide as well, which of course not a situation in the present

case. The Supreme Court in dealing with the relevant provisions of Kurukshetra University Ordinance held as follows:

The last part of the statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the Appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant can not be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear.

Repealing the conditions that the candidate had failed to draw attention of the University authorities that he was short of attendance as required under the Rules, the Supreme Court observed:

There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the Appellant to appear in Part I examination in April 1972, then by force of the University statute the University had no power to withdraw the candidature of the Appellant.

7. The facts as revealed in the present case are that the candidate who had appeared at the 1992 examination was in fact eligible to appear at the said examination and should have made clear to the University authorities. The candidate had furnished all the informations as required by the prescribed application form and even the Respondent did not dispute this ; what is now alleged that by suppressing the fact she misled the University. The information overleaf the prescribed application form is to be furnished by the forwarding authority namely, the Principal of the College and accordingly the Respondent- University is to see and fill the column left blank. It was for the mere error of the forwarding authority of the University which ought to have called upon the Principal of the College to furnish necessary information. But, instead of doing so the Respondent-University issued an Admit Card to the Petitioner and the Petitioner eventually got through the University examination.

8. A specific question was put to the learned Counsel for the Respondent, if any action has been taken against the erring officer who forwarded such incomplete information in the form. Mere fact that a racket was going on, the learned Counsel was not in a position to make a categorical statement for want of information whether in the instant case action if any was either taken or contemplated, could not be ascertained.

9. In this circumstance, to my mind penalising a candidate, is rather unjust. More so in the face of the principles enunciated by the Supreme Court in Shri Krishna's case

(supra). Following the same, this petition deserves to be allowed. It is accordingly allowed. The Respondent-University is directed to publish the Petitioner's result of B.A. Part I & Part II examination.

The impugned letter dated 22.2.93 (Annexure-I to the writ petition) is also quashed. I make no order as to costs.