

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 6083/2006

% Date of Decision: 14.08.2008

HARITOSH MISHRA Petitioner
Through: Mr. Gautam Awasthi, Adv.

versus

BOARD OF TECHNICAL EDUCATION & ANR Respondent
Through: Mr.J.K. Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

VIPIN SANGHI, J. (Oral)

1. The petitioner has filed this petition under Article 226 of the Constitution of India to seek a direction to the respondents to either hold the Sessional Examination in respect of the petitioner again or to award average marks to the petitioner in the paper of Basic Electronics (theory). A further writ is sought to quash the Respondent's letter dated 12.1.2006 whereby the respondents have communicated that the petitioner's representation has been rejected by the Expert Committee on the ground of completion of five years duration from the time the petitioner took admission in the Diploma course in Computer Engineering.

2. The petitioner was nominated by the State of Uttar Pradesh to undertake the course of Diploma in Computer Engineering at

respondent No.2 institute i.e. Ambedkar Polytechnic vide letter dated 20.9.2000 sent by the Director of Technical Education, U.P. to the Director, Training and Technical Education, Govt. of NCT of Delhi. Consequently a further communication was issued on 22.9.2000 by the Department of Training and Technical Education, Govt. of NCT of Delhi to the Chief Admission Officer, Pusa Polytechnic to admit the petitioner. Accordingly the petitioner took admission in the aforesaid course in Ambedkar Polytechnic, New Delhi on 25.9.2000. Admittedly, the academic session for the said course had started in the month of July, 2000 and the petitioner joined on or after 25.9.2000. The petitioner submits that according to the format of the said course, in each subject two Sessional examinations of 20 marks each were held before he could join the course at the end of September, 2000. However, since the petitioner was till then not admitted to the institute he possibly could not take the said Sessional examination. The petitioner appeared in the Ist semester Examinations, which were conducted when he was already studying in the 3rd semester in January, 2002. In the Basic Electronics theory paper he obtained 41 out of 100 marks. Out of maximum marks of 150, 100 marks are allotted to the final theory examination and 50 marks are allotted towards Sessional examinations (2 exams of 20 marks each) and House Assessment of 10 marks. In Basic Electronics, the petitioner had been marked absent in the first Sessional Examination and awarded zero marks in the second Sessional Examination.

3. In the same paper i.e. Basic Electronics he had been given 6 marks out of 10 marks under the heading House Assessment (HA).

Therefore, out of 50 marks comprising of two Sessional examinations of 20 marks each and the House Assessment of 10 marks, he was awarded only 6 marks in Basic Electronics subject.

4. Since the petitioner secured only 47 marks out of 150 in Basic Electronics paper he could not pass in the said subject, as he was not awarded any marks for the two Sessional exams that he possibly could not take. The submission of the petitioner is that in other subjects, he was given average marks in the Sessional examinations on the basis of his performance after he joined the institute.

5. The respondents have filed as Annexure R-1, the tabulation of the marks awarded, inter alia, to the petitioner in the Sessional Examinations and the Practical Examination. The aforesaid submission of the petitioner that he had been marked absent in the first Sessional Examination for Basic Engineering paper and awarded zero marks in the second Sessional Examination for the said paper is borne out from the said document.

6. The petitioner represented to the Principal of respondent No.2 institute on 18.3.2003 requesting him to hold the Sessional Examinations of Basic Electronics so that he could appear in the said Examination. On 24.10.2005 the petitioner made another representation in which he clearly stated that the first semester Sessional Examinations of Basic Electronics were held during the month of July-September, 2000. Since he was not enrolled during that period he could not appear in the said examinations. Consequently he was marked absent in one and he was awarded zero marks in the other, in the subject of Basic Electronics for no fault of

his, which is not justified. He further pointed out that he has successfully passed all the other semesters examinations in first division, except for the first semester Sessional Examinations in which he has not appeared.

7. By the impugned communication, the respondent rejected the aforesaid request of the petitioner on the ground of completion of 5 years duration.

8. The submission of learned counsel for the petitioner is that on account of his being awarded only 6 out of 50 marks in the Sessional and House Assessment, the petitioner was placed in a highly disadvantageous position, inasmuch as, in the final examination, though he had secured 41 out of 100 marks, in the over all result he was declared "fail" since the aggregate of his marks in Basic Electronics paper came to only 47. Moreover, even if he had reappeared in the Basic Electronics theory paper, the same would only relate to the theory examination consisting of 100 marks and the petitioner would then have had to secure 60 marks to be able to clear the Basic Electronics paper. His submission is that since the petitioner was granted admission on 25.9.2000, like in all other subjects, in Basic Electronics as well, he could have been granted average marks on the basis of his subsequent performance, or the respondent could have conducted the Sessional Examinations for the petitioner as prayed for by him repeatedly.

9. The respondents have filed their counter affidavit and two further affidavits in opposition to the writ petition.

10. The petitioner has made specific averments contained in para 2(iv) which reads as follows:

“(iv) That by the time the petitioner could take admission and resume studies, the sessional examination had been held and the petitioner was shown absent in the paper of Basic Electronics while in other subjects, the teachers gave him average marks or took the exam as the absence was not attributable to the petitioner.”

However, the same have not been specifically controverted in the counter affidavit as initially filed by the respondent. The respondents filed an additional affidavit on 1.11.2000 stating that they have no provision of giving any kind of average marks for examinations which were not taken by a candidate and that marks awarded by the respondents are the actual marks obtained by the candidates in examinations taken by them. It was further stated that zero marks awarded to the petitioner in Basic Electronics in the second Sessional Examination of the first semester were actual marks that he had obtained after appearing and taking the examination.

11. It appears that the issue as to whether the Sessional Examinations were held before the petitioner joined the respondent institute on 25.9.2000 or were held after the petitioner joined the said institute, and he absented in the first Sessional Examination in Basic Electronics paper and obtained zero marks in the second Sessional Examination for the said paper became the focal point for determination since diametrically opposite stands were taken by the parties. While it was contended by the petitioner that the two Sessional Examinations had already been held before he joined institute on 25.9.2000, the case of the respondent was that the said

Sessional Examinations were conducted after he joined the said course on 25.9.2000 and the marks awarded to the petitioner in all the papers including the Basic Electronics were the actual marks and not average marks. The respondents have also denied that in all other papers except Basic Electronics, average marks were awarded to the petitioner for the two Sessional Examinations as contended by the petitioner.

12. On 18.3.2008 the respondent was directed by the Court to place before this Court the date on which the petitioner was given admission to the course in question and the dates on which the first and second Sessional Examination for the year 2000 were conducted by them. Additional affidavit has been filed by the respondent some time in May, 2008. However, the same has not come on record. Counsel for the respondent has produced another copy of the same which has been taken on record today. Interestingly, the specific information sought by the Court has not been disclosed by the respondents on the ground that the information sought pertains to old records which are not available with the respondent No.2 institute. The communication dated 21.4.2008 of the respondent No.2 institute has been filed as an annexure to this affidavit wherein it is stated that the dates of conduct of first Sessional Examination of first semester for the academic session 2000-2001 are not available either in the Computer Engineering Department or the Academic Cell. As per the Sessional record, the student was absent in the first sessional and secured zero in the second Sessional.

13. In my view the stand of the respondent taken in the second additional affidavit is most unsatisfactory and unacceptable. Firstly, the letter dated 21.4.2008 is silent about the availability/non-availability of the records pertaining to the second Sessional Examination of 1st Semester. I could have appreciated the stand of the respondent if it was that the answer sheets of the first and second Sessional Examinations stated to have been taken by the petitioner are not available since they have not been preserved for such a long period. However, it seems rather strange that the respondent institute has not maintained its own records, inter alia, pertaining to formulation of question papers, issuance of notice of examination, circulation of date sheets for holding the examination and other documents in the administrative records of the respondent. As I see it, this appears to be a clear case of the respondent avoiding to answer the specific query raised by the Court. Learned counsel for the petitioner points out that the Board examination for the academic year 2000-2001 was held in January, 2001. In the month of October, 2000 as is customary, a break for Durga Pooja and Diwali was given. It, therefore, seems highly improbable that both the Sessional Examinations would have been held only after September, 2000. If the records are not available even to show as to when the two Sessional Examinations were held, it is difficult to appreciate as to on what basis the respondents made a definite and categorical statement that the Sessional Examinations were held after the petitioner had joined the course and that he had absented in the first and secured zero marks in the second Sessional Examination in the

Basic Electronics subject and the marks awarded to the petitioner awarded to the petitioner in all the Sessional Examination papers were actual and not average marks. No statement or affidavit of the examiner/teachers of the petitioner who may have taught the petitioner the various subjects in which Sessional Examinations were held have been filed in support of their stand by the respondent and to deny the case of the petitioner. Moreover, when the issue was live since at least 2003, the action of the respondents in not preserving the records cannot be appreciated. On account of the evasive response of the respondent, I draw an adverse inference against them. I may also notice that the stand of the petitioner that the Sessional Examination had taken place before he joined the course on 25.9.2000 was taken by him as early as on 24.10.2005. The said stand was reiterated in the representation made to the Chief Minister apparently on 9.11.2005. While responding to these representations on 12.1.2006 the respondent did not controvert this factual position.

14. For the aforesaid reasons I am of the view that the petitioner was wrongly shown as absent in the first Sessional examination and was wrongly awarded zero marks in the second Sessional examination of the Basic Electronics paper. The petitioner had made a reasonable requests that he was even later willing to reappear in the two Sessional Examinations for the said paper. Even that request was not granted by the respondents on the ground that the period of 5 years had expired overlooking the fact that the first request was made on 18.3.2003, i.e., within the period of five years. The

respondents could not have put the petitioner in a disadvantageous position on account of delay caused by them in deciding his case.

15. On being asked whether the petitioner could even now be permitted to take the two Sessional Examinations in Basic Electronics for the first semester, learned counsel for the respondent states that Sessional examinations are not repeated. Looking to the peculiar situation that has arisen in this case, I direct that the marks of the petitioner for the two Sessional Examinations of the first semester in the Basic Electronics paper should be assessed on an average basis, i.e., on the basis of his House Assessment awarded to him which is 60%. The petitioner may, therefore, be treated as having 12 marks out of 20 marks i.e. 60% in each of the Sessional Examinations for the Basic Electronics paper and his marks be computed accordingly.

16. The result of the petitioner be re compiled after complying with the aforesaid directions.

With these directions the petition stands disposed of.

VIPIN SANGHI
JUDGE

August 14, 2008
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