



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 22 of 2022

Shri Pravin Sharma,
S/o Shri Kharananda Sharma,
R/o Gyalshing, Aari Gaon,
P.O. and P.S. Gyalshing,
West Sikkim.

..... Petitioner

Versus

1. Sikkim University,
Through the Controller of Examination,
6th Mile, Samdur, Tadong,
Gangtok East Sikkim,
Pin No.737102.
2. The Principal,
Sikkim Government College, Gyalshing,
Pin No. 737111.
3. Education Department,
Through the Secretary,
Government of Sikkim,
Gangtok 737101.

.....Respondents

Writ Petition under Article 226 of the Constitution of India.

Appearance:

Mr. Thupden Youngda and Mr. Purab Wangdi,
Advocates for the Petitioner.

Mr. Karma Thinlay Namgyal, Senior Advocate with Mr.
Karma T. Gyatso and Mr. Yashir N. Tamang,
Advocates for Respondent No.1.

Mr. Thinlay Dorjee Bhutia, Government Advocate and
Ms. Pema Bhutia, Assistant Government Advocate for
Respondent Nos. 2 and 3.



With
W.P. (C) No. 23 of 2022

Shri Praveen Basnet,
S/o Shri Mohan Singh Basnet,
R/o Middle Gyalshing,
P.O. and P.S. Gyalshing,
West Sikkim.

Versus

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Through the Controller of Examination,
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Date of hearing : 03.05.2023 & 04.05.2023.
Date of Judgment : 04.05.2023



J U D G M E N T (O R A L)

Bhaskar Raj Pradhan, J.

1. The two petitioners before this court are students pursuing BA (Honours) degree in the respondent no.2 college under the respondent no.1 University. While Pravin Sharma is pursuing Sociology (Honours), Praveen Basnet is pursuing Political Science (Honours).

2. While the petitioners were in the 3rd semester they were expelled on 19.02.2021 by the respondent no.2. Four students including the petitioners who were expelled challenged the expulsion orders before this court. On 14.12.2021 this court set aside the expulsion orders. However, the two petitioners are once again before this court. They seek to challenge the communication dated 16.02.2022 issued by the respondent no.1 to the respondent no.2. The petitioners also seek a direction upon the respondents to allow them to sit for the 6th semester and classes as well as clear the backlogs of the previous semester examinations.

3. Counter affidavits have been filed by the respondents. The respondent no.1 states that the petitioners could not appear for the 3rd and 4th semester examinations or attend lectures for the 4th semester on account of being under



expulsion. It is also stated that when the judgment dated 14.12.2021 was pronounced by this court the courses of the subsequent 5th semester had already commenced from 30.08.2021 and major part of 5th semester syllabus was also complete before the expulsion was set aside. As the petitioners had not attended their course from the 5th semester, they were allowed readmission as regular student from the next upcoming 4th semester in the subsequent even session, 2022 to be held from 18.04.2022 to 28.07.2022. However, the petitioners rejoined from the then ongoing 5th semester with their batchmates which had already commenced from 30.08.2021 and attended classes of the said semester from 10.02.2022 till 28.02.2022. According to the respondent no.1 this was in consonance with the University Ordinance, Syllabus and Regulations on Conduct of Examination. The respondent no.1 submits that a reading of the relevant Regulations makes it clear that all students must compulsorily attend each of the stipulated number of lectures as regular students in order to fulfill the requirements for award of degree.

4. The respondent no.2 asserts that after the judgment dated 14.12.2021 in the general body meeting convened on 22.12.2021 by the Principal it was decided to make a formal query to the respondent no.1 to understand the



various steps to be taken pursuant to which they sent a communication dated 22.12.2021 which was replied to by the respondent no.1 vide its letter dated 11.01.2022. Thereafter, at the general body meeting convened on 01.02.2022 the expelled students were allowed to complete their studies. On 09.02.2022 undertakings were taken from the petitioners to abide by the rules and regulations of the respondents. On 10.02.2022 the respondent no.2 informed the respondent no.1 about the reinstatement of the petitioners and others. Thereafter, the respondent no.1 issued letter dated 16.02.2022. The petitioners and other students vide their letters dated 23.02.2022 and 24.02.2022 requested the respondent no.1 to allow them to continue with classes without a year gap which was responded to by respondent no.1 vide their letter dated 23.03.2022.

5. On 21.07.2022 the petitioners wrote to the respondent no.1 complaining about their examination details not been registered in the 6th semester while filling up the online examination form. On 27.07.2022 the respondent no.1 wrote to the respondent no.2 making interim arrangement for examination of the petitioners for even semester 2022. On 29.11.2022 the petitioners approached the respondent



no.1 requesting them to be allowed to sit for the end term examination of the 5th semester as a backlog.

6. On perusal of the pleadings in the present proceedings it is quite evident that the controversy of the present dispute lies in a narrow compass. Admittedly, when the petitioners were expelled on 19.02.2021 they were attending the 3rd semester. When they rejoined after their expulsion was set aside on 14.12.2021 the 5th semester was on. Evidently part of the 3rd semester, the entire 4th semester and part of the 5th semester could not be attended by the petitioners solely on account of their expulsion which was found to be illegal by this court.

7. It transpires that on 22.12.2021 the respondent no.2 sent a query to the respondent no.1 about the petitioner's status. In that communication the respondent no.2 informed the respondent no.1 about the expulsion of the students as well as the judgment of this court setting aside the expulsion. A copy of the judgment was also enclosed. The respondent no.2 asked the respondent no.1 what were the various procedural formalities which were needed for the students to be reinstated in view of the fact that the students had already been deregistered from the university. In response the respondent no.1 clarified to the respondent no.2 on 11.01.2022 stating that although a student may be



expelled by a college for various reasons their registration with the university continues till the students withdraws migration certificate from the university. Respondent no.1 also clarified that the four students including the petitioners were registered students of the respondent no.1 even though they were expelled by the respondent no.2. They further clarified that under clause 2B (h) and (i) of the Regulations on Conduct of Examination (the Regulation) notified on 09.10.2017, the undergraduate students may continue “in the relevant semester” and may have the option to clear the back papers of the missed semester within the maximum permissible ten semesters.

8. On 09.02.2022 the respondent no.2 seem to have taken undertakings from the petitioners that they would abide by the rules and regulations prescribed by the respondents. On 10.02.2022 thereafter, the respondent no.2 informed the respondent no.1 that they had reinstated the four students including the petitioners pursuant to the judgment of this court. On 16.02.2022 the respondent no.1 wrote to the respondent no.2 making certain clarification with regard to the petitioners. It was stated that as per Regulation, subject to the consent of the head of the institution, student may be allowed readmission from 4th semester from even semester 2022 and appear for backlog



papers if any, from the ongoing odd semester 2021-2022. It further clarified that in order to be declared qualified for a degree, the student has to clear all papers within the maximum number of semester permissible as per Regulation. On 24.02.2022 the petitioners wrote to the respondent no.1 requesting them to allow them to continue their classes without a year gap. The respondent no.1 replied to the petitioners letter vide the letter dated 23.03.2022 stating that they had examined their request and their communication dated 16.02.2022 to the respondent no.2 continue to remain valid.

9. The Regulations provides under the head “Assessment Procedures; Sessional Test and End Semester Examinations” various procedures to be followed. Attention was drawn by the learned Senior Counsel appearing for respondent no.1 to Regulation 2B (b), (c) and (h).

10. Regulation 2B (b) provides that ordinarily any student admitted to the privileges of the university who has duly applied for permission to sit in his /her end semester examination shall be treated as eligible to sit for the examination subject to the conditions that the student concerned has paid the prescribed fee and has, on aggregate, attended at least 75% of the total lectures



delivered during the entire tenure of the semester he/she is enrolled in.

11. Regulation 2B (c) provides that in the event of a student failing to obtain the stipulated 75% attendance, he, she may apply through his/her head of the department to the concerned Dean or to the Principal of the college wherein the student is enrolled seeking partial relaxation of the applicable attendance norm. Subject to the condition that the concerned Authority is convinced of the genuineness of the case he/she may grant relaxation in attendance to the tune of a maximum of 5% and provided that the relaxation thus granted makes up for the stipulated attendance norm, the student concerned may be allowed to sit for examination. In case, the relaxation thus accorded is not sufficient to make the student eligible to sit for examination, the student shall have to repeat the papers in which he /she has insufficient attendance in the next relevant semester.

12. Regulation 2B (d) provides that all regular students shall be subjected to the process of continuous evaluation accordingly, as student is required to attend and duly clear two sessional tests and one end semester examination by the close of each semester. The Regulation also provides for



the structure of these sessional test and end semester examination.

13. Regulation 2B (h) provides that ordinarily, a student shall not be detained in any semester even if the student attends less than 75% of the classes held in that particular semester and/or fails in the end semester examination subject to the condition that the student has to clear all papers within the stipulated number of semesters as is fixed by the University failing which the student would be declared failed and has to restart from the first semester of the course in case still willing to pursue study.

14. During the pendency of the present proceedings before this court the petitioners made a grievance that although pursuant to the judgment dated 14.12.2021 they had attended the 5th semester from 10.02.2022 till 28.02.2022 and also appeared for the sessional examination, admit card for appearing in the end term examination of the 5th semester was not issued to them. Considering the grievance and to ensure that the petitioners who were students do not miss out attending lectures an interim direction was passed directing the respondent no.2 to permit the petitioners to attend classes for the current session. It was also clarified that should the concerned authority seek variation of the order they were



free to make an appropriate application before this court. Admittedly, no such application was preferred.

15. Similarly on 14.12.2022 the learned Senior Counsel appearing for the respondent no.1 submitted that the 5th semester examination is scheduled to be held on 13.03.2023. It was also pointed out that by the Order dated 07.06.2022 this court had directed the respondent no.2 to permit the petitioners to attend classes for the current session of his batch. It was also stated that pursuant to the interim direction the petitioners had attended the classes for two weeks of the 5th semester and thereafter, they have been attending the further semesters. In view of the submissions made by the parties this court deemed it fit to direct that the petitioner may be permitted to sit for the 5th semester examination scheduled to be held on 13.03.2023 subject to the outcome of the writ petition.

16. The learned Counsel for the parties clarified that, the petitioners have in terms of Regulations 2B (d) of the Regulation appeared for the sessional tests as well as the end semester examination. The learned Senior Counsel for the respondent no.1 however, submits that as the petitioners have not fulfilled the requirement of Regulation 2B (c) they could not be awarded a degree in spite of the



fact that they have appeared for the end semester examination and as such their results are being withheld.

17. Attention is also drawn to clause 5.8 of the Minimum Standards of Instruction for the Grant of the First Degree through Formal Education Regulations, 2003 (UGC Regulation) of the University Grant Commission (UGC) which is applicable to all universities and Institutions as provided therein. Regulation 5.8 provides “*the Minimum number of lectures, tutorials, seminars and practicals which a student shall be required to attend for eligibility to appear at the examination shall be prescribed by the university which ordinarily shall be not less than 75% of the total number of lectures, tutorials, seminars, practicals, and any other prescribed requirements*”.

18. The situation in the present case however is unique. Admittedly, the petitioners missed out the entire 4th semester because of them being expelled by the respondent no.2 and by the time the expulsion orders were set aside they had missed out in their education for the entire 4th semester. The correspondences discussed above reflects that at the first instance the respondent no.2 seem to have misunderstood the communication of the respondent no.1 in which the respondent no.1 had advised the respondent no.2 to permit the students to continue “*in the relevant*



semester” to mean the 5th semester and not the 4th semester. Pursuant to such interpretation the respondent no.2 permitted the petitioners to attend the 5th semester. However, it was only on 16.02.2022 that the respondent no.1 clarified as per the Regulation the petitioners may be allowed readmission from the 4th semester from even semester 2022 and appear for backlog papers if any, from the ongoing odd semester 2021-2022. Although the petitioners approached the respondent no.1 on 24.02.2022 requesting them to continue their classes without a year gap the respondent no.1 responded to it only by reiterating their stand taken on 16.02.2022.

19. The learned Senior Counsel for the respondent no.1 submits that it is because of the fact that the petitioners have not attended the 4th semester they could not fulfill the requirement of 75% of attendance as per the Regulations. There is no document placed on record by the respondent no.1 taking any informed decision on the situation. The learned Senior Counsel also informs that in view of the UGC Regulation 5.8 and 8.1 the respondent no.1 has not yet declared the result of the 4th 5th and 6th semesters examinations conducted by the respondent no.1 in which the petitioners have appeared. On a query made by this court the learned counsel for the parties states that the 5th



semester examination was held between 30.03.2022 to 12.04.2022 and the 4th semester and the 6th semester's examinations were held between 01.08.2022 to 17.08.2022. It is noticed that although these examinations were held in the year 2022 there is nothing on the record from the respondent no.1 as to why they have not declared the result of the petitioners as yet. The learned Senior Counsel for the respondent no.1 submits that since the matter was pending before this court no decision was taken.

20. This court is of the considered view that decision with regard to the academics of a University is best left to the experts. The respondent no.1 is tasked to ensure quality education. They are also experts in understanding the need and welfare of their students. The only issue raised repeatedly during the hearing is the lack of attendance of the petitioners as they failed to attend the lectures during the entire 4th semester which was held during the period of their expulsion. As the respondent no.1 has withheld the result of the examination of the 4th 5th and 6th semester of the petitioners without any decision which would reflect their application of mind, the respondent no.1 is directed to take an informed decision in writing considering the applicable Regulations as well as the peculiar situation the petitioners are faced with of not attending the lectures of



the 4th semester due to their expulsion which was later on set aside by this court. Apparently, there was little the petitioners could do or under their control to attend lectures during the period of their expulsion. The decision shall be taken on time so as to ensure that there is no impediment to the petitioners in pursuing their further studies, which they desire to do, subject however, to them being successful in the examinations. It is submitted by the learned counsel for the petitioners that for the purpose of further studies they are required to sit for Common University Entrance Test (CUET) and the last date prescribed in the portal for enrolling themselves for CUET Post Graduate (P.G.) 2023 is 05.05.2023. This fact is also confirmed by the learned counsel for the respondents. The respondent no.1 is therefore, directed to ensure that the decision is taken by today or at least before noon tomorrow and communicated to the petitioners to enable them to get adequate time to enroll themselves for CUET PG in case they are declared successful.



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21. The writ petitions are disposed of accordingly. No order as to costs. The copy of the order shall be made available to the parties by today.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/