

GAHC010029202016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6740/2016

ABHIJIT BHOWMICK
S/O SRI SHANKAR BHOWMICK, R/O H/NO.25, VIVEKANANDA PATH,
BIRUBARI, UDAIPUR, P.O. GOPINATH NAGAR, GHY-16, DIST- KAMRUP
METRO, ASSAM

VERSUS

GAUHATI UNIVERSITY and 4 ORS.
REP. BY ITS VICE CHANCELLOR, JALUKBARI, GHY-14

2:THE REGISTRAR
GAUHATI UNIVERSITY
JALUKBARI
GHY-14

3:THE CONTROLLER OF EXAMINATIONS
GAUHATI UNIVERSITY
JALUKBARI
GHY-14

4:THE DIRECTOR
INSTITUTE OF DISTANCE AND OPEN LEARNING
GAUHATI UNIVERSITY
JALUKBARI
GHY-14

5:THE ASSTT. DIRECTOR EVALUATION
INSTITUTE OF DISTANCE AND OPEN LEARNING
GAUHATI UNIVERSITY
JALUKBARI
GHY-1

Advocate for the Petitioner : MR.D P BORAH

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 27.03.2023

Heard Mr. M. Nath, learned senior counsel, assisted by Mr. A. Bhattacharjee, learned counsel for the petitioner and Mr. P.J. Phukan, learned standing counsel for the Gauhati University, representing all the respondents.

2. The case of the petitioner is that after obtaining B.Com. Degree, the petitioner took admission in M.Com. Course in Institute of Distance and Open Learning (IDOL for short) under Gauhati University in the academic session 2012-13. The petitioner had appeared in the "M.Com. Previous Examination" held by the Gauhati University in the year 2013 and cleared Paper-I, III, IV and V, and he had pleaded that he had cleared all the 5 (five) papers of the "M.Com. Final Examination" held by the Gauhati University in the year 2015. However, it appears from the copy of the prospectus annexed by the petitioner that there were only four papers in M.Com. final syllabus, being Paper VI and three options of Paper VII, VIII and IX. Thus, in terms of notice dated 12.05.2016 and 11.06.2016, the petitioner went to submit filled-up forms with the requisite fees for appearing in the back-paper, i.e. Paper-II of the "M.Com. Previous Examination", but the respondent authorities refused to accept the same. Thereby the petitioner was deprived of his right to appear and clear the M.Com. Examination.

3. Hence, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for directing the respondent authorities to allow the petitioner to appear in Paper-II of the "M.Com. Previous Examination".

4. The learned senior counsel for the petitioner has referred to the prospectus of IDOL and various clauses therein and it has been submitted that at the relevant time, two mode of studentship was permitted for M.Com course, one being course of 2 (two) annual academic years, viz., Previous and Final. The second being 6 semester course, viz., 1st, 2nd, 3rd, 4th, 5th and 6th semester , being 3 (three) year course, for which examinations was to be held at the end of every semester. It is submitted that Rules/Regulation 1, 13 and 14 provided in the prospectus, was to the following effect:-

"1. The MA/MSc/MCom/MCJ degree programme shall of two/three years duration and be divided into two/four modules viz., PREVIOUS and FINAL and/or 1st, 2nd, 3rd, 4th, 5th and 6th semester examinations which shall be held annually or at the end of every semester as specified in the respective syllabi.

*

*

*

13. A candidate for the MA/MSc/MCom/MCJ/MSc-IT/MCA degree must pass/ clear all the courses/ papers prescribed for a particular subject within a period of maximum four academic years from the date of his/ her enrolment in order to get the said degree."

14. For any programme offered by IDOL, a candidate need not clear all the courses/ papers in one examination. His/her credit for each course/ paper cleared will be carried over to subsequent year. This clause be read along with clause 13 above."

5. Thus, it is submitted that on conjoint reading of the

hereinbefore referred Rule 1, 13 and 14, the petitioner was entitled to clear all the papers in four academic years and therefore, as the petitioner got himself admitted in academic session 2012-13, his four academic years would be over in the year 2015-16. Accordingly, it is submitted that as the examination for 2015-16 session was announced vide notice dated 12.05.2016 and 11.06.2016, the petitioner went to submit filled-up forms with the requisite fees for appearing in the back-paper, i.e. Paper-II of the "M.Com. Previous Examination", but the respondent authorities refused to accept the same, adversely affecting his academic pursuit.

6. Per contra, the learned counsel for the respondents, by referring to the Gauhati University Regulations for Master of Commerce (M.Com.) Course & Examination For Graduates of 10+2+3 pattern (Effective from 1987-88 Session), has submitted that under Rule 18 thereof, a student of the M.Com. course would have 4 (four) years to clear all the examinations, but within 3 (three) successive years. Therefore, it is submitted that one would have three chances within four years. Hence, it is submitted that the petitioner would not be entitled to any relief.

7. Perused the materials on record. Also perused the copy of the M.Com. Regulations of Gauhati University produced by the learned standing counsel for the respondents. It would be relevant to quote Rule 18 of the said Rules, which is as follows:-

"18 (a) A candidate who fails to pass or present himself for the Previous or Final M. Com. examination shall not be entitled to claim a refund of the examination fee nor will such fee be carried over for a subsequent examination.

(b) If a student after completion of his/her regular course of studies for the M.

Com., Previous or Final Examination does not register himself as a candidate for or present himself at or fails to pass the examination immediately succeeding such completion, he may appear at any of the two successive examinations of the same standard.

(c) For any further subsequent examination, he shall be required to prosecute a fresh course of for the full period prescribed.

(d) A candidate for the M. Com. Examination must pass the Final Examination within three years from the date of passing the previous examination."

8. The relevant Clause 7.3 of the Prospectus of IDOL is also quoted below:-

"7.3 FEES TO BE PAID FOR SECOND/THIRD CHANCE/ BACK PAPER CANDIDATES

Candidates re-appearing in the Previous/Final examination of the M.A./M.Sc./M.Com/MCJ programme for second/third chance/Back papers are required to pay examination fee of Rs.1000/- (Rupees one thousand only) for full papers or more than two papers and Rs.500/-for appearing in maximum two papers."

9. Thus, it is seen that Clause 7.3 of the IDOL Prospectus is in consonance with Rule 18 of the M.Com. Regulations of Gauhati University. Thus, a student undergoing M.Com. Course is required to clear all his/her papers in four academic years but in three chances.

10. Therefore, in light of Rule 18 of the M.Com. Regulations of Gauhati University, the Court is unable to hold that the respondent authorities had committed any wrong of illegality in refusing to accept the examination form and examination fees from the petitioner in 2016, as his chance had lapsed. The petitioner was required to clear all his papers within 3 (three) successive years.

11. Nonetheless, the Court is inclined to observe that a student is attracted to undergo a particular academic course based on information given in the prospectus. A student is not expected to go through Act by which University was established, University Statutes, Rules, Regulations, before admitting into a course. Therefore, the Gauhati University ought to have taken care that all relevant information is available in its prospectus for a particular course. In this case, it apparently appeared on conjoint reading of clause 1 and 13 under the heading "Rules and Regulations" of the prospectus, as relied upon by the learned senior counsel for the petitioner that a candidate undergoing M.Com. Course had four academic years to clear the M.Com. Examinations.

12. Be that as it may, as Rule 18 of the Gauhati University Regulations for Master of Commerce (M.Com.) Course & Examination For Graduates of 10+2+3 pattern (Effective from 1987-88 Session) clearly provides that a student of the M.Com. course would have 4 (four) years to clear all the examinations, but within 3 (three) successive years, the Court is constrained to hold that the petitioner would not be entitled to any relief.

13. Therefore, this writ petition stands dismissed.

14. The parties are left to bear their own cost.

JUDGE

Comparing Assistant