

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1702 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 10499 of 2014

- =====
1. B. N. Mandal University, Laloonaagar, Madhepura through its Vice Chancellor
 2. The Vice Chancellor, B. N. Mandal University, Laloonaagar, Madhepura
 3. The Registrar, B. N. Mandal University, Laloonaagar, Madhepura
 4. The Controller of Examination, B. N. Mandal University, Laloonaagar, Madhepura

.... Appellants

Versus

1. Amit Pratap Roy, S/o Brinda Prasad Roy, resident of Qtr No. T/32, Postal Colony, Barmasis, Post + District - Katihar
2. The Principal, D.S. College, Katihar
3. The State of Bihar through the Principal Secretary, Human Resources Development Department, now Education Department, Govt. of Bihar, New Secretariat, Patna
4. The Director, High Education, Govt. of Bihar, Patna

.... Respondents

=====

Appearance :

For the Appellants : Mr. R.K. Verma, Sr. Advocate.
Mr. Shashi Bhushan Singh, Advocate.
For the Respondents : Md. Ataur Rahman, Advocate.
Mr. Anisur Rahman, Advocate.
For Respondent No.2: Mr. Rakesh Kumar Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 05-04-2016

I.A. No. 7674 of 2015

The application is for condonation of delay of 50 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 50 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 7674 of 2015 is allowed and delay of 50 days in filing the Letters Patent Appeal is condoned.

L.P.A. No. 1702 of 2015

Heard learned counsel for the appellants and the respondents.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13th of January, 2015 in C.W.J.C. No. 10499 of 2014, whereby Appellant Nos. 2 to 4 have been directed to publish the result of B.A. (History Hons.) Part-III Examination held in the year 2012 at an early date.

3. The admitted facts of the case are that the writ petitioner, Respondent No. 1 herein, was admitted in three years degree course of Bachelor of Arts (Hons. in History) at D.S. College, Katihar for the Session 2005-2008. Respondent No. 1 appeared in B.A. (History Hons.) Part-I examination in January, 2007 and was declared to have passed the



aforesaid examination. He appeared in B.A. (History Hons.) Part-II examination in December, 2008 and declared to have passed the said examination. But thereafter for three years i.e. in 2009, 2010 and 2011 the writ petitioner did not appear in the examination nor attended the sessions for academic studies. He appeared in B.A. (History Hons.) Part-III examination in all the papers in the year 2012. The result of the said examination was withheld by the appellants, which has been directed to be published by the learned Single Bench.

4. Learned counsel for the appellants refers to Rule 7.1 of the Regulations for Bachelor of Arts (General/Honours) Examination (Three Year Degree Course) (hereinafter referred to as “the Regulation”) to contend that a candidate has to take out the examination in carry over subject/subjects at not more than three consecutive examinations. Since the writ petitioner did not appear in the three consecutive examinations i.e. in the year 2009, 2010 and 2011, therefore, he ought not to have appeared in the B.A. (History Hons.) Part-III examination in the year 2012 and the direction of the learned Single Bench runs counter to the Regulation framed. Therefore, such direction is not sustainable. For ready reference, Clause 7.1 of the Regulation is reproduced hereinbelow:-

“7.1. There shall be University examination at the end of the first, the second and the third years of study to be known respectively as the B.A. (General/Honours) Part I Part II and Part III examination. No student shall be

admitted to the B.A. (General) or B.A. (Honours) Part II class unless he has passed the B.A. (General) or B.A. (Honours) Part I examination and to the Part III class unless he has passed the Part II examination.

Provided that if a student fails in or fails to appear at, not more than two subjects at the B.A. (General/Honours) Part I/II examination he shall be promoted to the next higher class but he shall not be eligible for admission to the B.A. (General) or B.A. (Honours) Part III class unless he has passed the B.A. (General) or B.A. (Honours) Part I examination in the subject/subjects concerned.

Provided further that this facility for appearing in such carry over subject/subjects shall be available to a student at not more than three consecutive examinations.”

5. We do not find any merit in the said argument. Clause 7.1 of the Regulation deals with a situation if a student fails in or fails to appear at not more than two subjects. The second proviso deals with a situation where a candidate has appeared in any of the three parts of the Bachelor of Arts Courses and could not qualify in a subject or subjects, then he cannot appear in the examination in more than three consecutive examinations. But present is a case where the student has not taken admission in B.A. (History Hons.) Part III course for a period of three years. Therefore, there was no question of his having failed in one or more subjects in respect of Part III examination. Thus Clause 7.1 of the

Regulation will not have any application to the facts of the present case.

6. Faced with this situation, learned counsel for the appellants refers to Clause 8 of the Regulation to contend that even in terms of such Regulation, the candidate is not eligible to appear in the B.A. (History Hons.) Part III examination. Such Clause 8 of the Regulation reads as under:

“8. Any registered student of the University may be admitted to the B.A. (General/Honours) Part I, Part II or Part III examination if he produces a certificate from the Principal of a college of (a) good conduct (b) completion of regular course of study in the college by fulfillment of the prescribed requirement of attendance at lectures, tutorials and/or practicals and by satisfactory record of tutorial and/or practical and by satisfactory record of tutorial and/or practical work and (c) having passed the college test or any other equivalent examination, for making him eligible for the University examination.

Provided that a candidate who has failed at any of these examinations or having completed the regular course of study by fulfilling all the requirements is prevented from appearing at the examination for reasons accepted as adequate by the Principal of the college and who has not joined a college again, may appear as a non-collegiate student at and up to three immediately following examinations without attendance at lectures and tutorials if he produces a certificate from the Principal of the college where he completed his regular course of study stating that

nothing is known to the Principal against his moral character, and if such a candidate has offered any subject or subjects for which a practical examination is prescribed, other than Music and Home Science, also a certificate of having taken again a course of practical work at the college in each such subject for at least 16 periods, along with his application for admission to the examination.

Provided further that if a candidate for the B.A. (General/Honours) Part III examination has passed in other subject/subjects and failed to pass only in General Studies he shall have the option to appear in that single subject at the next examination, and if he passes therein it shall be taken into consideration in determination of his results.”

7. We find that such Regulation is applicable to a candidate who has failed at any of these examinations or having completed the regular course of study by fulfilling all the requirements is prevented from appearing at the examination for reasons accepted as adequate by the Principal of the college. The two conditions are that the candidate has either failed at any of the examinations or having completed the regular course of study, did not appear in the examination. Both the situations are not applicable in the case of the writ petitioner as he has neither failed in B.A. (History Hons.) Part III examination nor has completed regular course of study so as to raise the bar of three consecutive examinations, as provided in the proviso to Clause 8 of the Regulation.

8. In view of the above, we do not find any error in the order

passed by the learned Single Bench which may warrant interference in the present intra court appeal.

9. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P./Sujit
N.A.F.R.

U			
---	--	--	--