

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1832 of 2016

Gauray Kumar son of Anil Kumar resident of A/206, Laxmi Appartment,
Chitragupta Nagar, Kangarbagh, P.S. Patrakarnagar, Patna

.... Petitioner/s

Versus

1. The High Court of Judicature At Patna through its Registrar General, Patna High Court, Patna
2. Registrar General, Patna High Court, Patna
3. The Registrar Administration I/C Patna High Court, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sumit Kumar Jha

For the Respondent/s : Mr. Bindhyachal Singh

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 18-04-2016

Heard the counsel for the petitioner and Mr. Bindhyachal

Singh the counsel for the Patna High Court.

The interpretation of Rule 7 (XI) (a), Chapter XXIV of the Patna High Court Rules (for short ‘the Rules’) has fallen for consideration in this writ proceeding.

To provide the background, let it be recorded that an Advocate wishing to practice in this Court has to clear the Advocate-on-Record (AOR) examination conducted by the Patna High Court under Chapter XXIV of the Patna High Court Rules. Only upon clearing the said test/examination, an advocate is allowed to practice in this Court and file pleadings. The petitioner appeared at the 2nd AOR examination held in 2014. He secured the following marks in the said test/examination:-

Paper I : 42.00

Paper II : 55.00

Paper II : 67.00

Paper IV : 60.00

Total : 224.00 (56.00% aggregate)

It is stated that his aggregate marks in three papers namely Paper II, Paper III and Paper IV was 60%. The respondent declared him failed. The representation thereagainst did not bring any favourable result whereafter the present writ petition was filed wherein an interim order was passed on 18.02.2016. The petitioner was permitted to take the examination in one paper (paper-1) only in the next year examination conducted by the respondent at his own risk and peril. It is informed at Bar that the petitioner was permitted to take the examination in Paper-I only and the result is awaited.

A counter affidavit on behalf of the respondents has been filed.

The counsel for the petitioner has submitted that a bare reading of the relevant provision(s) would make it abundantly clear that if a candidate has secured more than 50% marks in the remaining papers and between these three papers the aggregate is 60% or above, then he can be allowed to take the subsequent examination in the remaining paper only subject to deposit of full examination fee. In the light of the said provision, the petitioner requested the Court and he was permitted to take the examination in Paper-I only result whereof is awaited. He also referred in this regard to Rule 7(xi) (b) of the Rules.

Mr. Binadhyachal Singh, the counsel for the respondents, on the other hand, submitted that the harmonious construction of the provision of Rule 7 (XI(a)) of the Rules does not qualify the petitioner to take examination of only one paper. If the petitioner has



obtained 60% marks in each paper of the previous examination then only he can be permitted to take the examination of the remaining papers in the subsequent AOR examination to be added in the previous papers to be considered him as passed or failed. It is stated that if any wrong in the past has been committed, it is not expected from the respondent to repeat the same mistake and thereby opening the floodgates for other prospective candidates

Rule 7 (XI)(a) of the Rules reads as under:-

“A candidate who fails to obtain 50 per cent in one paper only but 40 per cent in that paper and also obtain 60 per cent in the remaining papers, shall be allowed to appear in the paper at (any one) subsequent examination on payment of the full examination fee and he/she shall be declared to have passed the Advocate-on-Record Examination if the marks obtained by him/her at the subsequent examination taken with the marks obtained in the remaining papers at the earlier examination are 60 per cent of the aggregate marks in all papers.”

A plain reading of the Rule postulates a candidate having secured 60% marks in aggregate in the previous examination but failed on account of having secured less than 50% marks in any paper can be allowed to take the examination of that papers in the subsequent AOR examination on payment of full examination fee which shall be added and he can be declared passed or failed. The condition is that the candidate must have 50% marks and in aggregate 60% marks in those papers in the previous examination. In that event, he can be allowed to take the examination of the



papers only in which he secured less than 50% marks but above 40% marks upon payment of full examination fee and the marks obtained by the candidate in the subsequent examination would be considered by the respondents for declaring him passed or failed if the marks obtained by him in the paper at the next examination together with the marks obtained in other papers at the previous examination aggregate at 60%.

Mr. Bindhyachal Singh, on the other hand, on reading two lines of the Rule has contended that this can be done only in the event where in the papers taken by the petitioner in the previous examination he has obtained 60% in each paper. The rule of interpretation is that not a single word in the Rule or the Act is used without any meaning. The entire Rule has to be taken into account while interpreting it. The Rule does contemplate the situation where the candidate taking the 1st examination fails to obtain 50 per cent marks in one paper but obtained more than 40 per cent in that paper and also secures 60% marks in aggregate in the remaining papers, then he shall be allowed to appear in the paper at the subsequent examination on payment of the full examination fee and he/she shall be declared to have passed the examination if the marks obtained by him/her at the subsequent examination taken in the said paper together with the marks obtained in the remaining papers at the earlier examination aggregate 60 per cent. Rule 7(xi)(b) in this context has also bearing on the point at issue which reads as under:-

“A candidate who passed in all the papers at any

single Committee and on payment of the full examination fee, appear at (any one) subsequent examination in one of the papers only in which he/she has obtained less than 60 per cent marks and shall be declared to have passed the Advocate on Record Examination if the marks obtained in the remaining papers at the earlier examination is 60 per cent of the aggregate marks in all the papers.”

The respondent has been doing so in the past as is apparent from the averments made in paragraph 13 of the writ application. Denial of the same benefit/privilege to the petitioner in the present case, in my view, shall not only be arbitrary but contrary to the Rule 7(XI)(a) of the Rules.

Having clarified the rule-provision in the manner aforesaid, the application is fit to be allowed. I order accordingly. The respondents shall publish the result of the petitioner on the basis of the result of the examination of Paper-I conducted by the respondents in pursuance of the interim order passed by this Court.

(Kishore Kumar Mandal, J)

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