

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7882 of 2020

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Md. Helal son of Alamgir Ansari resident of Kukraun Paschim, Kukraun,
P.S.- Dhamdaha, Dist.- Purnia, Amarikukraon, Bihar- 854205.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department,
Government of Bihar.
2. Vice Chancellor, Bhupendra Narayan Mandal University, Laloo Nagar,
Madhepura, Bihar.
3. Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura, Bihar
through its Registrar.
4. Controller of Examination, Bhupendra Narayan Mandal University, Laloo
Nagar, Madhepura, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jitendra Kumar Pandey
For the Respondent/s	:	Mrs.Shilpa Singh, G.A.12
		Ms. Abhanjali AC to GA-12
For the University	:	Mr. Ritesh Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 04-01-2021

The facts of this case are not in dispute. The petitioner was student of Bachelor of Science (Hons), Chemistry in R.K.K. College, Purnea. The examination for the course is held in three parts. The petitioner had passed Part-I examination in 2014. In Part-II examination held in 2015, he appeared but failed in Chemistry(Hons,) and Mathematics (Subsidiary). He again appeared in Part-II examination in 2016 but again failed in Chemistry (Hons.) paper though, this time he could clear his mathematics (subsidiary) paper. In 2017 he did not appear in



B.Sc. Part-II examination. The petitioner had though failed in B.Sc. Part-II examination in 2015, he was granted promotion to Part-III of the course under Examination Regulations of the University. He had taken admission in B.Sc. Part-III in the same year but he did not appear in Part-III examination held in 2016,2017 and 2018. He appeared in B.Sc Part-III examination in the year 2019. His result of B.Sc. (Hons.) Part-III examination is not being published by the affiliating University, viz, B.N. Mandal University, Madhepura.

2. In the aforesaid background, the petitioner has filed this writ application, seeking following directions:-

“i. For issuance of an appropriate writ in the nature of mandamus for giving direction to the respondents concerned to declare the final result of the petitioner’s complete course (Bachelors in Science) which got completed in January, 2020.

ii. For issuance of an appropriate writ in the nature of mandamus to direct the respondent University to issue the mark sheet and the degree of the petitioner after the declaration of result which has been kept in pending by the University.”

3. It is the petitioner’s case that due to various reasons including his sickness and the accident which he had met, he had missed to appear and had failed also when he appeared in



Part-II examination. It is the petitioner's case that once he was allowed to appear in Part-III examination, his final result ought to have been declared.

4. A counter affidavit has been filed on behalf of the University and relying on Regulation 7.1 of the Examination Regulation of the University, it is being contended that no student can be admitted in B.Sc. (General) Part-III or B.Sc. (Hons.) Part-III Class unless he has passed the B.Sc. Part-II examination. It, however, provides that if a student fails in, or fails to appear at, not more than two subjects at the B.Sc. (General/Honours) Part-I/II examination, he shall be permitted to the next higher class but he shall not be eligible for admission to Part-III class unless he has passed the B.Sc. (Hons.) part-I examination in the subjects concerned. It further provides that "this facility for appearing in such carry over subject/subjects shall be available to a student at not more than three consecutive examination.

5. Mr. Jitendra Kumar Pandey, learned counsel appearing on behalf of the petitioner has argued that once the petitioner was allowed to appear in the third Semester examination, his result could not have been withheld on the ground that he was not eligible to appear in the said examination



in terms of the Examination Regulation. He has placed heavy reliance on Supreme Court's decision in case of **Shri Krishan Vs. Kurukshetra University**, reported in (1976) 1 SCC 311, in support of his contention that if the University allowed a candidate to sit and participate in the examination, they are precluded from holding back the result of a candidate. It is to be noted that the petitioner does not dispute the position that in terms of the Examination Regulation, he was not eligible to appear in Part-III examination.

6. The question as to whether the University may withhold result of a candidate who was allowed or managed to appear in an examination contrary to Examination Regulation had arisen in similar circumstance before this Court in case of **Mihir Kumar Jha Vs. Bhupendra Narayan Mandal University (CWJC No. 21660 of 2013)**. Dealing with the decision rendered by the Supreme Court in Case of **Shri Krishna Vs. Kurukshetra University**(supra) this Court held in its judgment dated 24.04.2014 to the following effect:-

“Counsel for the petitioner relies on two decisions in support of the relief he is looking for. First is the case of **Vikash Anand Vrs. The Chancellor of the University, reported in 2001 (4) PLJR 72**, wherein a learned Single Judge taking note of the fact that the



petitioner was allowed to sit in the examination and participate, even though illegally, but thereafter since the university was held responsible for allowing such leverage to the petitioner, direction was issued for declaration of his result. The other proposition, which he has relied upon is in the case of **Shri Krishan Vrs. Kurukshetra University, reported in (1976) 1 SCC 311**. In this decision, there is proposition that if the University allowed a candidate to sit and participate in the examination, they are precluded from holding back the result of a candidate.

Both the propositions, which have been relied upon by learned counsel for the petitioner, are not of universal application. The facts have to be also looked into too. There is consistent performance of the petitioner in not clearing the examination every time and then after a long time gap he took an attempt at the final year in 2011, which too he could not clear within the specified time-frame and had to sit for examination again beyond the time-frame, indicated or laid down in regulation 7.1.”

7. The Court further held in case of **Mihir Kumar Jha**

(supra) as under:-

“If the petitioner would have cleared his 3rd year examination, may be in the year 2011, there could have been arguable case for him, but since he has passed the 3rd year beyond the time-



frame in the year 2012, giving any indulgence to the petitioner or direction to the respondents would amount to giving a complete go-bye to regulation, relating to examination as well as academic consistency and control of the University. Any indulgence to the petitioner at the High Court level will also become a referable point to all such students who are students more in name rather than in performance or deed.

The consistency with which petitioner has failed to clear his papers every year for the first two years and then even the 3rd year after two attempts, are enough for this Court not to exercise its extraordinary discretion by giving a go-bye to the regulations and rules of the University and destroy the academic standards of the University.

Writ application has no merit, it is dismissed.”

8. Similar plea taken before this Court in case of **Sima Bharti Vs. State of Bihar and others (CWJC No. 4605 of 2018)** was rejected by an order dated 17.05.2018 as in that case promotion granted to the petitioner to Part-III course itself was found to be contrary to the Examination Regulation.

9. Reference may also be made in this regard to this Court’s decision in case of **Ruchi Rachna Vs. The**



State of Bihar and others (CWJC No. 6114 of 2018),

wherein this Court held as under:-

“In the background of absence of any dispute that the petitioner appeared fourth time after having failed in her three attempts to clear 3rd Semester Examination, this Court cannot issue a mandamus contrary to the provisions under the Ordinance. No relief, as sought in the present application, can be granted. The decision rendered by this Court in case of **Ranjeet Kumar Vs. V.C., J.P. University**(supra), does not lay down that even if a student is allowed to appear for examination against the Regulations, his/her result shall be liable to be published because he/she was allowed to appear. Matter would have been different, had the petitioner appeared fourth time in the 3rd Semester Examination after going through the course again as stipulated in Clause IX(b) of the Ordinance.”

10. As has been held by this Court in case of **Mihir Kumar Jha** (supra), the proposition laid down in case of **Shri Krishna Vs. Kurukshetra University** (supra) cannot be said to be of universal application to the effect that the University allowed a candidate to sit and participate in the examination, the University is precluded from holding back a result of a candidate is



not of universal application.

11. In my opinion, this Court cannot pass an order in breach of Examination Regulation since publication of result in question, of the petitioner, in the facts and circumstances of the case, shall permit and perpetuate illegality. If the petitioner somehow or the other managed to appear in Part-III examination contrary to Examination Regulation, the Court cannot give his aid to support such illegality by issuing direction to the University to publish the petitioner's result.

12. For the aforesaid reason, I do not find any merit in this application.

13. This application is, accordingly, dismissed.

14. Grant of relief as claimed by the petitioner, in Court's opinion, shall be violative of Article 14 of the Constitution of India as in similar circumstance, similarly situated students might not have been given or might not have availed the opportunity of appearing in Part-III examination in contravention of the Examination Regulation.

15. Before I part with, I consider it appropriate to direct the Vice-Chancellor of the University to cause an



inquiry into the circumstance in which the petitioner was
allowed to appear in Part-III examination in breach of the
Examination Regulation.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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