

Present :- Hon'ble Justice Amrita Sinha

Souvik Ghosh & Ors.

University of Burdwan & Ors.

Judgment on :- 10.08.2021

The course consists of six semesters in the new syllabus and three parts in the old syllabus. The petitioners participated in the semester/part examinations and were unsuccessful in a few of the subjects. The petitioners were permitted to appear in the final semester examination held in the year 2020 and they were successful in the same.

The grievance of the petitioners is that though they have been permitted to appear in the final semester examination and have cleared the same, but as they were unsuccessful in the previous semesters/part examinations accordingly, they will not get their degree/diploma certificate. Until and unless they clear all the semesters/part examinations degree/diploma certificate will not be given to them.

The petitioners' earnest request before the Court is to allow them to participate in the backlog examinations so that they may get an opportunity to clear the same and get their degree/diploma certificate.

The petitioners rely upon the University Regulations relating to BA/BSc/B.Com examinations under the Choice Based Credit System (CBCS). The petitioners press Regulation 5 wherein it has been mentioned that a candidate (regular/back) shall have to complete Semester I to Semester VI Honours/General examinations within seven consecutive years including his/her original year of enrolment, subject to the condition that not more than three consecutive chances shall be allowed in each semester.

If any of the chances is not availed of by a candidate within the stipulated period, the chance shall be deemed to have lapsed to appear in final semester. A candidate shall have to clear all previous semesters.

The petitioners rely upon the UGC revised guidelines on examinations and academic calendar for the Universities in view of the Covid-19 pandemic. The said guidelines have been issued as a special case to provide a fair and equal opportunity to all the students keeping in mind their career opportunities and future progress during the Covid-19 pandemic.

With regard to the backlog papers in respect of final year students, the revised guidelines mention that the students of final year/terminal semester having backlog

should compulsorily be evaluated by conducting examinations as per feasibility and suitability.

The petitioners contend that as they have cleared the terminal examination, they should be given a further opportunity to clear the backlog paper(s). According to the petitioners, the seven years' period is yet to be over and they still have chances to clear the backlog papers, hence the petitioners pray that a further opportunity may be given to them to clear the backlog papers.

The learned advocate representing the University of Burdwan relies upon the modified guidelines applicable to the under graduate examinees for the terminal examinations 2020. The said guidelines are to be followed in supersession of all earlier guidelines issued in that regard.

Guideline 5 mentions that examinees who have enrolled themselves in the semester V examination 2019 have been allowed to fill examination forms for semester VI examination, 2020 irrespective of their results of previous semester(s). However, the result of semester VI examinees with backlog in respect of semester I will not be considered and hence will be put under "part not cleared" category if they fail to clear the semester I backlog even after the publication of Post Publication Review/ Post Publication Scrutiny result of semester I examination, 2019. For availing themselves of the scope of review/ scrutiny of their result of the third and last chance of semester I, such examinees should apply for the Post Publication Review/ Post Publication Scrutiny.

Guideline 6 mentions that examinees with Roll Prefix 16, who had already qualified their Part I Examination and appeared but failed to qualify Part II Examination in 2019 have been allowed to appear in Part III Examination 2020. Similarly, examinees with Roll Prefix 17, who failed to qualify their Part I/Part II Examination in 2019 have been allowed to appear in Part III Examination 2020. The

result of Part III Examinations, 2020, will be considered only for those examinees who qualify their Part I and/or Part II Examinations, 2019, as the case may be, after the publication of results of Post Publication Review/Post Publication Scrutiny 2019.

The primary contention of the University is that all the semesters/parts have to be cleared by a candidate for getting their pass certificate.

It has been submitted that the petitioners though were unsuccessful in their previous semesters/part examination but they were permitted to participate in the final examination only in view of the modified guidelines published by the UGC.

It has been contented that there is a provision for applying for Post Publication Review/ Post Publication Scrutiny which the petitioners have not availed of. It is the clear case of the University that as the petitioners failed to qualify in all the semester/part examinations their results have been declared by mentioning "part not cleared".

It has strenuously been contended that the University provided ample opportunity to the students to clear their backlogs, but the petitioners failed to avail the said opportunity. As the writ petitioners have failed to qualify in all the semesters/ part examinations as per the University Regulations, accordingly they cannot be granted any further opportunity to appear in the backlog examinations.

The respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties. The petitioners were admitted in their respective courses way back in the year 2016-2017. CBCS Regulation 5 clearly lay down that a candidate shall have to complete the entire course within seven consecutive years. It further lay down that three consecutive chances shall be allowed to clear each semester.

In the instant case there are students who failed to clear the semester 1 examination which was held in the year 2017. In case a student fails in the year 2017 he/she ought to clear the said examination within three consecutive chances. There are two semesters in a year, which means that the student ought to clear the semester within 2018 or latest by 2019.

The dictionary meaning of the word “consecutive” is, following one after another in a series without interruption. It means that a candidate who failed to clear the examination in the year 2017 ought to appear in the very next two examinations to clear the same.

A candidate who failed to clear the semester I examination in the year 2017 cannot under any circumstances be given an opportunity to clear the same in the year 2021 as Regulation 5 specifically mentions that if the three consecutive chances is not availed of by a candidate the chance shall be deemed to have lapsed.

The candidates who failed to clear the semester examinations in the year 2017 or before automatically loses their chance to clear the backlog paper(s) in 2020 or thereafter. If the backlog papers remained unclear, then the candidate remains unsuccessful and is not permitted to appear in the final semester examination.

The petitioners have been permitted to appear in the final semester examinations held in the year 2020 only in accordance with the revised guidelines published by the UGC. In view of the said relaxation the candidates who were unsuccessful in the years 2019 or onwards get an opportunity to avail the benefit of the Post Publication Review/Post Publication Scrutiny and the result of the terminal examination of those examinees who qualify in the semester/part examination after availing the Post Publication Scrutiny /Post Publication Review are considered as pass.

The petitioners though appeared in the terminal examination by dint of the modified guidelines of the UGC, but as they were unsuccessful in the previous examinations they failed to obtain the benefit of such relaxation. The candidates who became unsuccessful in the year 2017 or before could not have anticipated that a situation like Covid-19 will strike in the year 2020 for which relaxation in the examination guidelines may be granted. The said candidates practically lost their chance to clear the examination long before Covid-19 struck. After the prescribed period they cannot be permitted to reopen their case with a prayer to appear in the backlog paper(s). Covid-19 ought not to be the alibi to tweak the examination regulations/guidelines of the University.

The petitioners being the students of the University are bound to follow and abide by the regulations of the University according to which the examinations are held. The submission of the petitioners that they be given a further chance as the seven years' period to complete the course is not yet over, does not come to the aid of the petitioners in any manner. In my opinion, the petitioners misinterpreted the said regulation. The petitioners failed to appreciate that though the course is to be completed within seven years, but at the same time a semester/ part is to be cleared within three consecutive chances. A candidate who failed in the year 2017 or prior thereto loses the chance to appear in the said examination after two further uninterrupted chances.

As two semester examinations are conducted in a year, if a candidate fails in the first semester he must pass either in the second or the third semester. If the candidate does not pass in either of the second or the third semester the candidate loses the opportunity to clear the course once and for all. Even though the outer limit for completing the course is seven years, it does not mean that a candidate who failed in the first semester examination can appear in the fifth semester for clearing the same, because the candidate is allowed only two further uninterrupted

chances for clearing the backlog paper. The result of the students has been declared as 'part not cleared'.

From the submissions of the parties and upon perusal of the relevant documents, I am of the considered opinion that the petitioners have lost their chance to clear the backlog papers and no further opportunity can be granted to them to clear the backlog papers at such a distant time.

In view of the discussions made herein above no relief can be granted to the writ petitioners.

The writ petition fails and is hereby dismissed.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)