

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 9902 of 2021

Safia Khatun

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Biswarup Biswas, Adv. Mr. Nabankur Paul, Adv. Md. Apzal Ansari, Adv.
For Burdwan University	:-	Mr. N. C. Bihani, Adv. Mr. Soumyajit Ghosh, Adv.
For UGC	:-	Mr. Anil Kumar Gupta, Adv.
For State	:-	Mr. Manas Kuma Kundu, Adv. Mr. Sudip Sarkar, Adv.
Heard on	:-	06.09.2021
Judgment on	:-	16.09.2021

Amrita Sinha, J.:-

The petitioner was a student of a college affiliated to the University of Burdwan pursuing BA Hons. three-year degree course, under 1+1+1 pattern. She appeared in BA Part-I Hons. examination 2017 and failed to obtain qualifying marks in BNGG. She appeared in the BA Part-II Hons. examination 2018 and cleared the same. According to her, she could not appear in the unclear Part-I BNGG paper in 2018 due to her illness. She thereafter appeared and cleared the BA Part-III Hons. examination 2019, but again she failed to appear in the backlog BNGG paper Part-I.

The petitioner made a representation before the University praying for a direction to allow her to appear in the unclear Part-I examination. As the representation of the petitioner was not considered, she approached this Court by

filing a writ petition being WPA 10436 of 2020 which stood disposed of by an order dated 21st January, 2021 whereby the Court directed the Controller of Examinations, University of Burdwan to consider the petitioner's representation and pass a reasoned order after giving an opportunity of hearing to the petitioner and allow her to produce necessary documents in her support. The order of the Court was duly complied and the reasoned order was communicated to her.

The reasoned order dated 31st March, 2021 rejecting the prayer of the petitioner is impugned in the present writ petition.

The University duly considered the prayer of the petitioner and noted that according to the University Regulation 4(UG) of Undergraduate Examinations Regulations, 2016 a regular candidate shall have to complete Part-I, Part-II and Part-III Hons./General examinations within seven consecutive years including his/her original enrolment in Part-I examination, subject to the condition that not more than three consecutive chances shall be allowed in each part. If any of the chances is not availed of by a candidate within a stipulated time, the chance shall be deemed to have lapsed. The University was of the opinion that at present there is no scope for retaking any examination of the petitioner.

The petitioner draws attention of the Court to the UGC guidelines on determination of a uniform span period within which a student may be allowed to qualify for a degree. The guidelines mention that a student who, for whatever reasons, is not able to complete the programme within the normal period or the minimum duration prescribed for the programme, may be allowed two years' period beyond the normal period to clear the backlog to be qualified for the degree. During the extended period the student shall be considered as a private candidate and also not be eligible for ranking. The said guidelines are subject to the Rules and Regulations of the statutory bodies and universities governing the grant of degrees.

The learned advocate for the petitioner contends that as the petitioner has cleared all the papers, barring one, within the three consecutive years and the outer limit to complete the course being seven years, the petitioner ought to have been permitted by the University to complete the course. It has been contended that a candidate is liable to be given three consecutive chances according to the University Regulations to clear the backlog papers. As the petitioner was not in a position to avail the two further opportunities which were available to her for the years 2018 and 2019, accordingly, she ought to be given another chance to utilise the said benefit, more so, because she still has four years' time left to complete the course.

The specific submission of the petitioner is that three consecutive chances ought to be read as three consecutive chances availed of.

The petitioner submits that since the Regulations have been made for the benefit of the students, accordingly the benefit ought to be given to the petitioner for availing the opportunity to appear in the backlog paper to clear the same.

In support of his submission the petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Delhi Airtake Services Pvt. Ltd. & Anr. -vs- State of Uttar Pradesh & Anr.; (2011) 9 SCC 354*** paragraphs 126, 129 and 132.

The petitioner has also relied upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***JK Jute Mill Mazdoor Morcha -vs- Juggilal Kamlapat Jute Mills Co. Ltd.; (2019) 11 SCC 332*** paragraph 16.

He also relies upon an order passed by the High Court of Delhi in the matter of ***Pijush Gupta -vs- University of Delhi*** reported in ***1988 0 Supreme Del 337*** paragraphs 6-9.

The petitioner prays for a direction upon the University to give her one more chance to clear her backlog paper of Part-I.

The learned advocate for the University of Burdwan relies upon the University Regulation 4(UG) of Undergraduate Examinations Regulations and submits that the Regulation categorically lays down that the outer limit for completing the course is seven years and a candidate has three consecutive chances to clear each part. The chances not availed of, are deemed as lapsed.

According to the University the petitioner for reasons not known to the University chose not to avail the two extra opportunities that she had to clear the backlog paper. After she cleared her Part-III examination, mark sheet has been issued in her favour mentioning that she could not clear one paper in her Part-I examination. The University has acted in accordance with their Regulations and there is no illegality on the part of the University.

The learned advocate refers to an unreported judgment dated 10th August, 2021 passed by this Court in **WPA 7110 of 2021 (Souvik Ghosh –vs- University of Burdwan & Ors.)**.

It has been contended that the UGC guidelines referred to by the petitioner will not be applicable in the instant case, in as much as, the said guidelines give two extra years for completion of the entire course. University of Burdwan already has a regulation giving seven years' time for a candidate to complete his/her course. The UGC guidelines does not mention as to how many chances can a candidate be given for clearing a failed paper. The said guidelines are subject to the Rules and Regulations of the University. As the University already has a regulation which mentions that if any of the chances are not availed of by the candidate for clearing the backlog papers within the stipulated three consecutive chances and within the seven years' time period, the chances shall be deemed to have lapsed, accordingly no further chance can be given to the petitioner.

It has been submitted that at this stage it is not possible for the University to allow any further opportunity to the petitioner to appear in the examination for clearing her backlog paper.

I have heard and considered the submissions made on behalf of both the parties.

Burdwan University Regulation 4(UG) of Undergraduate Examinations Regulations, 2016 reads as follows:

“A regular candidate shall have to complete Part-I, Part-II and Part-III Hons./General examinations within seven consecutive years including his/her original enrolment in Part-I examination subject to the condition that not more than three consecutive chances shall be allowed in each part.

If any of the chances mentioned above is not availed of by a candidate within the stipulated period, the chances shall be deemed to have lapsed.”

UGC guidelines referred to by the petitioner lays down that normally a student is expected to complete his programme within the minimum period as laid down under the relevant Regulation of the University and the same should be in conformity with the UGC Regulations.

A student who, for whatever reasons, is not able to complete the programme within the normal period or the minimum duration prescribed for the programme, may be allowed two years' period beyond the normal period to clear the backlog to be qualified for the degree. During the extended period the students shall be considered as a private candidate and also shall not be eligible for ranking. The guidelines further mention that the guidelines are subject to the Rules and Regulations of the statutory bodies and universities governing the grant of degrees.

UGC guidelines, in my opinion, deal with the outer time limit within which a course is to be completed by a candidate. According to the UGC guidelines two extra years ought to be allowed for the candidate to complete the course. The guidelines are however subject to the Rules and Regulations of the concerned University.

In the instant case, the University has a regulation which mentions that the outer limit to complete the course is seven years. The University Regulations further mention that three consecutive chances can be availed of by a candidate for clearing the backlog paper and further that if any chance, out of the said three consecutive chances, is not availed of by a candidate, the said chance shall be deemed to have lapsed.

In the instant case the petitioner appeared in the Part-I examination in the year 2017 and failed to clear one paper. The petitioner ought to have availed the opportunity to appear in the backlog paper in the year 2018 and lastly in 2019. The petitioner, for reasons unknown, did not avail the opportunity to clear her backlog paper in the next two chances which she had.

The submission of the petitioner that the term 'consecutive' ought to mean as 'consecutive chances availed of' cannot be accepted by the Court. The Court in the matter of Souvik Ghosh (*supra*) held that the dictionary meaning of the word 'consecutive' is following one after another, in a series, without interruption. According to the petitioner, she first appeared in the year 2017 and she may be allowed to appear in the year 2021-22 or thereafter. If the argument of the petitioner is to be accepted, then it would mean that a candidate may avail the opportunity to clear the backlog paper in three chances any time, as per his wish, within the outer limit of seven years as prescribed.

The legislature in its wisdom has fixed two time limits for completion of the course. First one is the time limit for completion of the entire course and the second

one is the time limit to clear a part of the said course. The time limits mentioned are distinct and run parallel to each other. Had it been the intention of the legislature that a candidate may be given three opportunities to clear a part within the outer limit of seven years, then the expression 'consecutive chances' had not been used. It would have been mentioned that three chances may be availed of for clearing an examination within the seven years course. Adding words to the said expression will distort its meaning.

The Hon'ble Supreme Court in Delhi Airtake Services (supra) in paragraph 126 held that the basic purpose of interpretation of statutes is further to aid in determining either the general object of the legislation or the meaning of the language in any particular provision. The intention which appears to be most in accordance with convenience, reason, justice and legal principles should in all cases of doubtful interpretation, be presumed to be a true one. In the instant case, there is not ambiguity in the regulation of the University. There is absolutely no doubt in the mind of the Court that consecutive chances mean one after the other without any break in between.

The Hon'ble Supreme Court in JK Jute Mill (supra) reiterated the observation that procedure is the handmaid of justice and is meant to serve justice. The Court while deciding the aforesaid matter referred to the judgment in the case of ***Kailash -vs- Nanhku; (2005) 4 SCC 480*** paragraph 28 wherein it was mentioned that the language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice.

In the instant case, the Regulation of the University have been framed keeping in mind the interest of the students. The argument that has been advanced by the petitioner, if accepted, will in my opinion, create uncertainty and the entire

examination process will remain hanging for years together. The same is certainly not in the interest of the students, neither is it in the interest of justice.

The Delhi High Court in Piyush Gupta (supra) was of the opinion that a candidate who failed in one of the papers of a semester is entitled to get only one more chance to pass in that paper as a regular student and if he fails in the second chance also, he can appear in that paper as an ex-student in the future examinations without any restrictions regarding the number of chances.

The aforesaid order was passed in respect of a student studying a course affiliated to the University of Delhi. In the present case, the University of Burdwan does not have any provision to allow a candidate to appear in the examination as an ex-student. Immediately after conclusion of a course the University of Burdwan issues the mark sheet mentioning the marks obtained by a candidate and the relationship between the University and the student severs. Accordingly, there is no provision for permitting the petitioner to appear in the examination not as a regular candidate but as an ex-student of the university. As such the judgment referred to by the petitioner does not come to her aid.

On the contrary the judgment referred to by the respondents in the matter of Souvik Ghosh (supra) is apt and may be relied upon for the purpose of taking a decision in the instant case.

The basic principle of interpretation is that, if the language of the statute is clear and there is no ambiguity, then the meaning which appears from the plain reading of the provision is to be applied. Burdwan University Examinations Regulations are crystal clear. There is hardly any ambiguity. The timelines mention that a backlog paper has to be cleared within three consecutive chances and if the chances are not availed of, they shall be deemed to have lapsed. The petitioner, unfortunately, failed to avail her chances to clear the backlog paper. In such a

situation no direction can be passed upon the University to permit the petitioner to appear in her backlog paper for clearing the same once again.

The writ petition fails and is hereby dismissed.

WPA 9902 of 2021 is 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.)