

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.164 of 2021

In

Civil Writ Jurisdiction Case No.7882 of 2020

=====

Md. Helal S/o Alamgir Ansari, resident of Village - Kukraun Paschim,
Kukraun, P.S. - Dhamdaha, District - Purnea, Amari Kukraun, Bihar- 854205.

... .. Appellant/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. Registrar, Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura,
Bihar.
4. Controller of Examination, Bhupendra Narayan Mandal University, Laloo
Nagar, Madhepura, Bihar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Anurag Saurav, Adv. Mr. Priyajeet Pandey, Adv. Mr. Abhinav Alok, Adv.
For the Respondent/s	:	Mr. Lalit Kishore (AG)
For University	:	Mr. Ritesh Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

4 29-06-2022 The appellant, a student in B.N. Mandal

University is aggrieved because his Part – III examination



result is not being published for the reasons that he could not pass the Part – II examination in three consecutive attempts.

The learned Single Judge while deciding the writ petition, seeking direction to the University to publish his result of Part – III examination, refused to entertain such request on the ground that it would be giving premium to a student who has not passed the examination of Part – II within three consecutive years and has somehow or the other managed to take admission to higher class of Part – III and was permitted to write the examination for Part – III in the year 2020.

Two sets of decisions for and against the proposition have been referred to by the learned Single Judge in rejecting the prayer of the appellant for issuance of any direction to the University for publishing the result of appellant of Part – III examination.

For publication of result:-

- (1). *Sri Krishna v. Kurukshetra University, (1976) 1 SCC 311.*
- (2) *Guru Nanak Dev University v. Sanjay Kumar Katwal and Another, (2009) 1*



SCC 610.

- (3). *B.N. Mandal University and Others v. Amit Pratap Roy and Others, L.P.A. No. 1702 of 2015.*
- (4). *Punam Kumari v. Lalit Narain Mithila University and Others, C.W.J.C. (DB) No. 11050 of 1992, 1993(1) PLJR 609.*
- (5). *Amit Pratap Roy v. State of Bihar and Others, C.W.J.C. No. 10499 of 2014.*
- (6). *Lovely Kumari v. B.N. Mandal University and Ors, C.W.J.C. No. 13753 of 2020, 2004(2) PLJR 519.*
- (7). *Akhtar Imam v. B.N. Mandal University and Ors, C.W.J.C. No. 6911 of 2002, (2002) 3 BLJR 1847.*
- (8). *Surendra Nath Mishra v. Vice Chancellor, Gorakh University and Ors., C.M.W.P. No. 9703 of 1995.*
- (9). *Anil Kumar Srivastava v. University of Allahabad and Ors, C. Misc. Writ No. 2455 of 1972, AIR 1973 ALL 442.*

Against publication of result:-

- (1) *Sunil Kumar v. B.N. Mandal University and Ors, L.P.A. No. 580 of 2018, 2020(4) PLJR 129.*
- (2) *Mihir Kumar Jha v. B.N. Mandal University and Others, L.P.A. No. 904 of 2014.*



- (3) *Mihir Kumar Jha v. B.N. Mandal University and Others, C.W.J.C. No. 21660 of 2013.*
- (4) *Sima Bharti v. the State of Bihar and Others, C.W.J.C. No. 4605 of 2018.*
- (5) *Sunil Kumar v. B.N. Mandal University and Ors, L.P.A. No. 580 of 2018, 2020(4)PLJR 129.*

The factual position is as here-under:-

The appellant was admitted to B.Sc. Honours course in session 2013-14 and for the session 2013-14, examination was held in the month of January, 2015 in which the appellant was successful. He was admitted to Part – II of the course and for the session 2015 (Part – II), in the examination which was held in the year 2016, the appellant failed in two of the subjects. The appellant, thereafter, was admitted to the next higher class of Part – III, but again he failed in the supplementary examination in the year 2017, but this time in one subject only. For some reason or the other he could not appear in the examination of Part – II which was held in the year 2018 but appeared in Part – II examination again in the year 2019 in which he passed. The appellant also has written the examination of



Part – III in the year 2020, the result of which has been withheld for the reason that the appellant could not pass the Part – II examination within three consecutive years and, therefore, the result of Part – III examination was consciously withheld by the University.

The learned Counsel for the parties have drawn the attention of this Court to the examination regulation of B.N. Mandal University. Clause 7.1 of the aforesaid regulation provides that the university examination shall be held at the end of the first, second and third years of the course. No student shall be admitted to the B.Sc. Course Part – II class unless he has passed the Part – I examination and to Part – III class unless he has passed the Part – II examination.

However, there is a proviso to the aforesaid regulation which further clarifies that if a student fails in, or fails to appear at, not more than two subjects in Part – I and Part – II examination, he shall be promoted to the next higher class but he shall not be eligible for admission to Part – III class unless he has passed the Part– I examination of the subject concerned.



The second proviso permits such facility to a student for appearing in carry over subjects only if such student passes in not more than three consecutive examinations.

In the case of the appellant, he was promoted to Part – II of the course after successfully completing and passing in Part – I examination. He failed in two consecutive examinations in Part – II but because of the examination regulation permitting a student to get promoted to the next higher class of Part – III if he has passed in Part – I, the appellant was given admission in Part – III.

However, as ill luck would have it and for which necessary explanation was offered by the appellant before the learned Single Judge, he could not pass Part – II examination in first instance when he failed in two subjects. Since the regulation permits carry over in case of a candidate failing in not more than two subjects, the appellant was promoted to the higher class of Part – III and was also permitted to appear in the next examination which he took in the year 2017. In this instance, the appellant failed in one subject. There would have been no difficulty



for the appellant if he had again taken the examination in 2018 and would have passed. However, for the reason of some mishap in the family, he could not appear in 2018 examination for Part – II. He however passed in the lone subject of part -II, in which he had failed earlier in 2019 but since he could not clear all papers of part -II in three (03) consecutive years, he was dientitled for his result of part -III. .

The appellant has also passed in the Part – III examination which was conducted in the year 2020.

The B.N. Mandal University has not published his result for the reason of the appellant, as noted above, not having cleared Part – II examination in three consecutive terms.

The learned Single Judge, while taking note of decisions of the High Court both ways, found that the fact scenario and cases where result of such candidates were published were different from the situation which the appellant had faced when he could not clear his examination within three consecutive terms. The learned Single Judge therefore was of the view that no order could



be passed under Article 226 of the Constitution of India in breach of examination regulation and doing so would only amount to perpetuating an illegality of permitting the appellant to be promoted to higher class of Part – III. It was also observed by the learned Single Judge that if the appellant, somehow or the other managed to appear in Part – III examination contrary to the examination regulation, no imprimatur could be given on such concession given to him by the University *de-hors* and in breach of the rules therein.

The learned Single Judge has also held that granting any relief to the appellant would amount to violation of Article 14 of the Constitution of India as in similar circumstances, 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.

The Court also consciously directed the Vice Chancellor of the University to cause an inquiry into the circumstance in which the appellant was allowed to appear in Part – III examination in breach of the examination regulation.



In some cases referred to by the learned Single Judge, the result was directed to be published of the student concerned on the ground that if the University had permitted that student to appear in the examination of higher class, the result could not have been withheld.

In cases where such concession has not been given, the line of reasoning of the Courts are that it is no settled principle that if a candidate is allowed to appear in an examination, it would be obligatory upon the University to declare the result for the reason that only on the concession granted by the University, the candidate took the examination. Thus not publishing the result in that instance would be accepting a situation where an Institution is allowed to blow hot and cold in the same breath.

But in a different fact scenario, if a candidate keeps on performing poorly and does not clear the examination every time that he appears or that he appears after a long gap, without any plausible justification, such concession may not be given to such students.

On a considered opinion, we find that there is no dichotomy in the reasoning in both sets of cited cases.



In the examination regulation of B.N. Mandal University, provision has been made for a student to be promoted to higher class even if he has not cleared the examination. This is for the purposes of accommodating students in special contingency. Success in an examination is dependent on several factors and it would not be appropriate for the career of the students in not permitting them to take admission in higher class with the condition on their ultimately clearing the examination for all such classes.

In the case of the appellant, we find that his admission to Part – III of the course was not *de-hors* the rules as the proviso to Clause 7 of the examination regulation clearly specifies that a student shall be admitted to the higher class of Part – III if he has passed Part – I examination. There is no dispute that the appellant had passed the Part – I examination in the first instance. The only difficulty which the appellant has faced is because he has not passed his Part – II examination within three consecutive examinations held for Part – II.

There has been a gap of a year.



However, considering the fact that the appellant has passed Part – II examination simultaneously or before his passing the Part – III examination, we find that non publication of the result of the appellant would put him to undue hardship which is not contemplated in the examination regulation and if so ordered, it would hardly be violative of Article 14 of the Constitution of India or would amount to giving any stamp of approval on departure of any rule of the examination.

Looking at the facts of the case of the appellant from this angle, we are not able to sustain the order of the learned Single Judge who has refused the request of the appellant for a direction to the respondent University for publication of his final result.

Taking into account the fact that the appellant has not performed miserably as he had failed in two subjects in Part – II in the first attempt and then in one subject in the second attempt but finally passed Part – II examination prior to his passing the Part – III examination and that his admission in Part – III even before finally clearing Part – III examination was not *de-hors* the rules, we direct the



University to publish the result of the appellant.

Considering the special facts of the present case,
we have passed the aforesaid order, keeping in mind the
future of the student and the academic environment of the
University.

The appeal stands disposed of accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-ritik

U			
---	--	--	--

