

Sl.No2
June 2,
2022
Bpg & Sg

MAT No.839 of 2022
With
CAN 1 of 2022

Sayan Das
Versus
The University of Calcutta and others

Mr. Anindya Bose,
Mr. Ashok Kumar Das,
Mr. Diptendu Mandal,
Mr. Arindam Poali.
...for the appellant.

Mr. Nilotpal Chatterjee,
Mr. Satyaki Banerjee.
...for the Calcutta University.

Learned counsel for the appellant contends that the respondent-university gave effect to a Circular (vide notification no. CSR 27/2013 dated 16th September, 2013), in place of the prior Circular (vide notification no.CSR 123/2010 dated November 19, 2010) in debarring the petitioner from taking the Part-III examination of the University.

Learned counsel further contends that, in view of the petitioner having taken admission in the year 2010, the 2010 Circular is applicable to the petitioner and the University could not have given effect to the 2013 Circular vis-à-vis the petitioner.

Learned counsel appearing for the University, however, argues that in terms of the ratio laid down in

the Division Bench judgment dated March 16, 2022 rendered in MAT 113 of 2022 (*Pramod Kumar Mahato Vs. University of Calcutta & Ors.*), the admission of the candidate does not create any right to the petitioner, nor can the candidate's participation, having been allowed mistakenly, override the statutory norms and rules applicable in this regard.

In the present case, it is argued, the University took a liberal view in favour of the students and permitted the petitioner to take his Part-I examinations by applying the 2013 Circular. However, there is a specific bar in clause 33 of the 2010 Circular regarding a candidate appearing in Part-III examination within two years from the year of qualifying Part-II examination.

In the present case, since the petitioner cleared both Part-I and Part-II examinations in the year 2020, that is, ten years after taking admission in the course-in-question, by virtue of clause 30, read with clause 33 of the 2010 Circular, the petitioner had no right to participate in the Part-II examinations, let alone Part-III.

Upon hearing learned counsel for the parties, it is evident that, as per the 2010 Circular, which, even if applied on the basis that the petitioner took admission in the year 2010, clearly debars, under Clause 33, a candidate from appearing at the Part-III

examination beyond the period of two years from the year of qualifying the Part-II examination and from participating in the Part-III examination beyond the span of three years from the year of first appearance for the Part-III examination.

Clause 30, however, specifically stipulates that a candidate who has prosecuted a regular course of study for the first year of the three-year course shall have to appear at the Part-I examinations from two years of the year of admission to the course and shall have to clear the Part-I examinations within a span of three years from the year of first appearance at the Part-I examination, failing which he/she shall have to prosecute a fresh course of study from the first year, subject to the proviso of the said clause.

Thus, even if the 2010 Circular were to be applied, the petitioner could not have appeared for his Part II examinations, which is the stepping-stone for taking the Part III examinations, since the individual time periods for joining the Part I and II courses and taking the Part I and II examinations had long expired by the year 2020, when the petitioner cleared both the Part I and Part II examinations.

In the present case, the petitioner cannot blow hot and cold in the same breath by taking advantage of the 2013 Circular for the purpose of taking the Part-I examination but resiling therefrom and relying on the

2010 Circular for the purpose of getting clearance to take the Part-II and Part-III examinations.

In the present case, even if the 2010 Circular was to be applied, the petitioner would be debarred from taking the Part-II examination beyond two years from the year of qualifying the Part-I examination and from clearing the Part-III examination beyond the span of three years from the year of first appearance in Part-II examination.

Thus, the present petitioner was not entitled, on a composite reading of Clauses 30 and 33 of the 2010 Circular, to participate in the Part II examinations, having jumped the mandatory individual time-spans stipulated for the Part I and Part II examinations after taking admission in the course. The petitioner was erroneously afforded the advantage of the 2013 Circular for taking his Part-I and Part II examinations, which, *ipso facto*, cannot confer a right on the petitioner to claim participation in the Part-III examinations as well. Following the judgment of *Pramod Kumar Mahato* (supra), the admission to the University did not create any right in favour of the petitioner, nor did the factum of his participation having been allowed mistakenly in the Part-II examinations, which would tantamount to overriding the statutory norms and rules applicable in this regard.

Hence, there is no scope of interference with the order of the learned Single Judge, which ascribed detailed reasons in consonance with the above principles as enumerated in the relevant Circulars.

Accordingly, MAT 893 of 2022 along with CAN 1 of 2022 are dismissed without any order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Krishna Rao, J.)