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15.9.2022
S.D.

W.P.A. 10337 of 2022

**Sougata Saha
Vs.
The University of Burdwan & Ors.**

Ms. Soumasree Saha
...For the Petitioner.

Mr. N.C. Bihani
Ms. P.B. Bihani
Ms. K.S. Singh
...For the Burdwan University.

The facts of this case have surfaced the irreconcilability of some provisions of the University Regulations Relating To Three Year Degree Course in Bachelor Of Computer Applications & Such Other Professional Examination (in short, the said Regulations) framed by the Executive Council of Burdwan University in the exercise of power under Section 52 of Burdwan University Act, 1981.

Before the said provisions are adverted to, it is necessary to note the undisputed facts involved in this case.

The petitioner was a student of Bachelor Computer Application (Hons.) at Burdwan University. The course was of three-year duration and divided into three parts.

The petitioner appeared in Part-I examination on June 10, 2015, but could not clear the same.

He then appeared in the Part II examination on May 18, 2016, and cleared the same.

On June 29, 2016, the petitioner took Part-I examination again as his second chance. The result of said Part-I examination was published on February 17, 2017, declaring the petitioner 'fail' in the said examination once again. He applied for post-publication scrutiny.

The petitioner was allowed to participate in his Part-III examination which took place on April 11, 2017, with an undertaking that he would clear Part-I examination in the post-publication scrutiny of Part-I examination held in 2016. The petitioner was successful in said Part-III examination.

The result of post publication scrutiny of Part-I examination held in 2016 was ultimately published on June 20, 2017, when the petitioner was declared unsuccessful. This is how the petitioner lost his two consecutive chances to clear Part-I examination.

The University allowed the petitioner to take his Part-I examination as a third chance again on June 7, 2017. This time, the petitioner cleared his Part-I examination.

The University, however, declined to issue the certificate to the petitioner on the ground that he could not clear his Part-I examination before the Part-III examination.

The relevant parts of University Regulations Relating To Three Year Degree Course in Bachelor Of Computer Applications & Such Other Professional Examination are quoted below:-

U.Reg.4(BBA & BCA)

“(f) In order to appear at the Part-III Examination, a candidate shall have to clear his/her Part-I & Part-II Examinations.

U.Reg.5(BBA & BCA)

(a) A candidate shall have to complete his/her Part-I, Part-II and Part-III Examination in five consecutive years calculated from the due year of his/her first appearance at the Part-I Examination subject to the condition that not more than three consecutive chances shall be allowed to a candidate including the year of his/her original appearance in either PART.

(b) If any of the chances mentioned above is not availed of within the stipulated period the chance shall be deemed to have lapsed.

Mr. Bihani submits that the petitioner was not entitled to sit in Part III examination since there was a specific bar under the U.Reg.4 (f) (BBA &BCA). The petitioner was allowed to sit in Part III on the basis of his undertaking. Such procedure is usually adopted by the University only

to ensure that in the event, a student comes out successful in post-publication scrutiny, he does not lose a year. The petitioner could not clear Part-I and Part-II before Part-III and therefore, the University was right in not issuing the certificate to the petitioner. The petitioner could have availed his chance to clear Part-III examination again in 2018 or in 2019, but he chose not to do so.

Ms. Soumasree Saha, learned advocate appearing on behalf of the petitioner submits that U.Reg.5 (a) (BBA &BCA) permits a candidate to clear any part of the examination in five consecutive years within three consecutive chances. In the present case, the petitioner has cleared his Part-I by availing three consecutive chances in terms of U.Reg.5 (a) (BBA &BCA). The University cannot deny to issue certificate when the petitioner has cleared all three parts of the course within five years.

The apparent contradictions between U.Reg.4(f) (BBA &BCA) and U.Reg.5(a) (BBA &BCA) cannot be reconciled. When U.Reg.4 (BBA & BCA) is applied to a student, he may not avail the benefit of U.Reg.5 (a) (BBA & BCA).

For example, if U.Reg.4 (BBA & BCA) is applied, a candidate who cleared his Part-II examination in third

chance cannot avail all three chances to clear Part-III since all three parts need to be cleared in five consecutive years.

In the present case the petitioner admittedly availed the three consecutive chances to clear his Part I examination in terms of U.Reg.5 (a) (BBA &BCA). It is grossly iniquitous to compel the petitioner to take Part-III examination once again when he had already passed the said examination in the year 2017.

In view of such incompatibility and irreconcilability U.Reg.5 (a) (BBA & BCA) has to be given full play to secure ends of justice and fair play. The benefits conferred under the said Regulation should not be curtailed by U.Reg.4 (BBA & BCA) to compel a student to accept an unreasonable condition.

There has been some delay in filing of the writ petition, but law is settled that there is no hard and fast prescribed limitation period for filing of a writ petition before this Court. When no third party interest is created, a lenient approach is to be made in dealing with such delay. Reliance with this regard may be placed in the judgment reported at (2008) SCC 648 (Union of India & Ors. Vs. Tarsem Singh).

In that view of the matter, the present writ petition is allowed giving a direction upon the University to provide the petitioner with the certificate of Part-III BCA (Hons.) Course within a period of two weeks from the date of communication of the order.

It is expected that the Executive Council of the University shall expeditiously make suitable amendments in U.Reg.4 (f) (BBA & BCA) to make it workable and compatible with the other provisions of the said Regulations.

Written notes of argument filed by the respective parties be kept with the records.

All parties shall act upon the server copy of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)