

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar

MAT 593 of 2023
with
I.A No. CAN 1 of 2023

Kasturi Sarkar
Vs.
Visva Bharati & Ors.

For the Appellant :Mr. Joyak Gupta, Adv.
Mr. Puspall Chakraborty, Adv.
Ms. P. Ganguly, Adv.
Mr. Saumyadeep Sarkar, Adv.

For the Respondents :Mr. Subhradip Roy, Adv.

Order Dated: 27th July, 2023

Soumen Sen, J. (Oral): We have heard the learned counsel for the parties.

2. It is submitted that the petitioner had failed in three papers but it has been wrongly recorded as two papers in the impugned order.

3. The petitioner was a student of B.A (Honours) in Comparative Religion under Visva-Bharati.

4. The first semester examination was held in 2018. The petitioner failed in three papers spread over two courses, namely, (i) Islam: Origin and Development CC-2 under core course, (ii) Tagore Studies (English) under foundation course and (iii) Literature and the other Arts GEC-I (Comparative Literature) under Generic Elective Course. Thereafter she

was allowed to sit for the said three papers again in the year 2019 along with the second semester to clear the backlog. This time also the petitioner was unsuccessful. Again in the year 2020, the examination was held for the said three papers, but the petitioner did not fill up the form. In the year 2021, the University issued admit card in favour of the petitioner for appearing in the examination of said three papers.

5. In view of the fact that her result was not published, the petitioner filed a writ petition praying for publishing the result of those papers.

6. Learned Single Judge on consideration of the relevant part of the “General Rules for University Examinations” held that she was not eligible to appear in the year 2021 in the said three papers. The relevant part of the “General Rules for University Examinations” relied upon in the impugned order is quoted below:-

“Chances for Back Candidates: *A candidate who fails in any paper will be eligible for two normal and one special subsequent (consecutive) chance if approved by the competent authority (Vice-Chancellor) to sit for the examination for that particular paper(s) as per the existing Rules of the University. The students of the University pursuing their studies under ICAR curriculum B.Sc(Ag) & M.Sc. (Ag) and under NCTE curricular for B.Ed & M.Ed Courses, etc., shall get their respective changes as laid down in the ICAR, NCTE etc., norms. If a student of Ph.D. or M. Phil fails to qualify/pass in any of the courses in his/her regular change in any semester, one additional chance in the immediately succeeding academic session shall be given and that shall be the final chance.”*

7. Learned Counsel appearing for the appellant submits that the first chance is availed only after a candidate fails in his/her first attempt to clear a paper. In other words the first chance would come only after a candidate has failed in the subject paper. It is submitted that she availed her first chance only in the year 2019 when she was allowed to sit in the examination for those three back papers of the first semester along with her second semester.

8. Learned Single Judge was of the view that the petitioner failed in the said papers in 2018 thereby she lost her first chance. Accordingly, she was eligible to sit for the second chance in the year 2019 and if unsuccessful could sit for the third time in 2020 only with the approval of the Vice-Chancellor. She was given third chance in the year 2020. The petitioner did not appear and avail her third chance.

9. The relevant Rules stipulate only three consecutive chances to be given to the petitioner.

10. Learned counsel for the University has relied upon Clause(d) of the relevant regulation which reads as follows:-

“d. A candidate who fails to secure at least 40% marks in any Credited Course and 33% marks in any Non-credited Course of a Semester Examination shall be declared to have failed in that Course. The candidate may appear as a Back Candidate in that Course in the next corresponding Semester Examination. He/She shall have three consecutive chances to pass in that course starting with the first chance. However, for M Phil and Ph D coursework examinations the students will

get only one additional chance to clear the backlogs starting with the first chance.” (emphasis supplied)

12. The learned counsel for the University has submitted that the said rule permits a candidate only three consecutive chances to pass starting with the first chance and having regard to the fact that she failed in three papers in 2018, the said failure of the petitioner to clear the papers should be considered as the first chance.

13. We are, however, unable to accept the submission made on behalf of the University. The eligibility to sit for examination in a semester would only arise if the candidate fails in that paper. The question of first chance would come once a candidate is unsuccessful in a paper. Once a candidate fails in a paper in the regular examination he/she is given two normal and one special chance to sit for the examination for that particular paper. It is clear from the relevant regulation with regard to the back candidate as mentioned above. Admittedly, the appellant is a “Back Candidate” and she became eligible to two normal and one special chance, once she failed in the regular examination in respect of three papers. Two normal and one special chance referred to the said rule would trigger off and arise if the petitioner fails in a paper otherwise the said rule is meaningless. The words ‘will be’ is essentially helping verb to depict the future continuous tense. It refers to actions that will be happening in the future. The first normal chance would arise once she is unsuccessful in the particular paper and thereafter two chances would be given to

the candidate to clear the particular paper. However, so far as the third chance is concerned, it is dependent upon the approval by the competent authority. A candidate is entitled to get two normal chances as a matter of right in terms of the relevant rules. We do not find any ambiguity in the said Rule. In any event the said Rule is required to be interpreted in favour of the student. The said Rule was made keeping in mind the academic interest of the student.

14. The learned Counsel for the appellant submits that due to pandemic situation she could not sit for the examination held in 2020, hence, she sat for the three papers in the year 2021. Admittedly, she was not successful in her first normal chance in 2019 and she did not sit for the examination in 2020. The University did not find her eligible for the examination in 2021 treating her as a back candidate who availed of the first chance in 2018. The basis for non-consideration of the eligibility appears to be wrong.

15. Under such circumstances, we set-aside the judgment and order passed by the learned Single Judge and direct the University to reconsider the ground furnished by the appellant for 'not being able to sit for the examination in 2020' as due to pandemic the normal life was completely disrupted.

16. In the event, the University favourably considers the representation and condones her non-participation for the examination held in 2020, in that case the examination held in 2021 in which she had participated shall be considered her second chance and the result

should be published. If it is found that she was unsuccessful in the examination held in 2021, subject to any application that may be made by the appellant, the Vice-Chancellor may consider such application 'as one special' in terms of the Rule keeping in mind the academic interest and welfare of the student.

17. We request the Vice-Chancellor to consider the matter within four weeks from the date of communication of this order keeping in mind the welfare of the student.

18. On such consideration, the appeal being MAT 593 of 2023 is disposed of.

19. In view of disposal of the appeal, CAN 1 of 2021 is also disposed of.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)