

Hemanta Kumar and ors. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Jan-29-1999

Judge : M. Sharma, J.

Acts : [Constitution of India](#) - Article 226; University Regulations, 1983; University Regulations, 1997

Appeal No. : C.R. No. 5736 of 1998

Appellant : Hemanta Kumar and ors.

Respondent : State of Assam and ors.

Advocate for Def. : H.N. Sharma, G.A., L.P. Sharma and R. Bhattacharjee, Advs.

Advocate for Pet/Ap. : A.K. Phukan, B. Bhuyan and H. Das, Advs.

Disposition : Petition dismissed

Prior history : M. Sharma, J. 1. This writ petition is preferred praying for a direction to the Respondent Gauhati University to allow the petitioners to attend classes in the 2nd year MBBS Course so as to fulfil the requisites as contemplated under Rules 2 of the Regulation of MBBS Examinations under Gauhati University and also declare the Regulation 2(b) of the Regulation, as ultra vires of the Constitution. 2. All the petitioners appeared in the first MBBS Examination held in July, 1998, result of which

Judgement :

M. Sharma, J.

1. This writ petition is preferred praying for a direction to the Respondent Gauhati University to allow the petitioners to attend classes in the 2nd year MBBS Course so as to fulfil the requisites as contemplated under Rules 2 of the Regulation of MBBS Examinations under Gauhati University and also declare the Regulation 2(b) of the Regulation, as ultra vires of the Constitution.

2. All the petitioners appeared in the first MBBS Examination held in July, 1998, result of which was declared on 2nd September, 1998. All the 63 writ petitioners in this writ petition are failed students, total unsuccessful students being 69 out of total 150 students. Referring Regulation 12(3) of Chapter V of the Regulation on Graduate Medical Education, 1997 it is contended that it is stipulated therein that there shall be one examination in a year and a supplementary to be held not later than six months after the publication of its results. That this guideline of Medical Council of India (MCI) is followed in the Regulation of MBBS Examination framed by the Gauhati University under Regulation 4(2) which provides for supplementary examination to be held after six months of the final examination and that all the petitioners are going to appear in the supplementary examination which was to be held in the December, 1998. Further contention of the petitioners is that Regulation 3(4) of the said Regulation of the Gauhati University provided similar benefit, provided the Principal of the College certifies that the student has prosecuted studies in the college for at least 3/4th of the course allotted for the semester immediately preceding the examination in which the students want to appear. Petitioners' grievance is that the student of the same batch who passed the 1st MBBS course to have qualification are now prosecuting studies in the next course and apparently they will be able to benefit

the criteria as required under Regulation 3(4), being able to complete 3/4th of the '2nd year course (next course) and that consequently as the petitioners will not be allowed to attend the classes along with main batch, will be deprived of the benefit. Further grievances of the petitioners are that while Regulation 3(4) extends the

benefit, the same is constrained by under Regulation 2(b) which is reproduced below :--

'2(b) the first 1 1/2 years shall be occupied in the study of the pre-clinical subjects and that no students shall be permitted to study the pre-clinical and clinical group of subjects until he/ she has passed all pre-clinical subjects.'

Petitioners' grievance is that under the provisions of this Regulation 2(b), the petitioners are being prevented from prosecuting studies in the '2nd year' MBBS Course because they are yet to pass in all the pre-clinical subjects. Claiming the entitlement to prosecute studies in the '2nd year' MBBS Course (2nd MBBS) petitioners contend that all the petitioners completed the regular course of the 1st MBBS Course and by barring them under the provisions of Regulation 2(b), the petitioners made to have 'waste' valuable time as they are not allowed to attend classes of 2nd part of MBBS examination. That, it is contended having completed the regular course of studies in the 1st MBBS Course and having completed the same within the meaning of Regulation 4(4)(3) of the Regulation they cannot be insisted to attend classes of a course which they have already completed, that they be allowed to attend classes for the 2nd MBBS Course along with the main batch until the supplementary examination is over and results declared which will enable the petitioners to go along with the main batch.

3. The Registrar-Respondent No. 2 filed affidavit-in-opposition and Respondent No. 4 Dr. Pulin Kr. Deka, Principal G.M.C. filed application on behalf of himself and Respondents 1 and 3.

4. In his affidavit-in-opposition Respondent No. 2 denying the claims of the petitioners has averred that the Regulation of MBBS Examination was framed in the year 1983 and the same in force till now, that no student during this period has ever complained against Regulation 2(b) of Regulation of MBBS Examination, 1983, that Regulation 2(b) is framed with the meaningful purpose so that the unsuccessful students can

acquire knowledge deficient with them by attending classes to prepare for the 1st MBBS (preclinical) Examination. Further it is averred that these petitioners fall

under the Gauhati University Regulation and syllabi of Examination 1983 and that the University has not yet implemented the guidelines of Graduate Medical Education, 1997 and hence provisions thereof are not applicable to them. That University framed their own Regulations for MBBS Examination based on guidelines of Medical Council of India Regulations for MBBS and that examinations are conducted as per the University Regulation only, that examination for the failed students in first MBBS Examination was fixed in December, 1998 as per Gauhati University Regulation 1983. It is further averred that as per existing Regulation 2(b), no student can be permitted to study the para-clinical and clinical group of subject until a student passes all the pre-clinical subjects; that the petitioners are studying under Gauhati University Regulation 1983 and that in that Regulation, there is no such provision to allow the students to continue para-clinical subjects without clearing pre-clinical and that the Regulation is very clear in this aspect. Denying the challenge of the petitioners for striking off of the Regulation 2(b), this respondent has averred that, 1983 Regulation is in existence and petitioners prosecution of studies is controlled and guided by the Regulation 1983 where 1st MBBS Course consists of one and half year course,, whereas Medical Council of India, 1997 has made the duration of the 1st MBBS Course only one year and provisions have been made for attending 2nd year classes, which has not yet been given effect to.

5. The principal-Respondent No. 4 in his affidavit has averred that petitioners who became eligible to appear on completion of 18 months course could not come out successful in the 1st MBBS examination held in July, 1998 as they could not, secure minimum pass marks, prescribed by the University in the concerned subjects and mark-sheets have already been issued to them. This respondent supported the stand of the respondent University as taken in its affidavit regarding the claim, status and position of the petitioners affirming that the Regulations 1997

has not been made applicable so far the petitioners are concerned, that their course of study are guided and regulated by the recommendations of the Medical Council of India (MCI) on Graduate Medical Education, 1981, that the Regulation and syllabus of MBBS Examination framed by the Gauhati University are applicable to them and that 1997 Regulation has not yet been adopted and

introduced by the Gauhati University for the petitioners' batch i.e.-- 1996-97 batch.'

6. From the above discussion, the fact remains that the petitioners are unsuccessful candidates who belong to 1996-97, batch, that Regulations 1997 has not yet been made applicable and the provisions challenged in the writ petition are related to 1983 Regulation, and that therefore, petitioners claim is misconceived. The MCI being the authority to regulate the Medical Courses and Examinations of Medical Studies, the Council which is an autonomous Body being a creation of the statute, is empowered to frame, adopt, Rules and Regulations/Guidelines in exercise of the powers conferred by Section 33 of the Medical Council of India Act, which are of statutory nature and vested with the controlling authority of the Medical Colleges of India. Deviation from the provisions of law as enunciated shall deprive the students of such degree which is obtained in violation of statutory Rules and Regulations and such degree shall not be recognised. In such cases no Court has jurisdiction to give directions to act otherwise on the ground alleged of violation of rights-Constitutional or any rights. Admittedly, petitioners being 1996-97 batch are regulated and controlled under the provisions of Regulation 1981, and the Regulation 1997 is yet to be applicable and petitioners course of studying is not yet regulated under this Regulation 1997. Being unsuccessful candidates their status and course of studies etc. shall be regulated and controlled by 1981 Regulation. Therefore, their allegation of infringement of Constitutional and Fundamental Rights and violation of Article 14 of the Constitution is not sustainable being misconceived and rights of unsuccessful candidates are misconstrued and therefore, their allegations and challenge of Regulation 2(b) is not maintainable.

In view of the above discussions, I hold that,

being the batch of 1996-97 petitioners are subject to the provisions of 1981 Regulations and therefore, they cannot claim any benefit from other Regulation which is not yet implemented.

In the result, the petition is dismissed. No

costs.

