

Satish Kumar

Vs

State of Bihar and Others

Civil Appeal No. 3018 of 1989

(L. M. Sharma, N. D. Ojha JJ)

21.07.1989

ORDER

1. Special leave is granted.

2. The question in this case is as to whether the petitioner is entitled to be declared successful at the BAMS (Bihar Ayurvedic Medical Science) First Examination on the strength of Regulation 16 of the BAMS Regulation which reads as follows :

"A candidate who has failed in a single subject by not more than 6 per cent of the total marks in that subject and has failed in written-cum-oral portion of that subject by not more than 12 per cent of the total marks in that portion but has secured at least 60 per cent in the practical portion, then the shortage from pass marks in the subject in which he has failed shall be condoned and he will be deemed to have passed the examination under Regulation."

3. The petitioner appeared at the First BAMS Examination but could not pass in the subjects Materia Medica and Physiology. Under the Rules he was allowed to pursue his further studies but, it was essential for him to clear all his subjects before he could be allowed to appear at the Final Examination. The additional examination at which the petitioner and similarly situated students are permitted to sit has been described in the High Court's judgment as compartmental examination. On the second attempt in the subjects, Materia Medica and Physiology, he was successful in Materia Medica but, was short of the prescribed pass marks in the theory portion of Physiology by one mark. Since he obtained more than 60 per cent marks in the practical portion of Physiology he and his Principal assumed that by reason of Regulation 16 he had cleared all the subjects of the First Examination. Subsequently he was allowed to appear at the Final BAMS Examination which he duly passed. He was, however, not included in the list of successful candidates on the ground that he was not entitled to the benefit of Regulation 16 and must be held to have not cleared his examination in Physiology. He filed a writ petition before Patna High Court which has been dismissed holding that Regulation 16 is not applicable to compartmental examinations.

4. Although respondents 2 and 3 have appeared in response to a notice issued by this Court and filed a counter-affidavit condemning the Principal for having illegally forwarded the examination from the fees of the petitioner. Mr. R. K. Jain, the learned counsel has not pressed the aforesaid plea. The only question, therefore, is whether Regulations 16 applies to compartmental examination also or not.

5. There is no express provision in the regulation to indicate that its application is confined to the

main examination, First of Final. On the plain language it should be given a universal application. The High Court distinguished an earlier case relied upon by the petitioner on the ground that the same was in relation to general examination and no compartmental examination. We do not find any reason for excluding Regulation 16 from compartmental examinations. If the intention of the author of the Regulations was otherwise it should have been clearly so indicated. Students should not be expected to get involved in legal niceties and waste their time and energy in seeking expert advice on statutory interpretational problems. On the face of it, the regulation is of the general application and it was so understood even by the petitioner's Principal and the Other. University authorities who permitted him to sit in the Final examination. The object of the regulation is to adopt a liberal policy in favour of a candidate who has passed in all the subjects except one, and the petitioner clearly comes within that category. We, therefore, hold that the petitioner is entitled to the relief claimed. Accordingly we set aside the impugned judgment and direct the respondents to publish the result of the petitioner in the light of the observations under above. There will be no order as to costs.

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