

IN THE COURT OF SENIOR CIVIL JUDGE- 2 AIZAWL DISTRICT: AIZAWL, MIZORAM

CIVIL SUIT NO. 12 OF 2003

Plaintiff:

Mr. Zochhuana
S/o Sharma
Chaltlang Lily Veng, Aizawl

By Advocate's : Mr. W. Sam Joseph, Adv.

Versus

Defendants:

1. North Eastern Hill University
Through the Registrar
Bijni Complex, Shillong: Meghalaya
2. The Controller of Examination
North Eastern Hill University
Bijni Complex, Shillong: Meghalaya
3. The Registrar
North Eastern Hill University
Bijni Complex, Shillong: Meghalaya
4. The Deputy Registrar
North Eastern Hill University
Bijni Complex, Shillong: Meghalaya
5. The Vice Chancellor
North Eastern Hill University
Bijni Complex, Shillong: Meghalaya

By Advocate's : Mr. Michael Zothankhuma, Sr. Adv.

Date of Arguments : 06-05-2011

Date of Judgment & Order : 09-05-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

JUDGMENT & ORDER

FACTUAL SCENARIO

The plaintiff is presently enrolled as an Advocate under the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh in the month of April, 2002 and the defendant no. 1 is incorporated under section 3 of the North Eastern Hill University Act, 1973 and the other defendants are the officers working under defendant no. 1. The main cause of action arose that the defendant no. 2 conducted Intermediate LL.B (Old course) examination during 21/10/1999 to

1/11/1999 and the plaintiff appeared for the same under Roll Number 750 and the said examination result was declared in the month of April, 2000, in which the plaintiff was declared as 'failed' allegedly due to the negligence committed by the defendants. Being aggrieved, the plaintiff applied for re-evaluation of his paper by personally plying to Shillong where the defendant headquarter's located by paying a requisite fee, disposal of his application for re-evaluation took more than six months. Although the plaintiff sent a letter to the defendant no. 2 for communicating him about his re-evaluation outcome but fails to intimate the same in due course of time. As examination was scheduled, the plaintiff was indispensable to re-appear for the said Intermediate LL.B examination and thereby sat for the same during 13th to 20th September, 2000 under Roll No. 1261 and the said examination result was declared in the month of March, 2001 in which the plaintiff stood as First position under the defendant University (In short- NEHU). During pendency of the result of such examination, the defendants NEHU conveyed to the plaintiff about his application for re-evaluation under Roll No. 750 speaks that the plaintiff was passed/success in the said re-evaluation. The plaintiff also again stood as first position in the final year examination of LL.B during 14th to 20th June, 2001 under Roll No. 794 as declaring the result thereof in the month of February, 2002. The plaintiff alleged that due to willful negligence of the defendants, the plaintiff loss one year expending huge amount of money, time, energy for repeating the said Intermediate LL.B plus suffering from mental agony due to proclaimed him as 'failed' in the said examination. Thus, prayed a relief/damages at Rs. 4,50,000/- (Rupees four lakhs, fifty thousand) with interest rate at 12% per annum for the same and any other relief as this court deem fit and proper. Being an indigenous inhabitant and house tax payer, a requisite court fees at Rs. 5000/- is also paid in full.

The defendants in their written statements admitted that the plaintiff was declared as failed in his Intermediate LL.B exams in 1999 but denied that there was no negligence on the part of the defendants because of the evaluation made by the examiners. They further contended that the terms of re-evaluation is also printed in the backside of the form itself saying that ".... re-evaluation cannot be a time bound process" which binds the plaintiff in his re-evaluation process. Although timely completion of reevaluation is the desire of the defendants by sending reminder to the concerned examiner who evaluate the answer scripts, the examiners fails to complete in time and no negligence on the part of the defendants arose. In short, the defendants in their written statements mostly relied that re-evaluation cannot be a time bound process.

ISSUES

The issues were framed on 23/7/2004 and by virtue of O. XIV, R. 5 of the CPC, the issues were amended and the amended form of issues are as follows -

1. Whether the suit is maintainable in its present form and style
2. Whether the defendants had committed negligence for declaring the plaintiff as 'failed' in his Intermediate LL.B. exams in 1999
3. Whether the defendants had committed negligence by not conducting LL.B exams in time as per law
4. Whether the defendants had committed negligence for failure to timely process of re-evaluation papers of the plaintiff
5. Whether the plaintiff had sustained any injuries or loss for wrongly declaring him as 'failed' in his Intermediate LL.B exams in 1999 and lately completion of the process of re-evaluation of his papers

6. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Zochhuana S/o Sharma, Chaltlang Lily Veng, Aizawl (Hereinafter referred to him as PW-1)
2. Mr. H. Dolianbuaia S/o Sanpianga, Dinthar Veng, Aizawl (Hereinafter referred to him as PW-2)

The PW-1 in his examination in chief reiterated the contents of the plaint being the plaintiff himself. He further continued that-

Ext. P- 1 is his Registration Certificate as Advocate

Ext. P-2 is a Tribal Certificate in favour of the plaintiff

Ext. P-3 is University Registration Card of the plaintiff

Ext. P-4 is Pre-University Certificate

Ext. P-5 is B.A. Certificate

Ext. P-6 is Marksheet of LL.B. (Prelims)

Ext. P-7 is his application to the Controller of Exams

Ext. P-8 is his Marksheet of Intermediate LL.B under Roll. No. 750 before re-evaluation

Ext. P-9 is his Marksheet of Intermediate LL.B under Roll No. 1261

Ext. P-10 is Result of LL.B. (Old course), 2000

Ext. P-11 is his Marksheet of Intermediate LL.B under Roll No. 750 after re-evaluation

Ext. P-12 is his final year LL.B Marksheet under Roll No. 744

Ext. P-13 is result of LL.B (Old course) held in June 2001

Ext. P-14 is extract copy of order of Consumer Dispute Redressal Forum in CC No. 140/2002

Ext. P-15 is House Tax Payee certificate of the plaintiff

During cross examination, he deposed that although he did not know the exact date for submissions of re-evaluation application, he affirmed that soon after examination, he had submitted the said application to the defendant University. He admitted the conditions in the re-evaluation form saying that 're-evaluation cannot be a time bound process'. He further admitted that there was no any physical coercion or force to sit again for examination of intermediate LL.B exams inflicted by the defendants. Although he do not know the exact date for receiving his re-evaluation result but he ascertained that it was received after appearing for intermediate LL.B exams for the second time. He also admitted that a Legal Notice u/s 80 of CPC was not served to the defendants.

The PW-2 deposed in his examination in chief that since 1997, he knows the plaintiff as classmates at Aizawl Law College. In March 1999, he appeared for Preliminary LL.B (Old Course) with the plaintiff and both of them succeed and declared them as passed in Second Division. In the Intermediate LL.B (Old course) examination during 21/10/1999 to 1/11/1999, he and the plaintiff appeared and declared them as 'failed'. He also witnessed that the plaintiff had immediately submitted application for re-evaluation to the defendants but the result of the same took more than six months. Due the failure for timely completion of the said re-evaluation of answer script, the plaintiff and he himself again appeared for Intermediate

LL.B exams during Sept., 2000 and as such the plaintiff stood as first position as declaring the result thereof in March 2001. In the final LL.B exams held in June 2001, the plaintiff also stood as first position. Due to failure to timely re-evaluation process of the plaintiff, the plaintiff loss more than 16 months for completion of Law degree.

In his cross examination, he deposed that he did not accompany the plaintiff to ply for Shillong for re-evaluation of the answer script of the plaintiff. He admitted that he do not know the terms and conditions laid down for re-evaluation of answer scripts. He also admitted that his failure in his first Intermediate LL.B. exams without any doubt to the defendants.

For the defendants:

The defendants produced only one witness namely- Mr. B.S. Mohat S/o Late Bhiman Singh Mohat who is the Assistant Registrar of Examination Department, NEHU depositing that in October, 1999, the plaintiff also appeared for Intermediate LL.B exams under Roll No. 750 and evaluated his answer scripts as per norms and rules of the University. The plaintiff thereby secured 43.25% aggregate marks but failed to get 45% in aggregate as required under the rules and he was declared as 'failed'. In papers II and IV, the plaintiff had submitted application for re-evaluation but the conditions inter alia was that 're-evaluation cannot be a time bound process'. The answer scripts of the plaintiff were forwarded to two different examiners on 6/6/2000 and the examiner on "Labour Law and Company Law" to whom the said answer script was sent, returned without re-evaluation on 20.6.2000 due to his out of station (out of India), the answer script was re-assigned to an alternative examiner on 22.6.2000 and returned the same with due re-evaluation on 24.7.2000. The said re-evaluation result was declared on 26/9/2000 and admitted that Intermediate LL.B examination was conducted before such result declaration during 13.9.2000 to 20.9.2000 and declared the said result on 14/3/2001, the plaintiff thereby opted his examination result declared on 14/3/2001. No force to sit again for Intermediate LL.B exams was inflicted by the defendants. Only because of insufficient time to declare the disputed re-evaluation result, the said re-evaluation result was lately declared after commencement of Intermediate LL.B exams. No negligence on the part of the defendants was hit as examiner are not the regular employee of the defendants.

In his cross examination, he deposed that he was not a party for dealing the disputed re-evaluation process. He admitted that the result of re-evaluation of answer script was declared after completion of appearing of the plaintiff in his second time Intermediate LL.B examination. As per the 'Regulation & Syllabus for the Bachelor of Law Examination' recommended by the Faculty of Law on 19.7.1969, 2.9.1972 and passed by the Academic Council on 19.8.1969 and 15.2.1973, all the three examination shall be held twice in a year, first in the month of January and second in the month of July. He admitted that during 1999, the LL.B examination was conducted on 21st October to 1st November, 1999 though the said examination should be conducted during the month of July, 1999. He further admitted that as per the records available with him, the LL.B examination was not conducted as per the Regulation governing the said examination even during 2000. As per the procedure adopted by the defendants, re-evaluation of answer scripts could not be done by the same examiner who evaluate the same paper in the first instance and also hide the marked awarded in the first evaluation. The examiners were chosen as per the approved Panel of Examiners recommended by the Board of Under Graduates in Law and

approved by the Vice Chancellor. During 1999, 34 aggrieved students applied for re-evaluation of their respective answer scripts, out of which nine candidates were declared as 'Passed' the other 25 students were declared as 'failed'. He also admitted that after re-evaluation, the plaintiff was declared him as 'passed'. As per the record of the defendants, the plaintiff applied for his re-evaluation within due course of time on 16/5/2000. He also admitted that the plaintiff also submitted reminder for his application for re-evaluation to the Controller of Exams on 22nd July, 2000 marked as Ext. P-7. In the meantime, he denied that the carrier of the plaintiff was disturbed due to lethargy in re-evaluation of his papers because of negligence committed by the defendants.

ARGUMENTS

The defendants in their written arguments stated that in view of the ingredients of 'Negligence' under Law of Torts, the plaintiff does not have any fault in the instant suit on negligence. They totally denied to force the plaintiff for sitting in the Intermediate LL.B examination for the second time. The defendants fairly process the examination including re-evaluation of the answer script of the plaintiff and thereby no fault was inflicted on the plaintiff. By making reliance in the decisions of Hon'ble Supreme Court in **Rajasthan State Electricity Board, Jaipur vs Mohan Lal & Ors** decided on 3 April, 1967 reported in 1967 AIR 1857, 1967 SCR (3) 377, being Autonomous Body, the plaintiff failed to served legal notice to the defendants and the suit is also barred by law of limitation while the cause of action had arisen firstly on 24.4.2000 and filing of the suit on 05-09-2003.

The plaintiff in his written arguments after reiterating the germination of the case on facts and appreciation of evidence contended that the defendants violated paragraph 7 of their own Regulations and Syllabus for the Bachelor of Law Examination' recommended by the Faculty of Law on 19.7.1969, 2.9.1972 and passed by the Academic Council on 19.8.1969 and 15.2.1973 which reads thus- "All the three examinations shall be held twice in a year- One in the month of January and the other in the month of July". The Schedule of the compensation is submitted as follows-

1. Special damages	= Rs. 1,00,000.00
2. General damages	
(a) Pain suffering and loss of income and seniority	= Rs. 2,00,000.00
(b) Exemplary damages	= Rs. 1,00,000.00
3. Mental agony and causing of personal inconvenience	= Rs. 50,000.00
Total claimed amount	= Rs. 4,50,000.00 (Four lakhs and fifty thousand rupees)

At the time of oral arguments, the appearance of learned counsel of the defendants could not be obtained without knowing reasons, Mr. W. Sam Joseph, learned counsel for the plaintiff argued that the ratio of the decisions of Hon'ble Supreme Court in **Rajasthan State Electricity Board, Jaipur vs Mohan Lal & Ors** decided on 3 April, 1967 reported in 1967 AIR 1857, 1967 SCR (3) 377 is misread by learned counsel for the defendants by supplying its full text saying that it was rather held that a legal notice is not required u/s 80 of CPC to an Autonomous body like Rajasthan State Electricity Board of Jaipur. Another reliance in this task is also brought forward in the case of **U.P.S.E.B. & Anr vs Sant Kabir Sahakari Katai Mills** decided on 19 September, 2005 and reported in 2005 (7) SCC 176:

2005 AIR (SCW) 4779: 2005 (8) JT 399: 2005 (7) SCALE 337 which held that the Board cannot be equated with state government in terms of Section 80 of the CPC.

FINDINGS

Issue No. 1 Maintainability of the suit

On meticulously examining the plaint, a requisite court fees is paid by the plaintiff, in regards of legal notice, I accepted the arguments advanced by learned counsel for the plaintiff alleging that learned counsel for the defendants misread and misinterpret the ratio laid down in **Rajasthan State Electricity Board, Jaipur vs Mohan Lal & Ors (supra)**. The relevant portion of an observations in the case of **U.P.S.E.B. & Anr vs Sant Kabir Sahakari Katai Mills** decided on 19 September, 2005 and reported in 2005 (7) SCC 176: 2005 AIR (SCW) 4779: 2005 (8) JT 399: 2005 (7) SCALE 337 was that-

“The High Court's view is clearly untenable. Board cannot be equated with State Government. Section 80 of the Code of Civil Procedure, 1908 (in short 'CPC') is a pointer in that regard. Co-operative Societies and Public Sector Undertakings are conceptually different. The Board is a Public Sector Undertaking and not a State Government department. It may be "State" for the purpose of Article 12 of the Constitution. There the similarity ends. Co-operative Societies (writ petitioners) cannot be, without examination of relevant factual aspects, equated with Public Sector Undertaking. The High Court has come to abrupt conclusion that they are Public Sector Undertakings without indicating any reason for such conclusion. The High Court, therefore, was wrong in applying ratio of ONGC-I case (supra) to the facts of the present cases.”

The main cause of action was arose on 14/3/2001 when the plaintiff was declared as 'passed' in his Intermediate LL.B examination while the suit was filed on 8/9/2003, the crux on law of limitation its barring submitting that filing of the suit after lapse of three years does not arisen in the instant suit. The issue no. 1 is therefore affirmative in favour of the plaintiff.

Pertinently, the submissions of the plaintiff in the plaint in respect of inapplicability of law of limitation like in the instant suit where non-tribals are a party due to Notification is untenable as held by the Hon'ble Gauhati High Court in the case of **Lalchawimawia & Ors. Vs. State of Mizoram** decided on 5-5-1999 in connection with WP (C) No. 4 of 1996 reported in 1999 (3) GLR 100 and the later decision in the case of **L. Biakchhunga vs State Of Mizoram And Ors.** decided on 1/8/2005 and reported in (2006) 2 GLR 610.

Issue No. 2 Negligence on declaring the plaintiff as 'failed'

All human beings are no doubt fallible so the rules for re-evaluation of answer script is chalked out. Although due care, sincere efforts and painstaking effort, error can be committed in this planet. I find no negligence on the part of the defendants to declare him as 'failed' in the Intermediate LL.B examination during 21/10/1999 to 1/11/1999.

Issue No. 3
Negligence by not conducting timely LL.B exams

On perusal of the contents of the 'Regulation & Syllabus for the Bachelor of Law Examination' recommended by the Faculty of Law on 19.7.1969, 2.9.1972 and passed by the Academic Council on 19.8.1969 and 15.2.1973, all the three examination shall be held twice in a year, first in the month of January and second in the month of July, I find that when the cause of action of the instant suit arose, the defendants committed negligence to conduct timely examination of LL.B as per their own Regulations duly adopted by them which purely aimed the welfare and carrier of Law students by not missing a year for law degree where the plaintiff is one of the persons who are the victims of the said negligence committed by the defendants as admitted by deposition of the lone DW.

Issue No. 4
Negligence for failure to timely completion of re-evaluation

Although admitted that as per the terms and conditions also displayed in the adverse side of the Re-evaluation application form that "Although the University shall make efforts to declare the results of re-evaluation as early as possible, but because of various safeguards required to be taken, re-evaluation cannot be a time bound process", this will not meant that declaration of re-evaluation result after conducting and completion of the next academic semester/sessions examination for the same degree course is justifiable. Otherwise, public faith in the said University will be minimized and the students who paid huge amount of fees and spending whole time will be victimized if we scot free the said lethargy. The grade and status of university will also be determined by the timely action of University. In the instant case, as admitted by evidences of both parties, the plaintiff, declared him as failed in his Intermediate LL.B exams held during 21/10/1999 to 1/11/1999 and submitted application for re-evaluation in due course of time but declared the said re-evaluation result on 26/9/2000 after completion of the same Intermediate LL.B examination held during 13.9.2000 to 20.9.2000 and declared the said result on 14/3/2001 as deposed by DW is certainly negligence on the part of the defendants.

The undisputed legal principles is that although examiners for the said re-evaluation of answer scripts is not a regular employee of the defendant University, at least vicarious liability should be applicable as re-evaluation process is obviously under the aegis and process of the defendant University, the argument advanced in this catena is not a sufficient grounds to exonerate the liability.

Issue No. 5
Injury and loss of the plaintiff

A brilliant student like the instant plaintiff who stood in the first position for Intermediate and final year LL.B examination but declared him as 'failed' although later declared him as 'passed' after re-evaluation of his answer scripts will be utter effect on him.

However, law is a professional even without affording government service, missing of around 16 months for getting legal profession whilst the plaintiff deserved due to unusual delay of his re-evaluation process will cogently cause loss of earning, huge amount of money for repeating Intermediate LL.B for prescribed fees, collection of study materials etc.

Issue No. 6
Entitlement of relief and it's extend

In the findings and discussions made above, the plaintiff is not doubt entitle the relief due to the negligence committed by the defendants. The relief sought by the plaintiff in his plaint and in his written arguments is reiterated as-

- | | |
|---|-------------------|
| 1. Special damages | = Rs. 1,00,000.00 |
| 2. General damages | |
| (a) Pain suffering and loss of income and seniority | = Rs. 2,00,000.00 |
| (b) Exemplary damages | = Rs. 1,00,000.00 |
| 3. Mental agony and causing of personal inconvenience | = Rs. 50,000.00 |

Total claimed amount = Rs. 4,50,000.00 (Four lakhs and fifty thousand rupees)

Instead of agreeing of the above submissions in toto, I am in opinion to accurate the amount of relief as follows-

- (1) Loss earning of junior Advocate's for 16 months (Rs. 10,000/- x 16) = Rs. 1,60,000/- (Rupees one lakh and sixty thousand)
- (2) Expenditure incurred on Law college fees and study materials = Rs. 20,000/- (Rs. 10,000/- + Rs. 10,000/-)
- (3) Mental agony = Rs. 10,000/-

Sub-total = Rs. 1,90,000/- (Rupees one lakh and ninety thousand)

The plaintiff also deserved the other costs of the suit as follows-

- (1) Court fees = Rs. 5000/-
- (2) Lawyers fee = Rs. 10,000/-
- (3) Stationery including printing charge = Rs. 2000/-
- (4) Conveyance = Rs. 3000/-

Sub-total = Rs. 20,000/- (Rupees twenty thousand)

Total amount falls = **Rs. 2,10,000/- (Rupees two lakhs and ten thousand)**

DIRECTIVES

Thus, the defendants are directed to pay relief to the plaintiff within one year from the date of this order in the following terms-

- (1) Loss earning of junior Advocate's for 16 months (Rs. 10,000/- x 16) = Rs. 1,60,000/- (Rupees one lakh and sixty thousand)
- (2) Expenditure incurred on Law college fees and study materials = Rs. 20,000/- (Rs. 10,000/- + Rs. 10,000/-)
- (3) Mental agony = Rs. 10,000/-

Sub-total = Rs. 1,90,000/- (Rupees one lakh and ninety thousand)

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- (3) Stationery including printing charge = Rs. 2000/-
 (4) Conveyance = Rs. 3000/-

Sub-total = Rs. 20,000/- (Rupees twenty thousand)

Total amount falls = Rs. 2,10,000/- (Rupees two lakhs and ten thousand), wherein, interest rate at 12% per annum out of Rs. 2,10,000/- (Rupees two lakhs and ten thousand) with effect from 8.9.2003 (when institution of the suit) till realization will also be paid to the plaintiff by the defendants.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
 Aizawl District: Aizawl

Memo No. CS/12/2003, Sr. CJ (A)/

Dated Aizawl, the 9th May, 2011

Copy to:

1. Mr. Zochhuana S/o Sharma, Chaltlang Lily Veng, Aizawl through Mr. W. Sam Joseph, Advocate
2. North Eastern Hill University Through the Registrar, Bijni Complex, Shillong: Meghalaya through Mr. Michael Zothankhuma, Sr. Advocate
3. The Controller of Examination, North Eastern Hill University, Bijni Complex, Shillong: Meghalaya through Mr. Michael Zothankhuma, Sr. Advocate
4. The Registrar, North Eastern Hill University, Bijni Complex, Shillong: Meghalaya through Mr. Michael Zothankhuma, Sr. Advocate
5. The Deputy Registrar, North Eastern Hill University, Bijni Complex, Shillong: Meghalaya through Mr. Michael Zothankhuma, Sr. Advocate
6. The Vice Chancellor, North Eastern Hill University, Bijni Complex, Shillong: Meghalaya through Mr. Michael Zothankhuma, Sr. Advocate
7. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR