

(2014) 11 KAR CK 0110

In the Karnataka High Court

Case No : Writ Petition Nos. 58586-58676, 58779/2013, 59165-59226 and
59452-59461/2013 (EDN-EX)

Bharath B.K.

APPELLANT

Vs

The Government of India

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0110

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Ratna N. Shivayogimath, Advocate for Shivayogimath Assts,
Advocate for the Appellant; R. Veerendra Sharma, Sheetal Soni and N.K Ramesh,
Advocate for the Respondent

Judgement

A.S. Bopanna, J.—The petitioners in all these petitions are before this Court seeking benefit under the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine), (Amendment) Regulations, 2012 published on 25.04.2012 with subsequent amendment on 22.05.2013 as at Annexure-F to the petitions. In that light, the petitioners are seeking consideration of their representation. The petitioners are also seeking quashing of the amended notification dated 19.09.2006 issued by the third respondent-University.

2. The case as pleaded in W.P. Nos. 58586-58676/2013 is taken for the purpose of narration of, facts. The petitioners are the students of 2nd and 3rd year professional course, Bachelor of Ayurvedic Medicine and Surgery ("BAMS" for short) being awarded by the third respondent-University. They are studying in different. Government as well as private colleges which are affiliated to the University. They have been admitted to the said course during the academic years 2007-2008 onwards up to 2010-2011 in their respective cases.

3. The grievance presently is that under the notification dated 25.04.2012 amended on 22.05.2013 issued by the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine), no restriction with regard to the

number of attempts has been provided. Despite the same, the restriction of number of attempts in the examinations is being imposed on the petitioners only because they were admitted to the course earlier. In that regard, on the notification dated 19.09.2006 being issued by the third respondent, which they claim to be in consonance with the earlier regulations which governs the petitioners as their admissions were based on such notification which had been issued on 09.05.2004, the petitioners are before this Court claiming to be aggrieved that they cannot be treated differently from the students who get the benefit of the regulations published on 25.04.2012, amended on 22.05.2013.

4. The respondents have filed their objection statement seeking to justify their action. The case of the respondents is that the admissions of the petitioners herein to the said course was prior to the implementation of the regulations dated 25.04.2012. It is therefore contended that the provisions which contained under the notification dated 09.05.2004 based on which the "admissions had been secured by the petitioners would be applicable to the petitioners. In that view, it is contended that when the said regulations provide for the maximum attempts and when the petitioners have exhausted such attempts, certainly, the petitioners cannot at this juncture seek for the relief by contending that they are similar in case of the students who are admitted as per the regulations provided under the notification dated 25.04.2012. It is also contended that a decision is being taken by respondents No. 1 and 2 to amend the regulations dated 25.04.2012 to impose such condition of maximum attempts in examination, so as to improve the standard of education. Hence, the prayer as sought in these petitions is opposed.

5. The contentions urged by the learned counsel for the parties herein is in similar lines as has been contended in their respective pleadings. Though several contentions have been urged, what is necessary to be noticed is that the very same issue under the said notifications which are referred to herein had arisen for consideration before the High Court of Judicature of Bombay, Bench at Aurangabad in W.P. No. 3391/2013. While considering the contentions which were put forth therein and on making detailed analysis of the same, the learned Judge was of the view that when a contention is put forth on behalf of the respondents that the regulations are being implemented to improve the standard of education, the subsequent notification dated 25.04.2012 removing the maximum attempts provided cannot be understood to have achieved the said object. It is in that view, the Court was of the opinion that the notification dated 09.05.2004 under which the maximum number of attempts which are being imposed on the petitioners which was assailed therein cannot co-exist with the regulations of Central Council of Indian Medicine ("CCIM" for short) dated 25.04.2014.

6. It is no doubt true that the notification dated 09.05.2004 impugned therein had been issued by the University. Even if that be so, the said notification was in consonance with the regulations had been issued by the "CCIM". If this aspect of

the matter is kept in view, in the instant facts also, the notification impugned at Annexure-J dated 19.09.2006 has been issued by the third respondent in view of the regulations contained in the regulations of the "CCIM" which according to them applied to the students who were admitted under the earlier regulations.

7. Therefore, when the same issue had been considered by the Bombay High Court and it was held that the earlier regulations and the subsequent regulations cannot co-exist in the circumstance and the notification which was assailed therein limiting the number of attempts of the petitioners therein had been quashed, a similar consideration would have to be made in the instant petitions as well.

8. While taking a decision on this aspect, the learned counsel for respondents No. 1 and 2 would bring to the notice of this Court that subsequent to the order passed by the Bombay High Court, the "CCIM", New Delhi has taken note of the same in its meeting held on 07.12.2013 in Additional Agenda Item No. 6, a copy of which is made available. A perusal of the same would indicate that having taken note of the observations made by the Bombay High Court, wherein it is stated that the regulations of 2012 does not achieve the object of improving standard of education, a suggestion has been made to amend the regulations, 2012 so as to introduce therein also the maximum number of attempts for the students, so that the standard of education improves.

9. Even if the said resolution is taken into consideration, as on today, the regulation, 2012 is yet to be amended. If that be the position, the two regulations which has been noticed by the Bombay High Court to come to a conclusion that they cannot co-exist and the benefit was granted to the petitioners would still be available to the petitioners herein.

10. Therefore, in the instant case also, the petitioners herein and the similarly placed students who had been admitted under the regulations which subsisted prior to the regulations, 2012 cannot be insisted upon to limit their number of appearances when such limitation is not yet brought into force in the regulations 2012. Therefore, until amendment is made to the regulations 2012 to apply a uniform procedure to all students who have been admitted either prior to regulations, 2012 or thereafter, the benefit as exists in the regulations, 2012 would have to be provided to the petitioners and similarly placed students without limiting their number of attempts.

11. In view of the above, though I see no reason to quash or modify the regulations or the notification, it is clarified that the petitioners shall not be prejudiced to limit their number of attempts in the examinations until a uniform procedure by amending the regulations, 2012 is made applicable to all students. In view of the above and considering the fact that the petitioners had been permitted to appear for the examinations by interim order granted by this Court, the result shall be announced and if any of the students have failed in any of the subjects, they may be provided further opportunity to appear in the examination

subject to the above conclusion.

In terms of the above, these writ petitions stand disposed of.