
(2019) 04 RAJ CK 0079

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18629 Of 2018

Dahar Prajapat And Ors

APPELLANT

Vs

Registrar And Ors

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

Citation : (2019) 04 RAJ CK 0079

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Surendra Singh Rathore, Sandeep Bhandawat, Shankar Singh

Final Decision : Disposed off

Judgement

1. The petitioners have preferred the present writ petition claiming the following reliefs :-

"by an appropriate writ, order or direction, the respondents may kindly be directed to allow the humble petitioners to appear in 3rd year professional examination of BAMS Course."

2. Brief facts of this case, as noticed by this Court, are that the petitioners are pursuing Course of Bachelor of Ayurvedic Medicine and Surgery at Dr. S.R. Rajasthan Ayurved University, Jodhpur. The duration of the said Course is five and a half years, including one year internship.

3. This Court on 12.12.2018 while admitting the writ petition passed order, which read as follows :-

"Learned counsel appearing for the petitioners submits that the petitioners passed BAMS First Year Examination conducted in November-December, 2016, they failed in three subjects, however, were promoted to BAMS Second Year Examination. They failed in BAMS Second Year Examination in subjects A1, A2 & A4, which were cleared by them in the examination held in the month of June-July, 2018 and thus, as per the Regulations, governing admission, they are

entitled to appear in BAMS Third Year Examination. It is submitted that the petitioners have attended the regular classes of BAMS Third Year and achieve the requisite attendance yet they are not permitted to fill up the forms of BAMS Third Year Examination.

Admit.

Issue notice. Issue notice of the stay application also. In the meanwhile, the respondents are directed to provisionally permit the petitioners to fill up the form of BAMS Third Year Examination scheduled to commence w.e.f. 26.12.18, if they are otherwise eligible. It is made clear that appearance of the petitioners in the examination pursuant to the interim order passed as aforesaid shall not create any right or equity in their favour and their result shall not be declared without permission of the Court."

4. Upon directions of Court, Mr. Sandeep Bhandawat Standing Counsel for the University, has produced result of petitioners in sealed-cover as per which petitioner no.1 Dahar Prajapat has 'failed' and petitioner no.2 Pushkar Singh Jakhar has 'Passed'.

5. Counsel for the parties submit that similar controversy has already been adjudicated in detail by this Court while passing order dated 11.4.2019 in S.B. Civil Writ Petition No.17251/2018, (Jitendra Kumar Valav & Anr. Vs. The Dean Academic, Dr. S.R. Rajasthan Ayurved University, Karwad, Jodhpur & Ors.), which read as follows :

"1. Petitioners have preferred the present writ petition claiming the following reliefs :-

"by an order, direction or the issuance of writ the respondents may be directed to allow the humble petitioners to apply for the examinations to be held for BAMS IIIrd year course and accepting their examinations applications forms with all sincerest approach as per the schedule released."

2. Brief facts of this case, as noticed by this Court, are that the petitioners are pursuing the Course of Bachelor of Ayurvedic Medicine and Surgery at Dr. S.R. Rajasthan Ayurved University, Jodhpur. The duration of the said course is five and a half years, including one year internship. The petitioners got admitted for the said course in the year 2015, and after completion of the First Year Examination held in November-December, 2016, they were declared successful in the results. The petitioners thereafter appeared in Second Year Examination, but could not succeed in three Subjects. The petitioners, however, went ahead for the Third Year Course and deposited the requisite fees, and the receipts towards the fee deposited by both the petitioners are on record as Annexure-3. The said receipts were issued by Dr. S. Radhakrishnan Rajasthan Ayurved University Jodhpur bearing Receipts No.22 and 27 dated 25.01.2018 and 7. 03.2018 respectively.

3. Learned counsel for the petitioner has made a limited submission that the

petitioners have subsequently qualified the Second Year Examination, which is reflected in the mark-sheets issued by the respondents, which are on page No. 25 and 26 of the writ petition.

4. Learned counsel for the petitioners has further demonstrated from the Annexure-5 that the petitioner No.1 Jitendra Kumar Malav is having 78.93% attendance in the BAMS IIIrd year 2015 Batch and petitioner No.2 Sanjay Gurjar is having 75.77% attendance in the BAMS IIIrd year 2015 Batch, as per the attendance-sheets issued by the respondent-University.

5. Learned counsel for the petitioner has, thus, submitted that since the petitioners have cleared BAMS Second Year Examination and have already participated in the examination of the BAMS Third Year in pursuance of the interim order passed by this Hon'ble Court on 19.11.2018, therefore, the petitioners may be permitted to carry on the Course after declaration of the results of BAMS Third Year Examination. The said order dated 19.11.2018 passed in this case reads as follows :-

"Learned counsel for the respondents seeks two weeks' time to file reply.

Time prayed for is allowed.

Learned counsel for the petitioner submitted that the petitioner is a student of BAMS Part- II and regularly attending his classes, however, the respondents have not allowed the petitioners to fill-up the forms for the examination of third year BAMS. Learned counsel further submitted that the last date for submitting the examination form is 25.11.2018 along with late fees.

In that view of the matter, in the meantime, the respondents are directed to provisionally allow the petitioners to fill-up the forms for examination of BAMS Third Year.

However, no equity shall be created in favour of the petitioner by this order passed today and the final relief shall remain subject to the outcome of the present writ petition."

6. Learned counsel for the respondents were thereafter directed to call for the results of BAMS Third Years Examination, which has been submitted before this Court today and the same reflects that Petitioner No.1 Jitendra Kumar Malav has failed in BAMS Third Year Examination whereas petitioner No.2 Sanjay Gurjar has passed the examination.

7. Learned counsel for the respondents is not in a position to refute the fact regarding attendance of the petitioners, and that, they both have been declared successful in the BAMS Second Year Examination.

8. In light of the aforementioned facts, this Court finds that since the petitioner No.2 Sanjay Gurjar has passed the BAMS Second Year Examination and thereafter has completed the requisite attendance in BAMS Third Year 2015 Course and has passed the BAMS Third Year Examination given in pursuance of

the interim order passed by this Hon'ble Court, therefore, the present writ petition qua the petitioner No.2 Sanjay Gurjar is allowed. The respondents, therefore, shall continue Petitioner No.2 Sanjay Gurjar along with the rest of the Course and he shall be allowed to complete the degree as per his qualifying necessary examinations. However, since the petitioner No.1 Jitendra Kumar Malav has not been able to qualify the BAMS Third Year given in pursuance of the interim order passed by this Hon'ble Court, the petition qua him fails and he may be continued in Third Year Course afresh.

9. Consequently, the present petition qua petitioner No.2 Sanjay Gurjar is allowed. However, the present petition qua Petitioner No.1 Jitendra Kumar Malav is dismissed. Stay petition No.17227/2018 also stands disposed of accordingly."

6. Consequently, the present petition qua petitioner No.2 Pushkar Singh Jakhar is allowed. However, the present writ petition qua Petitioner No.1 Dahar Prajapat is dismissed. Stay petition No.18558/2018 also stands disposed of accordingly.