

(2015) 09 MP CK 0014

In the Madhya Pradesh High Court

Case No : W.P. Nos. 2709, 6768, 2053, 2143, 5710, 6769, 6772, 6774, 6775
and 6777 of 2015

Harshita Mishra

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 4 MPLJ 312

Hon'ble Judges : Shantanu Kemkar and K.K. Trivedi, JJ.

Bench : Division Bench

Advocate : Rajendra Tiwari, Senior Counsel assisted by R.K. Tripathi, R.N. Singh, Senior Counsel assisted by Akshay Pawar, Amitabh Gupta, Paritosh Gupta, Pankaj Dubey, P.K. Saxena, Kuldeep Bhargava and Umesh Gajankush, for the Appellant; Piyush Dharmadhikari, Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. Shri Rajendra Tiwari, learned senior counsel, assisted by Shri R.K. Tripathi, learned counsel.

Shri R.N. Singh, learned senior counsel, assisted by Shri Akshay Pawar, learned counsel.

Shri Amitabh Gupta, learned counsel.

Shri Paritosh Gupta, learned counsel.

Shri Pankaj Dubey, learned counsel.

Shri P.K. Saxena, learned counsel.

Shri Kuldeep Bhargava, learned counsel.

Shri Umesh Gajankush, learned counsel.

For the petitioners in all their respective writ petitions.

Shri Piyush Dharmadhikari, learned Government Advocate, for the respondents-State.

Shri Aditya Khandekar, for the respondent-Professional Examination Board (VYAPAM).

Shri Vibhudendra Mishra, learned counsel for the respective respondent-University in all the writ petitions.

By this order, the interlocutory applications filed by the petitioners in this bunch of writ petitions are being disposed of.

2. In the first writ petition i.e. in Writ Petition No. 2053/2015, while entertaining the application for grant of interim relief, this Court has passed a detailed order on 11-3-2015. This Court was apprised of the fact that in similar writ petitions filed at Indore Bench, interim orders were passed by the Court granting permission to the petitioners in those petitions to continue their studies in the colleges concerned, by staying the operation of the impugned orders. On further consideration of the aforesaid prayer for grant of interim relief, a detailed order was passed by this Court on 14-5-2015 and rejected the interim prayer. The matters were to be heard as all other writ petitions filed before the Indore Bench were transferred to the Principal Bench.

3. Again, on 16-6-2015, this Court considered grant of interim relief of separate applications filed by the petitioners. All those applications, after due consideration, were rejected. This Court has categorically said that the persons like petitioners would not be allowed to participate in the ensuing examinations for the detailed reasons recorded in the order dated 17-4-2015.

4. Now the petitioners have come before this Court once again repeating their prayer for grant of interim relief on the grounds that the writ petitions against the similar orders were earlier filed before this Court, which have been dismissed and Special Leave Petitions have been filed before the Apex Court, which have been entertained and interim orders have been passed. It is very categorically contended that the issues raised in the SLPs pending consideration before the Apex Court and in the present writ petitions are identical and in fact the decision of the Apex Court on the said SLPs would govern the disposal of the present writ petitions. It is further contended that the Apex Court has passed a detailed order in SLP (C) No. (s) 28054/2014, Nidhi Kaim vs. State of M.P. and Ors. etc. and other analogous SLPs on 15-10-2014 on certain interim applications making arrangement for continuance of studies of persons like petitioners in the following manner:--

"We are informed that the petitioners in all these matters fall into two categories.

Some of them have completed their MBBS courses of study and are undergoing the internship in various institutions. The second set of students are in various years of the course of study.

Having regard to the questions involved in these cases, and also having regard to the fact that if an appropriate interim arrangement is not made, the students are likely to lose time in the process of litigation, we deem it appropriate to make the following interim arrangement:--

(i) The first category of students who are carrying on their internship will continue with the programme but the final certificate of the completion of the internship shall not be granted until further orders of this Court.

(ii) Insofar as second category of the students are concerned, these students may be permitted to write the examination but the result of such examination shall not be published insofar as these students are concerned, until further orders."

5. It is contended that the said order is being made continued and even repeated in SLP (C) No. (s) 10294/2015-Soumya Singh vs. State of M.P. and others on 17-6-2015, which reads thus:--

"The petitioner is permitted to write the examination which is to commence from 18th June, 2015. However, the result of such examination shall not be published until further orders."

6. It is further contended that that in some of the cases interim protection has been granted by this Court and those students are continuing their study, but are not permitted to take part in the examination. By filing some documents, persons like petitioners in Writ Petition No. 6768/2015, have brought to the notice of this Court the fact that colleges have informed that since the interim protection is not granted in respect of candidates such as the petitioners in the said case, they will not be allowed to take part in the examination. A prayer therefore is made that since the Apex Court has made arrangement for both the sets of students i.e. one who have not been permitted to take part in the classes have been allowed to take part in the classes/internship and in the second set those who have been permitted to continue their study and to take part in the examination, therefore, similar benefit may be extended to the petitioners. It is contended that those orders of Apex Court were not brought to the notice of the Division Bench when on earlier occasion the prayer for interim relief was being considered, therefore, to maintain parity and keeping in light the fact that the issues are to be decided by this Court, only after disposal of the SLPs by the Apex Court, and further the fact that there is acute shortage of doctors in the State, the petitioners may be allowed to continue with their study and to take part in the examination, in case they fulfill all other norms as is provided by the University for taking part in the said examination.

7. Learned counsel appearing for the State contended that once the issues have been considered and after deliberating all the circumstances, the orders have been passed by this Court, it would not be open for the petitioners to claim the similar interim relief once again. Putting reliance in several orders passed by this Court on earlier occasion, it is submitted by the learned Government Advocate

that even the Division Bench at Indore has refused to grant similar treatment to the persons like petitioners and it would be appropriate to hear the matter on merits rather than considering the interim prayer. However it has not been disputed by the learned counsel for the respondents that the issues raised in these petitions are pending consideration before the Apex Court.

8. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties. From the orders passed by this Court in various writ petitions as also in the present writ petitions it is clear that at no point of time the orders passed by the Apex Court in the pending SLPs were brought to the notice of this Court. The fact was also not pointed out that similar issue is pending consideration before the Apex Court and, therefore, hearing in the writ petitions was not to commence till the issue is decided by the Apex Court. Normal rule is that if the issues are pending consideration before the higher forum, the other forum is to restrain the hands in deciding the issues till the decision is rendered by the higher forum on the said issues.

9. Secondly, it has to be seen that the Apex Court itself has evolved the scheme for permitting the students to continue their study, but has put a rider that the result of the said examination would not be declared without the leave of the Court. This order was brought to the notice of the Indore Bench of this Court in the pending writ petitions and while considering the said aspect, the Division Bench of this Court has passed the order on 17-4-2015.

10. Keeping in view the aforesaid, when the similarly situated one group of students is permitted by the orders of this Court to continue their study and the other group has been allowed by the Apex Court to write the examination, we feel it necessary to pass following orders, keeping in mind the principle of maintaining the parity. Accordingly, we direct as follows:

(1) Those petitioners who have not been allowed to continue the study pursuant to the impugned order will be allowed to continue their study in the colleges and will further be allowed to write the examination, in case they fulfill all other requirements to take part in such examination such as completing the period of study enabling them to become eligible for taking part in the examination, filing of the forms, payment of fees and issuance of hall tickets in terms of the regulations of the University/College. However, final result of the examination of the said students will not be declared by the University without the leave of this Court. The petitioners will also not be entitled to claim any equity on the basis of this interim arrangement, in case their writ petitions ultimately fail.

(2) The students who have been allowed to continue with the study will be allowed to write the examination, in case they fulfill all other norms for taking part in the said examination such as completing the period of study enabling them to become eligible for taking part in the examination, filling of the forms, payment of fees and issuance of hall tickets in terms of the regulations of the University/College. However, final result of the examination of the said students

will not be declared by the University without the leave of this Court. The petitioners will also not be entitled to claim any equity on the basis of this interim arrangement, in case their writ petitions ultimately fail.

The Writ petitions are to be listed for final hearing only after disposal of the aforesaid SLPs by the Apex Court. All the IAs made in the group of writ petition to this extent stand disposed of by this common order.

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