
(1954) 12 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1 of 1954

Jai Chand Rai

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 14-12-1954

Acts Referred:

Constitution of India, 1950 — Article 15(1), 226
Punjab University Act, 1947 — Section 31

Citation : AIR 1955 HP 9

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : Party in person, for the Appellant; Inder Dev Dua, for the Respondent

Final Decision : Dismissed

Judgement

Ramabhadran, J.C.

1. This is a petition under Article 226 of the Constitution and it has been made under the following circumstances.

The petitioner, Jai Chand Rai, is a clerk employed in the Subordinate Judge's Court, Hissar, Punjab (I). On 7-7-1953, the petitioner submitted his admission form for the Intermediate Examination of the Punjab University, which was to be held on 5-9-1953. He offered Urdu as one of the elective subjects. On 8-8-1953, the petitioner was informed by the respondent that, according to the rules of the University, he could not offer Urdu as an elective subject. He was asked to offer some other subject admissible under the rules. Accordingly, the petitioner offered Hindi elective instead of Urdu elective and Urdu optional instead of Hindi optional.

The petitioner, in due course, appeared at the examination. When the results were announced, he found that he had failed in two subjects, namely English and Hindi. The petitioner's contention is that if he had not offered Hindi elective in place of Urdu elective, he would have come out successful, the deficiency of two marks in English being condonable under the rules.

Thereafterwards, the petitioner made representations to the University authorities, praying that he might be deemed to have passed in four subjects and allowed to appear in Hindi elective in the examination to be held in April 1954. The representation was rejected. Hence, the present petition, wherein the petitioner points out that, according to the rules of the University, he could have offered Persian, Arabic, French or German, but not Urdu, as an elective subject, whereas European, Anglo-Indian and women candidates could have offered Urdu elective. It is, therefore, contended that the University has made a discrimination on the basis of sex, race and place of birth and thereby infringed the provisions of Article 15(1) of the Constitution.

Petitioner further contends that Urdu is a language spoken all over the Punjab and under Article 29(1) of the Constitution, it must be conserved.

2. It was further alleged that the petitioner has been put to serious loss by the action of the respondent in debarring him from offering Urdu elective. But for this prohibition, petitioner's case is that he would have been successful in the Intermediate Examination and could have appeared for the B.A. Examination in April 1955. Accordingly, the reliefs asked for are: (a) that he be declared to have been successful in the Intermediate Examination held in September 1953 and be permitted to sit in the B.A. Examination due to be held in April 1955. (b) The petitioner be awarded compensation at the rate of Rs. 300/-p.m. from 1-9-1954 till 15-4-1955.

3. The petition was admitted only so far as it alleged that the petitioner's, fundamental rights under the Constitution had been infringed.

4. The petition was opposed by the respondent on various grounds. Inter alia, it was pointed out that the Punjab University is an autonomous body quite distinct from the Punjab Government. As regards the petitioner's grievances, the respondent pointed out that the petitioner had submitted to the rules and regulations of the University and had appeared in the Intermediate Examination subject to those regulations. The respondent also pointed out that the petitioner is guilty of serious laches, i.e., his representation was rejected by the University on 22-1-1954 and the present petition was put in as late as 13-8-1954. The University also contended that no fundamental rights of the petitioner had been infringed and the reliefs asked for by "the petitioner could not be granted in a writ petition.

5. I heard the petitioner in person and the learned counsel for the respondent on 2-11-1954. Since then, I have been continuously on circuit in the outlying districts of Himachal Pradesh. I returned to Simla only recently and now proceed to dispose of the petition.

6. There is no doubt that the petitioner is guilty of serious laches. His representation to the Chancellor dated 24-12-1953 was rejected and he was informed of it by the Deputy Registrar Examinations, vide his letter dated 22-1-1954. Petitioner again took up the matter and sent a post-card on

29-3-1954 to the Registrar of the University. The Registrar sent him a reply on 19-4-1954 drawing his attention to letter dated 22-1-1954 from the Deputy Registrar and informing him that the reply should be considered as final. Copies of the replies are on the record. Thus, the allegation made in paragraph 8 of the petition to the effect that the representation had not been disposed of upto the date the present petition was filed, is erroneous.

7. In the second place, the respondent, as stated in the petition, is the State of Punjab through the Registrar, Punjab University, Solan. The respondent has rightly pointed out that the Punjab University is an autonomous body set up under the East Punjab University Act, 1947. It is true that the Governor of the Punjab is ex-officio the Chancellor of the University, but that would not make the University a department of the Government. The petitioner appears to be labouring under some misapprehension as regards the status of the University.

8. Coming to the merits of the petition, the petitioner cited, inter alia,-- Srimathi Champakam Dorairajan and Another Vs. The State of Madras, where a Pull Bench of that High Court held that a G. O. restricting the number of seats in certain Government colleges for certain castes went directly against the provisions of Articles 15(1) and 29(2) and cannot be Justified under Article 46 of the Constitution. This decision was upheld by the Supreme Court in--"State of Madras v. Sm. Champakam Dorairajan" AIR 195 SC 226

Petitioner also cited,-- Nain Sukh Das and Another Vs. The State of Uttar Pradesh and Others, wherein their Lordships observed that any law providing for elections on the basis of separate electorates, for members of different religious communities, offends Article 15(1).

My attention was also drawn to--" The State of Bombay Vs. Bombay Education Society and Others, wherein their Lordships held that a G. O. denying pupils, whose mother-tongue was not English, admission into any school where the medium of instruction was English, offended the fundamental right guaranteed to all citizens by Article 29(2).

Petitioner also relied on--"Himendra Chandra v. Gauhati University" AIR 1954 GAU 65 where, with reference, to the Gauhati University Calendar, their Lordships of the Assam High Court held that Agricultural Botany is a subject by itself and if a candidate obtained 30 per cent. in that subject, he should be declared to have passed in that subject and it was not necessary that the candidate should get 30 per cent. in Plant Physiology and Genetics, Crop-breeding and Botany of Crop plants into which that subject had allegedly been divided.

9. Learned counsel for the respondent argued, and in my opinion not without justification, that the rulings relied upon by the petitioner are not applicable to the facts of the present case.

Under Section 31, East Punjab University Act, the Senate is empowered to make

regulations providing for the courses of the studies to be followed, the conditions to be complied with by candidates for any University examination. The rules for the Intermediate Examination are to be found from page 5 onwards of the Punjab University Calendar, Volume II. Rule 6 gives a list of compulsory subjects. One of the compulsory subjects is a classical language or Hindi, Punjabi, French or German. European, Anglo-Indian and women candidates could offer Urdu but not other candidates.

Learned counsel for the respondent argued that these rules were framed by the Senate after due consideration and they do not infringe the fundamental rights of the citizens.

He referred to--"Bimla Devi v. Punjab University" 54 P&H 369 where a Division Bench of that High Court observed that :

"If the regulations under which the University acted are "intra vires" of the Act of its incorporation and the University acted in accordance with those regulations, the High Court has no jurisdiction to interfere with the decision arrived at by the University."

Learned counsel also cited -- Kathi Raning Rawat Vs. The State of Saurashtra, where their Lordships of the Supreme Court observed:

"All legislative differentiation is not necessarily discriminatory. In fact, the word, "discrimination" does not occur in Article 14. The expression "discriminate against" is used in Article 15(1) and Article 16(2), and it means, according to the Oxford Dictionary, "to make an adverse distinction with regard to; to distinguish unfavourably from others". Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the Statute will, without more, incur condemnation as violating specific constitutional prohibition, unless it is saved by one or other of the provisos to those Articles. But the position under Article 14 is different. Equal protection claims under that Article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification, which the Legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies."

"A Legislature for the purpose of dealing with the complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons, upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause. Equality prescribed by the Constitution would not be violated if the Statute operates equally on all persons who are included in the group and the classification is not arbitrary or

capricious, but bears a reasonable relation to the objective which the legislation has in view. The Legislature is given the utmost latitude in making the classification and it is only when there is palpable abuse of power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises."

Learned counsel for the respondent suggested that in permitting European, Anglo-Indian and women candidates to offer Urdu and, at the same time, not allowing other candidates to do so, the Senate probably felt that the former set of the candidates were more used to Urdu rather than Hindi and hence made this rule.

10. On a careful consideration of the facts of the case, I am unable to hold that the classification made by the University is arbitrary or capricious. I may also point out that educational institutions would be within the purview of Article 15(1), if they are State maintained and not otherwise. The Punjab University is State aided but not State maintained and, therefore, their regulations do not come within the prohibition enacted under Article 15(1). I am supported in this view by a ruling, reported in-- The University of Madras Vs. Shantha Bai and Another,

11. In conclusion, I may point out that the relief asked for by the petitioner, namely, that he should be declared to have passed in the Intermediate Examination (where according to the regulations, he has failed), and permitting him to sit in the B.A. Examination to be held in April 1955 (while, according to the regulations of the University, he is not qualified to do so), could not possibly be granted by this Court. The petition, under these circumstances, must fail.

12. There only remains the question of costs. Although the petition fails on its merits, it appears that persons like the petitioner, who studied Urdu at school, find themselves at a disadvantage in view of the present switch over to . Hindi. The period of transition is always "accompanied by cases of individual hardship. Under these circumstances, I would leave parties to bear their respective costs.

ORDER

13. The petition fails and is rejected. Costs on parties.