
(2014) 08 SHI CK 0081
In the High Court Of Himachal Pradesh
Case No : CWP No. 2609 of 2014

Kiran Bala

APPELLANT

Vs

Himachal Pradesh University

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Citation : (2014) 08 SHI CK 0081

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Vikrant Thakur, Advocate for the Appellant; J.L. Bhardwaj, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—By way of present writ petition, the petitioners have approached this court for grant of following substantive reliefs:-

(i) That the order dated 18.3.2013 (Annexure P-1) may kindly be quashed and set-aside.

(ii) That the respondent No. 1 & 2 may kindly be directed to register the name of the present petitioners for Ph.D. in the department of Biotechnology, since the petitioners had passed the M. Phil in the academic Session of 2012.

(iii) That the respondents may be directed to enroll the petitioners' name for Ph.D. w.e.f. December 2013.

(iv) That the admission of the respondents No. 3 to 5 may kindly be cancelled because the same were made without advertising the posts.

(v) That the heavy costs may kindly be imposed on respondent No. 2 for unnecessary harassment and humiliation.

2. It is claimed by the petitioners that respondent No. 2, who is the Chairman of the Department of Biotechnology had wrongly returned the applications made by

the petitioners for registering their names in Ph.D. with the following remarks:-

"This has reference to your Enrolment/Registration form No. 1686 for the admission in Ph.D. course in the Biotechnology that was received through Speed Post on March 15, 2014. In this context your application is returned in original with the comment (wrongly typed as comment) that as on today no vacant position for Ph.D. has been offered by any of the faculty members. As and when a vacant position will be available, it will be notified and eligible candidates may apply thereof."

3. It is further claimed that respondent No. 2 had illegally permitted the registration of respondents No. 3 to 5 in December 2013 knowing fully well that the Chairman was not competent to exercise these powers as the same were available only with the Standing Committee in view of the provisions contained in Hand Book Form-I (the 1st Ordinance of the University), which clearly provides that:-

"16.3 The Standing Committee may permit registration or reject the application or may order the postponement of registration as the circumstances of the case may warrant. If the registration is accepted. The Standing Committee shall appoint a Supervisor(s) to guide the candidates. The Standing Committee can the Guide on the following circumstances:-

- a). If the application is made for the change within one year from the registration.
- b) The Change may be allowed after two years of registration with mutual consent of the Supervisor and the candidate.
- c) If the Supervisor expresses his inability to supervise the candidate.
- d) If the Supervisor leaves the University and the candidate is not able to seek guidance from him for any reason. No change of Supervisor(s) normally be allowed after three years from the date of registration. However, the Standing Committee can make the Change of Supervisors at any time under special circumstances for reasons to be recorded in writing."

4. The petitioners have further averred that the admissions in the Ph.D. have been made without advertising the posts either on the website of the University or in the leading newspaper, which is in gross violation of regulation fixed by the University Grants Commission. It has been lastly claimed that the petitioners were more meritorious than the private respondents No. 3 to 5 herein and despite this fact these respondents were granted admission.

5. The private respondents No. 3 to 5 though have been served at the pre-admission and post admission stage, but have chosen not to contest the claim and have been proceeded ex-parte.

6. The respondents/University has contested the writ petition and in its reply have not denied the allegations of the petitioners that private respondents No. 3 to 5 in fact have been admitted to the Ph.D. course in December 2013, but has

sought to justify its stand in the following manner:-

"That it is submitted that till date the existing Ordinances of the HPU Shimla nowhere made it mandatory to notify/advertise the number of seats available for Ph.D. Program in the HPU, Shimla and moreover a similar process is followed in all other Departments of HPU, Shimla and Universities in the nearby States. For the last more than 10 years, the prospective candidate(s) desirous for supplicating for the degree of doctor of Philosophy (Ph.D.) in the various faculties meet the faculty member(s) in the discipline/subject of his/her concern as per her own field of research interest and know about the availability of seats for enrolling under the Ph.D. Program in the concerned department(s). Thereof, the candidate apply for enrollment/registration by submitting an application to the Registrar/Chairpersons/Directors/Principal of Teaching departments/institutes/college (as the case may be) in the prescribed form accompanied by the requisite fee [As per University Ordinances]. All the applications received till Dec. 31, 2013 from the applicants seeking enrollment/registration in Ph.D. Program in Biotechnology were considered by the Standing Committee in Biotechnology chaired by The Dean, Faculty of Life Sciences, HPU, Shimla. The petitioners who did their M.Sc. Microbiology as well as M. Phil. in Biotechnology remained in the University for approximately 4 years could not be ignorant about the process of enrollment/admission in Ph.D. program in Biotechnology and Respondent No. 3 to 5 were allocated seats under the Ph.D. Program in Biotechnology. The Petitioners did not submit application(s) prior to Dec. 31, 2013."

7. Though in para-4 of the reply, it has been admitted that the registration of respondents No. 3 to 5 have been illegally permitted but then Sh. J.L. Bhardwaj, learned counsel for the respondents/University has claimed that this is a typographical error as the University did not make any such admission. The further explanation offered by the respondents for accepting the application forms of respondents No. 3 to 5 is set out in paragraph-4, wherein it has been stated as follows:-

"All the three applicants (made respondents 3-5 here) have submitted duly filled application forms alongwith the fee, were eligible and presented their candidature for consideration for enrollment/admission under the Ph.D. Program in the Biotechnology, and hence were recommended for registration under the said course as per past practice. Moreover, the petitioners [Ms. Kiran Bala, Mr. Satpal and Ms. Kriti Kanwar] never submitted any application to the Chairman, Department of Biotechnology or The Registrar, HPU, Shimla or any other dignitary mentioned in the HPU Ordinances till Dec. 31, 2013, the day on which the Standing Committee was conducted. The Standing Committee was notified on Dec. 27, 2013 after taking permission of the Dean, Faculty of Life Sciences who is the Chairman of the Standing Committee with the notification (Notification of Standing Committee attached at R-1). The applications were placed before the Standing Committee by respondent No. 2 and the Standing Committee selected three [03] candidates [Copy of the same is annexed annexure R-2]. Moreover,

the petitioners remained in the University for almost four long years and hence cannot be ignorant about the process of enrollment/admission under the Ph.D. Program in Biotechnology and the past practice of Ph.D. enrollment/admission as followed as per University Ordinances."

8. Not only this personal allegations in the over zealous pursuit to contest the writ petition, the respondents have gone to the extent of leveling allegations against the petitioners No. 1 and 2 in the following manner:-

"Moreover Ms. Kiran Bala and Ms. Kriti Kanwar were the last two candidates in a batch of 15 candidates to complete their M. Phil. Degree in Biotechnology and both were most-irregular in their attendance throughout the period of M. Phil. Biotechnology Degree Program and hence both totally contravened the condition(s) laid down in Chapter XIV of HP University Ordinance. Both also worked in RKMB, Longwood, Shimla [July 17 to Dec. 31, 2012; Feb. 09 to Feb. 28, 2013] for the reasons best known to them during the period of perusal of their M. Phil. Degrees. Further, the Counsels claim that the petitioners are being harassed and humiliated by respondent No. 2 [Item 11 of CWP] for the reasons that are unexplained in the writ petition. Hence, the honourable Court may appreciate and realize that the research is a career to be pursued only if the candidate has temperament for research, has aptitude, is punctual and absolute commitment to the research work."

9. From the above, it is not understandable how the University in this era still claims that it is not mandatory to notify or advertise the number of seats available for Ph.D. Program. The respondents-University in its overzealousness to contest the petition have gone to the extent of making the averments which can only be termed to be preposterous when it claims that petitioner had remained in the University for almost four long years and could not feign ignorance about the process of enrollment/admission under the Ph.D. Program in Biotechnology and about the past practice of Ph.D. enrollment. Is it to suggest that Ph.D. program offered by the University meant for the former students of the University, because it is only then they alone, who would have personal knowledge regarding "process of enrollment/admission under the Ph.D. Program in Biotechnology". The respondents should have avoided leveling uncalled for allegations against the petitioners, which otherwise have nothing to do with the admissions of the Ph.D. program.

10. The Hon"ble Supreme Court has clearly spelt out in a catena of decisions that criteria for selection in such like course has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be a travesty of justice if the rule of merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the rule of merit can be compromised.

11. From the facts of the present case, it is evident that not only the merit has been a causality, the respondents have failed to observe and oversee that

procedure adopted is fair and transparent. It has been the consistent view of the Hon''ble Supreme Court that merit alone is the criteria for such admission and circumvention of merit is not only impermissible but is also abuse of the process of law. [See: Priya Gupta Vs. State of Chhatisgarh and Others, , Harshali vs. State of Maharashtra (2005) 13 SCC 464, Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , Sharwan Kumar and etc. Vs. Director General of Health Services and another, , Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , Guru Nanak Dev University vs. Saumil Garg (2005) 13 SCC 749 and A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others,].

12. This court cannot ignore the fact that these admissions relate to Ph.D. courses, where there is throughout competition and the entire life of a student depends on his/her admission to this course. Higher the competition, greater is the duty on the part of the authorities concerned to act with utmost caution to ensure transparency and fairness. It is one of the primary obligations of the University to see that a candidate of higher merit is not denied seat to the appropriate course and the same is not offered to a lesser meritorious candidate. There is no gain saying that the process of admission is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The authorities concerned are expected to perform certain functions which must be performed in a fair and proper manner.

13. The essence of the judgment rendered by the Hon''ble Supreme Court dealing with these kind of issues is to nurture discipline, fairness and transparency in the selection and admission process and to avoid prejudice to any of the stakeholder. It is expected that the authorities would be perfect/fair and transparent in the discharge of their duties. The Hon''ble Supreme Court has in fact held that a candidate who adopts mal-practices in collusion with the authorities or otherwise for seeking admission and if their admissions are found to be irregular or faulty in law by the courts, they shall normally be held responsible for paying compensation to such other candidates who have been denied admission as a result of admission of the wrong candidates. The law requires adherence to certain protocol in the process of selection and grant of admission, so that none should be able to circumvent or trounce this process with or without an ulterior motive.

14. The courts are duty bound to ensure that the litigation relating to academic courses particularly professional courses, should not be generated for want of will on the part of stakeholder to follow the process of selection and admission fairly, transparently and without any exploitation. The court cannot lose sight of the fact that career of more meritorious student is at stake. These are the matters relating to adherence to the rule of merit and when its breach is complained of, the judiciary may be expected to deal with such grievance preferentially and efficiently. [See: Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others,].

15. The respondents-University cannot be permitted to give admission to

students in an arbitrary and nepotistic manner. The methodology adopted and the manner in which the admissions were given to respondents No. 3 to 5 leaves no doubt in the mind of this court that this process was neither fair nor transparent. It is required to ensure that arbitrariness and discrimination does not creep into the process of selection and equal opportunity is ensured to all eligible candidates in a just and fair manner.

16. The maxim *boni judicis est causas litium dirimere* places an obligation upon the court to ensure that it resolves the causes of litigation, so that litigation can be prevented by removing the cause of litigation itself.

17. Therefore, it has become necessary to issue directions, which are to provide transparency, in action and adherence to the basic law and fair play. Accordingly, the following directions are issued:-

i) The respondent-University is directed to decide and calculate well in advance the number of seats for Ph.D. Course and notify the same not only on the website of the University but also in two National dailies (English and Hindi) having wide circulation.

ii) This advertisement would be displayed on all the Notice Boards of the University including the Hostels.

iii) A proper time schedule shall be fixed for conducting admissions.

18. Since the admissions of the respondents No. 3 to 5 in Ph.D. course in Biotechnology has not been made in a transparent and fair manner, therefore, their admissions are set-aside. The respondent-University is directed to comply with the aforesaid directions within a period of six weeks by advertising all the vacancies in the aforesaid manner.

The writ petition is allowed in the aforesaid terms, leaving the parties to bear their own costs.