
(1995) 01 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10141 of 1993

Kiran Bala

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 110 PLR 494

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Manjit Dalal, for the Appellant; Ritu Bahri, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This petition has been filed by the petitioner with a prayer that the cancellation of her admission to the J.B.T. Course be declared as illegal and the respondents be directed to allow the petitioner to join the J.B.T. Classes. She has also prayed for issue of any other appropriate writ, order or direction.

2. During the pendency of the writ petition, the petitioner was once again given admission in the Course for the session 1993-94 as an additional Student in terms of the directions given by this Court on 22.9.1993. She has appeared in the ex-aminations held at the end of first year, which is known as the Examination for Diploma in Education Part I. She has also undergone the Course for the 2nd Year and has appeared in the Part II Examinations. Under the directions of the Court, the learned Assistant Advocate. General has produced before the Court two sheets in separate sealed covers showing the result of the petitioner in Part I and Part II. In part I Examination, the petitioner appeared with Roll No. 3399. She is shown to have secured 105 marks out of a total of 200 marks in the External Examination whereas in the Internal examinations she is shown to have secured 33 marks out of a total of 250 marks. A remark "re-appear" has been inserted opposite her marks in the Inter- nal Examination. In Part II, the petitioner appeared with Roll No. 8391. She is shown to have secured

108 marks out of a total of 200 marks in Theory and 131 marks out of a total of 150 marks under the heading "Skill in Teaching". On the basis of these marks, she has been treated as pass in the External Examination. In the Internal Examination she is shown to have secured 144 marks out of a total of 200 marks and has thus been treated as pass.

3. The facts, which are necessary for the purpose of deciding the issue raised in this writ petition, are that the petitioner was admitted to the Course on 3.12.1993 on the basis of her merit. She started attending the classes at the J.B.T. Institute, Dharela (Morni Hills), district Ambala. According to the petitioner, she went home on 13.2.1993 in view of the fact that there were three holidays in the next week. At home she fell ill. She suffered an attack of typhoid on 20.2.1993 and had to remain under medical treatment till 20.6.1993. She had sent intimation about her illness to the Headmaster of the school under the certificate of posting. The Institute remained closed due to summer holidays from 25.5.1993 to 5.7.1993. After having recovered from the illness, the petitioner submitted a representation to the Headmaster of the Institute and requested that she be re-admitted to the Course. On this application (Annexure P.2) the Headmaster of the Institute recorded a note that her name was struck off the rolls on 26.2.1993 due to her long absence. He also recorded that the matter was reported to the Director, Secondary Education, Haryana, for guidance and necessary action.

4. The petitioner has pleaded that before striking off the name from the rolls of the Institute on the ground of long absence from the Course, the Headmaster of the Institute did not give any notice or an opportunity of hearing to the petitioner and, therefore, the action taken by the Headmaster of the Institute is liable to be voided on the ground of violation of the principles of natural justice.

5. Writ petition has been opposed by the respondent who have pleaded that the name of the petitioner was struck off due to long absence. She approached the Headmaster after a period of over 4 months and 15 day but there was no justification for re-admitting her to the Course because she could not have achieved the target of 85% attendance. Respondents have submitted that even if shortage of attendance could be condoned to the tune of 10%, she could not have completed the Course. According to them, despite sympathy towards the petitioner, the competent authority could not have condoned her absence for a period of over 4 months and 15 days. Respondents have pointed out that a trainee is required to attend atleast 75% days of training even if condonation of 10% was to be allowed but the petitioner has attended only for 79 days out of a total of 138 days. It is also their case that the name of girl student is struck off from the rolls in case of continued absence of 10 days and as no application was received from the petitioner, the Headmaster of the Institute was fully justified in taking action against the petitioner.

6. The solitary argument advanced by the learned counsel for the petitioner is that action taken by respondent No. 3 in striking off the name of the petitioner

from the rolls is arbitrary and unreasonable and is also contrary to the principles of natural justice inasmuch as no action-oriented notice had been given to the petitioner and she had no opportunity to submit her explanation before the competent authority. Learned Act Advocate General vehemently argued that in terms of para 6 of the syllabus prescribed by the Director of School Education; Haryana, the maximum condonation in the shortage of attendance could be up to the extent of 10% and, therefore, even if shortage of 10% of attendance could be condoned by the Director of School Education, the petitioner could not have been treated as eligible because she would have clearly fallen short of the requirement of 75% of attendance. Learned counsel further argued that in terms of para 181 of the Haryana Education Code the name of a candidate, who absents from training for over 10 days, in case of girls, has to be struck off as a matter of course and, therefore, no illegality was committed by the Headmaster in striking off the name of the petitioner on 26.2.1993.

7. A look at the booklet which has been placed before the Court by the learned Assistant Advocate General shows that it contains various provisions regarding the Diploma in Education Course.

Para 6 of this syllabus deals with "duration and attendance suitability". Para 9 refers to the pass marks and para 10 deals with compartment. These three paragraphs read as under:-

" Para6:- Duration and Attendance Suitability:

The duration of the course will be two years. The course is exclusively meant for training teachers teaching primary classes (I to V). The trainees must have put in at least 85% of total no. of attendances. The Head of the Institution can condone upto five percent of the shortage of attendances only in extreme cases of illness duly certified by competent medical authorities and the D.S.E. (Haryana) upto 10%.

Para 9: Pass Marks The trainee shall have to secure 40% pass marks in each paper/part of theory/practice teaching/practical work separately.

The trainees securing 60% marks and above will be placed in 1st Divn. and those securing 50% or above but less than 60% will be placed in 2nd Divn. and those securing 40% or above but less than 50% will be placed in 3rd Division.

Para 10: Compartment. A candidate who fails in one paper of theory securing atleast 20% marks in that paper but passes in all other theory papers and other sections of practical examination shall be placed under compartment. He/She will appear in that paper in next two examinations for clearing the compartment. For the benefit of such candidates the department may hold a supplementary examination. If a trainee fails only in external examination of practice teaching, he/she will appear next year in that examination for passing practice teaching examination. If he/she fails in any part of internal assessment only, he/she will make up his/her deficiency in that institution till he/she satisfies the

head of the institution of his/her attainment of efficiency. The marks of internal assessment of the 2nd year of such candidate will be submitted after attainment of such efficiency."

8. The syllabus prescribed by the Director, School Education, Haryana, is no doubt is required to be followed by the Institute but it has not been suggested, and even if one was to argue it could not have been accepted, that the syllabus prescribed by the Director School Education, Haryana, has the force of law and is not subject to modification or alteration by the said authority itself. It cannot, therefore, be said that any deviation from the provisions contained in the syllabus, including the one contained in para 7, would have resulted in violation of any statutory provision. Therefore, even though para 7 of the syllabus gives power to the Headmaster to condone shortage of attendance upto 5% and to the Director to condone shortage of attendance upto 10% only, there is no doubt in my mind that in an appropriate case the Director, School Education, could exercise his powers to condone shortage in attendance beyond 10%. Of course, exercise of power for condonation of shortage in attendance will depend upon the facts of each case. If at all the Director of School Education feels satisfied that ailment of a candidate was such which could legitimately prevent the candidate from attending the Course for a period which exceeds 10% of the total attendance, it is certainly open to the Director, School Education, to condone the shortage of attendance. Even otherwise, there is nothing in the scheme of the syllabus to show that a candidate, who has failed to attend the Course in its fuller sense as contemplated in para 6, will necessarily be debarred from completing the Course in the next year. However, all this is within the discretionary domain of the Director of School Education and the power has to be exercised by that authority having regard to the facts of each particular case.

9. In so far as this case is concerned, it is an undisputed fact that before the Headmaster of the Institute had taken action for striking off the name of the petitioner from the rolls he did not give any notice to the petitioner calling upon her to explain as to why she was absenting from the Course. If such a notice had been given to the petitioner, she could have easily convinced the Headmaster that she was not in a position to attend the Course due to her illness. In that event, it would have been open to the Headmaster to examine the genuineness of the claim of the petitioner regarding her illness. However, there can be no manner of doubt that the absence of an action-oriented notice and an opportunity of hearing to the petitioner has caused serious prejudice to her. Undoubtedly, on the strength of her admission to the Course, the petitioner had acquired a right to complete the Course and secure Diploma in Education on successful passing of the examinations at the end of the Course. By striking off her name respondent No. 3 has clearly violated her right to complete the Course" and as the respondents did not comply with the basic tenets of natural justice, their action is liable to be nullified. In a more or less similar case in *The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others*, , the Supreme Court has held that where a

candidate's examination was cancelled due to shortage of attendance without an opportunity of hearing, the action taken by the competent authority was liable to be nullified on the ground of breach of the principles of natural justice. Duty to comply with the principles of natural justice was read as implicit in the exercise of power by the competent authority to cancel the examination. In that case the Supreme Court observed:-

" Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.

Where the board of High School and Intermediate examination had cancelled the examination of a Candidate who had been allowed to appear at the examination and had actually answered all the question papers, on the ground that he had been admitted to the examination in spite of shortage in attendance at lectures, without giving any show cause notice to the candidate, the action of Board is vitiated by violation of rules of natural justice. The Board in cancelling the examination was exercising quasi-judicial functions and it was incumbent upon it to issue a show-cause notice to the candidate before inflicting the penalty of cancellation."

10. An argument was also advanced in that case that an implied duty to comply with the rules of natural justice would place a heavy burden on the Board of High School and Intermediate Education. While repelling that argument, the Supreme Court observed: -

" The learned counsel urges that this would be casting a heavy burden on the Board. Principles of natural justice are to some minds burdensome but this price a small price indeed has to be paid if we desire a society governed by the rule of law."

11. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , the Supreme Court has once again reiterated the principle that duty to hear and act reasonably is implicit in the exercise of power by every public authority. The very nature of power implies that duty to act fairly and where rights of third parties are affected a duty to comply with the minimum requirement of natural justice.

12. Here what has happened is that the petitioner has been condemned unheard. Therefore, the action of respondent No. 3 is liable to be declared as contrary to the rule of *audi alteram partem* and is therefore liable to be quashed.

13. In the result, the writ petition is allowed. The action of respondent No. 3 in striking off the name of the petitioner is declared illegal and is hereby quashed. Respondent No. 2 is directed to re-consider the case of the petitioner in the light of her application Annexure P.2 and the medical certificate furnished by her. Respondent No. 2 should give a notice and an opportunity of bearing to the petitioner. In case respondent No. 2 is convinced that the plea of the petitioner

about her illness is genuine it shall be possible for the respondents to condone the shortage in attendance. However, in that event it will be open to the respondents to issue an appropriate direction requiring the petitioner to attend the course and re-appear at the Internal Examination for Diploma in Education Part I. Her result of the Course shall be announced finally only after she satisfactorily passed the internal Examination in Part I. This direction is being issued in the peculiar facts of this case and keeping in view the fact that under the orders of this Court the petitioner has already appeared in Part I and Part II Examinations and has cleared 3/4th of the two examinations. Respondent No. 2 is directed to decide the matter afresh within a period of one month from today. Parties to bear their own costs.