
(2005) 07 UK CK 0066
In the Uttarakhand High Court
Case No : Special Appeal No. 47 of 2005

Km. Usha Rawat and Another	Vs	APPELLANT
State of Uttaranchal and Others		RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

High Court Rules, 1952 — Rule 12, 13

Citation : (2006) 1 UC 74

Hon'ble Judges : Cyriac Joseph, C.J;B.C. Kandpal, J

Bench : Division Bench

Advocate : S.S. Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—This special appeal is filed against the judgement in Writ Petition Mo. 780 (S/S) of 2005 which was dismissed by the learned Single Judge on 18-07-2005. The Appellants are the Petitioners in the writ petition.

2. The Appellants applied for admission to the Special B.T.C. Course in the year 2005. Their applications for admission were rejected by the District Selection Committee and the said decision was communicated to the Appellants as per Annexure 31 order dated 04-06-2005 of the third Respondent Principal, district Institute of Education and Training, Almora. Admission was denied to the Appellants on the ground that they are not eligible for admission, as the Certificate of Physical Education (C.P.Ed.) acquired by them from Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra after the year 1997 is not a recognised qualification. Aggrieved by the denial, of admission, the Appellants filed the writ petition praying to quash Annexure 3 order dated 04-06-2005 and to direct Respondent No. 3 to treat the Petitioners as eligible candidates and to admit them to the Special B.T.C. Course for the year 2005. The learned Single Judge considered the averments contained in the writ petition in the light of the counter affidavit filed by the Respondents and the materials placed on record and held that the Appellants were not entitled to admission and accordingly, the writ

petition was dismissed.

3. The only question that arises for consideration in this appeal is whether the Appellants are eligible for admission to the Special B.T.C. Course for the year 2005. It is not disputed that for admission to the Special B.T.C. Course, a candidate should possess a bachelor degree and also the qualification of B.Ed./LT./D.P.Ed./C.P.Ed, provided that in the case of C.P.Ed, qualification from Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra it was not acquired after 1997. Admittedly, the Appellants possess a bachelor degree and also the qualification of C.P.Ed, from Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra. But the C.P.Ed, qualification was acquired by them only in 1998 after undergoing the C.P.Ed. Course during 1997-1998. Since the C.P.Ed, qualification was acquired by the Appellants only after 1997, the District Selection Committee decided to reject their applications for admission. The contention of the Appellants is that the C.P.Ed, qualification acquired till 1997 is a recognised qualification and therefore, the Appellants who secured admission to the C.P.Ed. Course in the year 1997 also should be treated as eligible candidates.

4. The materials placed on records show that the Government of U.P. had abolished the C.P.Ed. Course in the State of U.P. as per a Government Order dated 23-03-1995. Thereupon, through Annexure CA-2 order dated 28-02-1996 of the Special Secretary, Government of U.P., it was communicated that in the light of the abolition of the C.P.Ed. Course in the State of U.P., the recognition granted to the Certificate of Physical Education issued by Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra, stood withdrawn. In other words, with effect from 28-02-1996, the C.P.Ed, qualification acquired from Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra is not a qualification recognised by the State of U.P. However, it would appear that students who got admitted to the Course in Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra in the year 1996 and acquired the qualification in 1997, were being treated as eligible for admission to the Special B.T.C. Course. The said relaxation was allowed to prevent hardship and injustice to those students who secured admission in Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra and underwent the Course without being aware of the sudden derognition of the qualification. The Appellants admittedly got admission to the C.P.Ed. Course in Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra only in 1997, i.e., one year after the Government Order dated 28-02-1996 and they acquired the C.P.Ed, qualification only in the year 1998. Therefore, the Appellants are not entitled to the relaxation allowed in the case of students who were admitted to the Course in the year 1996 and acquired the qualification in the year 1997. As rightly pointed out by the learned Single Judge, there is no order of the Government of U.P. or the Government of Uttaranchal recognizing the C.P.Ed, qualification acquired from Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra after 1997. In the absence of such recognition, the Appellants have no enforceable legal right to claim eligibility for admission to the Special B.T.C. Course. Therefore, we are in complete agreement with the learned Single Judge

that the Appellants were not entitled to admission to the special B.T.C. Course for the year 2005 and that the writ petition was liable to be dismissed.

5. Mr. S.S. Yadav, learned Counsel for the Appellants submitted that in an identical case, the Honble Supreme Court directed that the C.P. Ed. Qualification acquired from Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra shall be treated as recognised qualification. Learned Counsel referred to the decision of the Supreme Court in Suresh Pal and Others Vs. State of Haryana and Others, . We have carefully read the entire order of the Hon"ble Supreme Court. In our view, the decision of the Supreme Court is against the Appellants and not in favour of the Appellants. In the case before the Supreme Court, the Certificate Course in Physical Education of Sri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra was derecognised by the Government of Haryana on 09-01-1985. The Petitioners before the Supreme Court had already been admitted to the Course and were undergoing the Course when the Government of Haryana derecognised the Course on 09-01-1985. In that factual context, the Supreme Court held that "it would be unjust to tell the Petitioners now that though at the time of their joining the Course it was recognised, yet they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because, during the pendency of the Course, it was derecognised by the State Government on 09-01-1985." The Hon"ble Supreme Court further held that "if any person has joined the certificate course after 09-01-1985, he would not be entitled to the benefit of this order and any certificate obtained by him from the said Institute would be of no avail." In the light of the above clear views expressed by the Hon"ble Supreme Court, the Appellants who got admission to the Course one year after the Course was derecognised by the State of U.P., cannot claim that the C.P.Ed, qualification acquired by them should be treated as a recognised qualification for admission to the Special B.T.C. Course.

6. Learned Counsel for the Appellants then contended that the fifth Respondent Km. Devki who underwent the C.P.Ed. Course along with the Appellants and acquired the C.P.Ed, qualification in the year 1998 was admitted to the Special B.T.C. Course and was given the Basic Training Certificate and that she also got appointment on the basis of the said certificate. This aspect also was considered by the learned Single Judge who held that the case of the fifth Respondent cannot confer any right on the Appellants, as the fifth Respondent first got provisional admission to the Special B.T.C. Course on the basis of an interim order passed by the High Court in a writ petition and she completed the Course and wrote the examination during the pendency of the Writ petition and ultimately in those peculiar circumstances, the Court directed that her admission may be treated as regular and she may be given the Special B.T.C. We agree with the learned Single Judge that the above benefit derived by the fifth Respondent on the basis of the above-mentioned orders passed by the High Court, will not confer any right on the Appellants to claim parity with the fifth Respondent for admission to the Special B.T.C. Course.

7. The last and final contention of the learned Counsel for the Appellants is that an interim order had been passed in the writ petition and the Appellants later filed an application for modification of the interim order but the said application for modification also was dismissed by the learned Single Judge along with the writ petition. According to the learned Counsel, the application for modification should have been considered and decided only by the same learned Judge who had passed the interim order. This contention is totally misconceived. Once the writ petition itself was finally heard and dismissed, the application for modification of the interim order lost its relevance and it could not survive. Once the writ petition was dismissed, the application for modification became infructuous and it was liable to be dismissed as such. Learned Counsel relied on Rule 13 in Chapter V of the Allahabad High Court Rules, 1952 as applicable to the High Court of Uttaranchal and contended that the application for modification of the interim order could be decided only by the learned Judge who had passed the interim order, the said Rule 13 reads thus:

13. Subsequent application on the same subject to be heard by the same Bench.- No application to the same effect or with the same object as a previous application upon which a Bench has passed any order other than an order of reference to another Judge or Judges, shall, except by way of appeal, ordinarily be heard by any other Bench.

The application when presented by or on behalf of the person by whom or on whose behalf such previous application was made shall give the necessary particulars of such previous application, the nature and the date of the order passed thereon and the name or names of the Judge or Judges by whom such order was passed.

Provided that an application for restoration of a case dismissed in default, need not be listed before the same Bench for disposal.

A mere reading of the above Rule shows that It is not applicable to an application for modification of an earlier interim order. On the contrary, in view of the fact that an order can be modified only after reviewing the said order, the relevant rule is Rule 12 in Chapter V of the Allahabad High Court Rules which provides for an application for review. But, when the writ petition itself is being heard and disposed of, an application for modification/review of the interim order is irrelevant and unnecessary and in such a situation it is unnecessary to place the application before the same Judge who had passed the interim order.

8. In the above circumstances, there is no merit in the appeal. The appeal is dismissed in limine.