
(1995) 10 P&H CK 0089
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2160 of 1994

Maharishi Dayanand University

APPELLANT

Vs

Rajan Sahuja

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Citation : (1996) 1 CivCC 711 : (1996) 113 PLR 144 : (1996) 3 RCR(Civil) 399

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

Bench : Single Bench

Advocate : Tribhuvan Dahiya, for the Appellant; Ramesh Hooda, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This revision petition is directed against the order dated 19.5.1994 passed by the learned Additional District Judge, Rohtak directing the Maharishi Dayanand University, Rohtak to allow respondent Rajan Sahunja to appear in the 2nd Professional Examination of M.B.B.S. Course (remaining papers) with a rider that the appearance- of the candidate would be subject to the decision of the appeal and the suit.

2. Respondent-Rajan Sahuja who was admitted to M.B.B.S. Course at Kasturba Medical College, Bangalore sought his transfer to the Medical College & Hospital, Rohtak in M.B.B.S. 2nd Professional Course during the session 1993-94 against the seat allegedly vacated by one Ms. Mansi Rana who returned to her original Medical College at Madurai. At the time of his migration to Medical College & Hospital, Rohtak, the respondent was made aware of the condition that he will be required to complete 18 months training before being permitted to appear in the examination. On an application made by him, the Vice Chancellor of Maharshi Dayanand University, Rohtak waived the condition of 18 months training. However, just before the commencement of the examination, the plaintiff-respondent was informed that he is ineligible to take the examination because he does not fulfil the Condition of 18 months training. This led to the filing of a civil

suit by the respondent along with an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The University contested the injunction application and after hearing learned counsel for the parties, learned Sub Judge 1st Class, Rohtak dismissed the application with costs of Rs. 2000/-. Aggrieved by the order dated 18.5.1994 passed by the learned Sub. Judge 1st Class, Rohtak, the respondent filed an appeal Under Order 43 Rule 1(r) of the CPC and at the same time, made a prayer for grant of interim stay in his favour for being allowed to appear in the examination which had already commenced. The learned Additional District Judge realised the urgency of the prayer made by the respondent and, therefore, gave a notice to the Standing Counsel for the University and after hearing the parties for some time, passed the impugned order to which reference has been made hereinabove. Learned Additional District Judge directed that the appeal be listed for hearing on 28.7.1994.

3. The University filed this revision petition before this Court on 23.5.1994. On 24.5.1994, this Court passed an order staying the operation of the order dated 19.5.1994 passed by the learned Additional District Judge, Rohtak. Subsequently, on an application filed by the respondent, this Court allowed the respondent to appear in the remaining practical examinations. While doing so, this Court took notice of the fact that the plaintiff-respondent had already appeared in the theory papers.

4. As the facts are available today the respondent has already appeared in the M.B.B.S, 2nd Professional examination (in the remaining theory papers and practical examinations) and has also appeared in the M.B.B.S. 3rd Professional examination.

5. The argument of Shri Dahiya, learned counsel for the petitioner is that; learned Additional District Judge has seriously erred in entertaining the appeal even though a copy of the order passed on 18.5.1994 by the Sub-Judge 1st Class, Rohtak was not placed on the record of the Appellate Court along with the memo of appeal. Learned counsel submitted that in view of the mandatory provisions contained in Order 41 Rule 1 of the Code of Civil Procedure, the Appellate Court had no jurisdiction to entertain the appeal and, therefore, it had no jurisdiction to pass the interim order in favour of the respondent. Shri Dahiya further argued that the University had taken the decision not to allow the respondent to appear in the examination without fulfilment of 18 months training in view of the direction given by the Medical Council of India and as the Medical Council of India was not a party to the suit filed by the respondent, the Appellate Court could not have directed that the respondent be allowed to appear in the examination.

6. In so far as the first contention of Shri Dahiya is concerned, I do not find any substance in it. A plain reading of the language used in Order 41 Rule 1 of the CPC makes it clear that the mandate incorporated in that provision requiring filing of a certified copy of the decree/judgment is not absolute. Ample discretion

vests with the Court for dispensing with the filing of the certified copy. In a given case, the Appealate Court is also entitled to entertain the appeal and pass an appropriate order even without a typed copy of the impugned order. Inherent power vesting in the Court u/s 151 of the CPC can appropriately be invoked in a case like the present one where the respondent was facing a serious threat to his career by declining him to appear in the examination. Mere allowing him to appear in the examination would not have conferred any vested or complete right in the respondent to claim prosecution of further studies. However, if he had not been allowed to appear in the examination it would have become impossible for him to repair the damage and the university had not indicated that it would hold separate examination for the respondent in case stay was not to be granted. Therefore, if after taking into consideration the urgency, the learned Additional District Judge exercised his inherent power to grant an injunction order in favour of the respondent, it cannot be said that the Appellate Court committed any jurisdictional error.

7. It is really surprising that the petitioner should have rushed to this Court without allowing the Additional District Judge to finally adjudicate the appeal filed by the respondent. In its very nature, the order passed by the Additional District Judge was tentative in character. The main issue regarding the eligibility of the respondent to take the examination without completion of 18 months training was still to be considered. Learned Additional District Judge may or may not have agreed with the trial Court. By filing this revision petition the petitioner has done nothing but has made an attempt to preempt the decision of the appeal by the Additional District Judge and I do not find any justification to exercise the revisional jurisdiction of this Court.

8. For the reasons mentioned above, the revision petition is dismissed. However, having regard to the nature of the case, I direct that the learned Additional District Judge, Rohtak will hear and decide the appeal filed by the respondent within a period of one month. Parties are directed to appear before the learned Additional District Judge, Rohtak on 9.11.1995 and produce before him a copy of this order. The registry is directed to give a copy of this order to both the parties dasti on payment. It is also directed that a separate copy of the order be despatched immediately to the Additional District Judge, Rohtak for compliance.