

(1997) 05 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : O.L.P.A. (Writ) No. 1 of 1993

Manmohan Singh and Others	Vs	APPELLANT
State of Jammu and Kashmir and Others		RESPONDENT

Date of Decision : 16-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 J&K 14

Hon'ble Judges : M. Ramakrishna, C.J; R.C. Gandhi, J

Bench : Division Bench

Advocate : S.S. Lehar, for the Appellant; D.S. Thakur, for the Respondent

Final Decision : Allowed

Judgement

Gandhi, J.—The appellants are the selected candidates, who were granted provisional admission for undergoing B. Ed. Correspondence

Course by the Respondent No. 3, Director, Institute of Correspondence Education, University, of Jammu. During the training period the

Respondent No. 3 under his letter No. IC/ B.Ed./89/7 122-29 dated 27-7-1990 communicated to the appellants to collect the Roll Numbers

from the Institute in person before 7-8-1990 and while collecting the Roll Numbers the appellants are required to produce duly attested copy of

the Certificate of recognition of Sant Mela Singh Public School, Poonch (for short School) and in failure whereof the appellants will not be allowed

to appear in the examination. The appellants (writ petitioners) approached the writ Court seeking to quash the Communication dated 27-7-1990

by issuance of writ of Certiorari and further seek a writ of mandamus to permit the appellants to appear in the B. Ed. Examination.

2. It is submitted by the learned counsel for the appellants that the Respondent

No. 3 issued a Notification inviting applications for admission to the

B. Ed. Training Course for the year 1989-90. The appellants amongst a large number of other candidates submitted their applications on the

prescribed form. The eligibility for consideration and selection to a Seat for B. Ed. Training Course, according to the Brochure and Prospectus of

the Institute of Correspondence Education, University of Jammu for the Session 1989-90 was as under :--""Course No. 3.

Admission to the B. Ed. Course is open to such in service teachers as are serving in government/ private recognised institutions and to the defence

personnel serving in educational branch as have minimum of three years teaching experience to their credit.

For appearing in B. Ed. Correspondence Course, a teacher must be serving in Government or private recognised Institute for a minimum period of

three years.

3. The respondent No. 3 after having considered the applications of the Appellants granted provisional admission providing a stipulation that the

provisional admission shall be subject to the submission of the documents and the balance dues. One of the document to be submitted was an

affidavit to declare on solemn affirmation that the experience Certificate and other documents submitted to the Institute are genuine and correct.

The appellants fulfilled this stipulated requirement also. During the period the appellants were undergoing Training Course, the respondents in order

to verify and test the genuineness and authenticity of the Certificate furnished by the appellants addressed a communication to the DEO. Poonch as

to whether the School is recognised by the Government under his No. CE/90/443 dated 21st of July, 1990 informed the Respondent No. 3,

University Authorities, that the School is an un-recognised Institute and the Certificates issued under the seal and signatures of the ZEO/DEO

Poonch or countersigned from his office may be treated as cancelled. Upon discovering this fact, the respondent No. 3 issued communication

dated 27-7-1990 stating that in case appellants fail to produce the requisite Certificate, they shall not be allowed to appear in the examination.

Admittedly, the appellants could not produce the Certificate and approached the writ Court presenting SWP No. 630 of 1990 seeking to quash

the communication dated 27-7-1990.

4. Upon consideration of the writ petition, the writ Court permitted the appellants to take the B.Ed. Correspondence Course Examination and

made it clear that the appellants are allowed to take the examination on their own risk and responsibility subject to the result of the writ petition.

The writ petition came to be dismissed by the writ Court by an order made on November 20, 1992 and while dismissing, it also directed the

Vigilance Commissioner of the State to investigate into the matter and leave no stone unturned in bringing to book the persons who might be

connected with the offence. It is this order which has been called in question challenging the legality and correctness of the order under appeal.

5. We have heard the learned counsel for the parties, gone through the memorandum of appeal, the order under appeal and other evidence on the file.

6. It is admitted case of the parties that the School has not been recognised by the Government and the Certificate issued by the School and

countersigned by the authorities of the Government is not of a recognised School, conforming to the requirement of the respondent no. 3 for

making the appellants eligible for consideration and selection against the Seats for undergoing B. Ed. Correspondents Training Course. This fact

goes to the root of the matter and questions the very eligibility of the appellants. The Certificate issued by the School has been counter-signed by

the Zonal Education Officer, making the appellants and the authorities to believe that the Certificates being issued to the appellants and presented

to the University are genuine. At the same time the Respondent No. 3 after having found that the Certificates presented to him are not genuine, he

has no option but to take an action for cancellation of the admission and preventing the appellants from appearing in the examination.

7. While dealing with this situation, it is incumbent upon us to see as to whether the action of the Respondent No. 3 against the appellants though

bona fide and genuine should succeed? It is not in dispute by the Respondent No. 3 that the appellants were not working as Teachers in the School.

The appellants perhaps under the wrong impression that the School is recognised and working teachers in the School applied for the experience

Certificates which was issued to them by the School. The Certificates issued by the School have been counter-signed by the Education Officer of

the State and a presumption arises that the Education Officer of the State has countersigned the Certificates only after verification of the record of

according recognition to the School. It is recorded by the learned Single Judge during the course of his order under appeal that the experience

Certificates issued by the School and duly countersigned by the Z.E.O. bear different numbers of the Government Orders showing the School has

been recognised by the Government but since the District Education Officer, Poonch has conveyed that the School is un-recognised and the

Certificates be treated as cancelled and therefore, proceeded to record the finding that the writ petitioners before the writ court are not entitled to

the relief.

8. It is further required to be seen whether the appellants or the University authorities are blameworthy for granting provisional admission to the

appellants the University authorities has not formally cancelled the provisional admission of the appellants but has simply issued the communication

dated 27-7-1990 asking the appellants to produce the requisite Certificates of the recognised School and that too at a time when the petitioners

after undergoing full training course were to collect the Roll Numbers to sit in the final examination. We feel the Respondent No. 3, University

authorities while prescribing the eligibility condition that a teacher made be serving in Government or private recognised Institute for a minimum

period of three years can seek consideration for selection to the B. Ed. Correspondence Course, should have the mechanism available before

granting provisional admission to verify the correctness and authenticity of the certificate or at least a list of the Schools recognised by the

Government, or a time-bound schedule should have been devised within which period the Respondents must make the provisional admission as

regular and not to linger on the provisional admission stretching over whole of the Session.

9. The University authorities have stated in their reply to the writpetition that the applications of the candidates were scrutinized by a Selection

Committee and thereupon the candidates including the appellants were granted provisional admission subject to some conditions. While the

University authorities have prescribed the eligibility condition of three years experience from a recognised Institution and for scrutiny purposes by

the University authorities, they should have with them a list of the Schools recognised by the Government in the State for proper check, verification and scrutiny. It is though bona fide but surprising that at the end of the Session the University authorities communicated to the appellants to produce the recognition certificates of the School throwing their responsibility and blame on the Appellants. The Certificates issued to the appellants and presented to the University have been duly counter-signed by the concerned officers of the Education Department of the State, upon which the University has granted the permission. Since the University authorities has no proper mechanism befitting the requirement for which the University is to be blamed and on the contrary this blame cannot be shifted and cast upon the appellants at the final stage of the examinations when the appellants have completed the courses. This aspect of the matter has not been considered by the learned single Judge, whether under such circumstances the appellants have played a fraud with the University, if at all any fraud has been played, that is a matter for investigation. However, prima facie the authorities of the School, Officers of the Education Department who has issued and countersigned the certificates are to be blamed for making the appellants and the University to believe the genuineness of the Certificates. The findings recorded by the learned single Judge to that extent need to be interfered.

10. Learned counsel for the appellants have further submitted and sought support from the Judgment reported in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, , wherein it is held (at pp. 380-81) :--

It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear.

11. The appellants have also appeared in the examination and their result have not been declared as directed by the writ Court. It is in this context also that it is a fit case where equity finds favour with the appellants for maintaining their admission. The Judgment of the learned single Judge is required to be interfered on this count also.

12. Apart from the finding recorded by the learned single Judge that issuance of the Certificate is a clear misuse of the power which seems to have

perpetuated an act of forgery has substance. The appeal of the appellants is being allowed on the principle of equity and fair-play but still the sin

committed by the School Authorities by issuing such Certificates and the Officers of the Education Department by countersigning the Certificates

and also whether the appellants have procured the Certificates in connivance with the authorities is a matter of concern and need to be investigated.

The Judgment of the learned single Judge to the extent directing the Vigilance Commissioner of the State to investigate into the matter is maintained.

13. For the foregoing reasons, the communication No. IC/B.Ed./89/7122-29 dated 27-7-1990 of Respondent No. 3 is set aside. The appeal is

allowed and the judgment of the learned single Judge is modified to the extent as observed above. No order as to costs.