
(2007) 07 AHC CK 0092
In the Allahabad High Court

Manoj Kumar Pal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Citation : (2007) 7 AWC 7475

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.C. Misra, J.—This writ petition has been filed by the petitioners who are students of Kanchan Singh Bhooli Devi Mahavidyalaya, village Bhikhana Pur, Post Sarvankhera, Kanpur-Dehat self financing institution, and have been provided admission in the course of B.Ed, in accordance with the provisions of the Government Orders passed from time to time. The said institution has 100 seats for the course in B.Ed. As per the Government Order dated 2.7.2003 (Annexure-20 to the writ petition) the institution was required to fill up 85% of the students/candidates approved and forwarded by the University to which it is affiliated and 5% of the students to be filled by the Managing Committee at its own level. The University forwarded the names of 85 students in total on various dates on the basis of counseling out of which only 55 candidates reported for admission. All were admitted forthwith. The institution also filled up 15 candidates/students at under the aforesaid Government Order. As per the Government Order dated 14.12.1999 (Annexure-19 to the writ petition) in case the students recommended by the University did not join the institution and seats remained vacant the institution was required to bring this fact to the notice of the University of the number of the vacancies so that further names by the University could be forwarded for being admitted. The institution informed the University vide letter dated 1.3.2006 (Annexure-14 to the writ petition) wherein it was mentioned that 30 seats had remained unfilled and the names against the vacancies may be forwarded to it within a period of one week so that further

action could be taken for filling up the post, failing which, the institute would be entitled to fill up the remaining vacancies on its own level in terms of the said Government Order dated 14.12.1999. The University instead of forwarding further 30 names of the institution sent a letter dated 22.2.2006 (Annexure-8 to the writ petition) followed by letter dated 9.3.2006 (Annexure-i6 k the writ petition) by which it asked the institution not to fill up the remaining seats as the number of the faculty as required for imparting education for 100 students was short, and thus the University did not forward the examination forms to 30 students. The institution in pursuance of the letter dated 1.3.2006 written to the University for recommending the names of remaining 30 students for filling up the vacancies on not being filled up by the University it filled them at its own level in terms of the Government Order dated 14.12.1999. The institution thereafter imparted education to all the 100 students. Since the University had not forwarded the examination forms the 30 petitioners/students having no alternative filed the present writ petition. After hearing the learned Counsel for the parties at length vide interim order dated 8.9.2006, this Court issued a direction that the petitioners would be allowed to appear provisionally in the B.Ed. examination scheduled to commence from 12th September 2006, however, their results were not to be declared except with the leave of the Court. This interim order was passed as in an identical set of circumstances, this Court had already passed an interim order in the Writ Petition No. 16614 of 2005.

2. In the present case, counter and rejoinder affidavits have been exchanged between the parties and are on record.

3. Learned Counsel for the petitioners has submitted that for no fault of the petitioners the University had wrongly and illegally refrained from issuing the examination form to them though as per the aforesaid government Orders the petitioners were entitled to be admitted and take their examination. That the impugned letter dated 22.6.2006 had been issued on no valid ground and seems to be an after thought for settling their scores with each other and is a matter between the University and the institution making the petitioners the scapegoat. That the aforesaid Government Orders have been held valid by the Court of law.

4. Learned Counsel for the petitioners Sri Ashok Khare Senior Advocate has referred to the Government Order dated 16.11.2005 (Annexure 12 to the writ petition) wherein it has been submitted that the affiliation is granted to the University for respective institutions only in pursuance of the letter of recognition forwarded by the National Council for Teachers Education and amongst other there is a specific condition that the affiliation should be granted after approving requisite number of faculty members including the Head/Principal of the institution and the affiliation of the institution has been granted after the approval of the requisite number of faculty members was found to be sufficient in respect with the institution and it is not that every year the number of the faculty should be taken into consideration as during the session there may be that some faculty member may unfortunately either die or go on long leave or for

whatsoever reason there may be a shortage then the University can not take resort to such action of reducing the number of sanctioned seats on such frivolous ground and restrain the student-petitioners from getting admission and from pursuing their Studies in accordance with law and finally declaration of their result.

5. Learned Counsel for the University has submitted that the examination forms have not been forwarded for reasons mentioned in letter dated 22.2.2006 as the institution was short of required number of faculty and therefore 100 students could not be allowed to take the examination of B.Ed.

6. Learned Counsel for the University has in support of his case stated that as per the Government Order dated 21.10.2005 (Para-2-C of Annexure-CA-2), the University has a right to look into the aspect of the faculty member which refers that this should also be ascertained that the member of faculty/teachers has not been transferred to any other institution during the session or is not working in any other institution simultaneously. Relevant portion of the said Government reads as under:

2-C. Uprokt ke atriakt yen bhi sunishchit kar liya jai ki sambandhit Mahavidyalay/Sansthan mein Vishvavidyalay dwara anumodit nirdharit sanstha mein योग्यातधारी प्राचार्या या निदेशक एवम शिक्षक क्यारत हन, तथा वेय संबान्दhit माहसविद्यालय/Sansthan के अत्रिक्ता कisi अन्या माहसविद्यालय/Sansthan के वये विश्वविद्यालय द्वारा अनुमोदित ना किये गय हन तथा कisi बhi अन्या माहविद्यालय में क्यारत ना हन. प्राचार्या वा शिक्षकों की अहर्ताउन का मूल अभिलेखन से बहली भान्ति सत्यपान करया जाना सुनिश्चित किया जाये. Is संबान्दह में कisi बhi प्रकार की शिथिलता या उदसेन्ता चहाम्या नाहिन होगा.

7. I have heard the learned Counsel for the petitioners at length and perused the record and it is found that the letter dated 22.2.2006 had been sent by the University after it had already recommended the names of 85 students out of 100 students for being admitted in terms of the Government Order dated 14.12.1999. The students did not report for joining the institution. The institution committed no illegality in giving the petitioners' admission which in fact is in accordance with law. The University may if so advised take action against the institution to the extent as is permitted under law on the ground of shortage of faculty if so found referred to in the letter dated 22.2.2006. Order dated 21.10.2005 referred to by the University-respondent does not apply to the facts and circumstances of the present case. The petitioners cannot be restrained from being admitted in the course of B.Ed. in the institution in terms of the aforesaid Government Order dated 14.12,1999 and having completed their studies and taken then final examination are entitle for declaration of their result.

8. Looking to the facts and circumstances of the case, the impugned communications dated 22.2.2006 and 9.3.2006 (Annexures-8 and 16 respectively to the writ petition) are hereby quashed. The University is directed to declare the result of the petitioners for B.Ed. examination 2005-06 forth with.

9. The writ petition is allowed. No order as to costs.