

---

**(2015) 01 RAJ CK 0043**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 2511/2010**

Neemb Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

---

**Date of Decision :** 14-01-2015

**Acts Referred:**

**Citation :** (2015) 01 RAJ CK 0043

**Hon'ble Judges :** Sandeep Mehta, J.

**Bench :** Single Bench

**Advocate :** N.R. Choudhary, for the Appellant; B.L. Bhati, AGC, Advocates for the Respondent

**Final Decision :** Allowed

---

## Judgement

Sandeep Mehta, J.—The petitioner in the instant writ petition seeks to challenge the validity and correctness of the order dated 12.1.2009 (Annex. 6).

2. Briefly stated the facts of the case are that the Director, Sanskrit Education, passed the impugned order imposing a punishment on the petitioner debarring him from being promoted and other service benefits for a period of five years from 11.2.2008 onwards and also directed that permission from appearing in any educational examination will not be given, on the basis of the degree held by him.

3. Counsel for the petitioner submits that due to the effect of the said order, the petitioner has been deprived of being considered for promotion to the post of Teacher Gr. II. He contends that the order impugned is in the nature of one imposing punishment and was passed without following the principles of natural justice or the due procedure of law as stipulated in either Rule 16 or Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, and therefore, the same is liable to be quashed and set aside. He submits that by the order impugned a stigmatic condition was imposed that the qualification obtained by the petitioner by passing B.Ed. Examination from Indira Gandhi Open University would not be considered for the purpose of promotion etc. and the

degree obtained shall not be entered in his service record. Counsel for the petitioner submits that before prosecuting the said course, the petitioner submitted repeated applications to the authorities for being granted permission to pursue the course but the application/prayers were never responded to and no refusal was ever communicated to the petitioner. Thus, assuming deemed permission, the petitioner pursued the course and was granted B.Ed. Degree by Indira Gandhi National Open University. He contends that because the course through which the petitioner procured the B.Ed. degree was a distance learning course, his duties were not adversely or prejudicially affected and no hindrance was caused in the performance of his duties as a teacher. As such he contends that the impugned order deserves to be quashed.

4. He, therefore, prays that while accepting the writ petition, the impugned order be quashed and the respondents be directed to convene a D.P.C. to consider the case of the petitioner for promotion w.e.f. the date the promotions were accorded to other candidates.

5. Learned counsel appearing for the respondents is not in a position to dispute the fact that the order Annexure-6 which is obviously in the nature of one imposing penalty was passed without following the principles of natural justice in as much as no opportunity of hearing was provided to the petitioner and furthermore the order was also not preceded with any departmental enquiry as envisaged either under Rule 16 or Rule 17 of the C.C.A. Rules. He is also not in a position to dispute the fact that repeated applications submitted by the petitioner for being permitted to pursue the B.Ed. course from the Indira Gandhi Open University were not responded to and neither any acceptance or refusal was ever communicated to the petitioner.

6. Heard and considered the arguments advanced at the bar. Perused the material available on record.

7. It is not in dispute that before pursuing the B.Ed. course from Indira Gandhi Open University, the petitioner submitted repeated applications seeking permission to pursue the course to the Director of the Department. One of the applications was duly endorsed and forwarded to the Director by the Principal of the school where the petitioner was working. However, the Director, for reasons best known to him chose not to pass any order thereupon. Thus, naturally and in all probability the petitioner was entitled to entertain a reasonable belief that permission would be accorded. Thereupon, proceeded to pursue the course and was declared successful. Thereafter, when he submitted an application for entering the said degree in his service book and for grant of other service benefits, the order impugned Annexure-6 came to be passed. The order impugned is apparently in the nature of order imposing penalty because a condition has been imposed that the degree procured by the petitioner shall not be considered for five years for the purpose of promotion and shall also not be placed in his service record. Furthermore the petitioner was debarred from appearing in any educational examination for a period of five years. Debarring an

employee from promotion for five years is obviously stigmatic and penal in nature. The said order was passed without following the principles of natural justice and without holding any enquiry under the C.C.A. Rules.

8. As a matter of fact, in the opinion of this Court, as the applications for permission to pursue further studies were received by the authority concerned and were not responded to, it has to be held that the petitioner was entitled to assume a deemed permission to pursue the course. It is more so because the course was a distance learning course and would not have in any manner affected the performance of duties being offered by the petitioner in the Department as a Teacher Gr. III. Had there been any possibility of any adverse effect on the petitioner's job requirements and expectations, the Principal of the school who forwarded the petitioner's application to the Director would have indicated it while forwarding the application.

9. The Director concerned should have acted immediately on the application and if it was thought fit that the concerned employee should not be granted permission to pursue the course, an intimation should have been conveyed to him forthwith so that he could have been apprised of his actual standing. The indecision on the application filed by the petitioner as a matter of fact reflects the casual cavalier attitude of the director concerned.

10. It is really a matter of concern that on the one hand, the Legislature has enacted the Right to Education Act in order to give impetus to Fundamental Right to Education and on the other hand, the hard headed officialdom continues to exercise a feudalistic approach on the subordinate employees, who in the endeavor to gain academic excellence, have drawn their wrath instead of appreciation. The approach of the concerned director who passed the order impugned dated 12.1.2009 is deprecated.

11. The writ petition thus deserves to be and is hereby allowed. The order impugned Annexure-6 dated 12.1.2009 is hereby quashed and set aside. The respondents shall consider the case of the petitioner for promotion w.e.f. the date the promotions were accorded to candidates junior to him. In the event the petitioner being promoted, he shall also be entitled to all consequential benefits. No order as to costs.