

(2015) 01 KAR CK 0116

In the Karnataka High Court

Case No : Writ Appeal Nos. 2780-2782/2013 (EDN-EX)

Pharmacy Council of India

APPELLANT

Vs

K. Srinivasulu

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0116

Hon'ble Judges : S. Sujatha, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : S.S. Haveri, for the Appellant; C.H. Ramachander Reddy and T.P. Rajendra Kumar Sungay, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—These appeals are filed by the Pharmacy Council of India, challenging the legality and correctness of the order passed by the learned Single Judge dated 07.02.2013 in W.P. No. 26022/2011 connected with W.P. Nos. 11329 and 11330/2012.

2. Heard the learned Counsel for the parties.

3. The writ petitioners having passed XII Standard examination from Open University known as National Institute of Open Schooling were admitted to "B" Pharma and "D" Pharma Courses respectively for the academic years 2010-2011 and 2011-2012. When they were about to take the examination, they were denied admissions on the ground that their education qualification is not recognized by Rajiv Gandhi University of Health Sciences, Bangalore, in respect of "B" Pharma students and by the Board of Examining Authority in respect of "D" Pharma students, on the ground that the students had not possessed valid eligibility criteria for admission to the Course of the "B" Pharma and "D" Pharma respectively.

4. According to the Pharmacy Council of India, Regulations have been made by the Pharmacy Council only in regard to admission to "D" Pharma Course and not

to "B" Pharma Course. According to Pharmacy Council of India, a candidate who has passed 10+2 examination (academic stream) alone is eligible for admission to "D" Pharma Course. Contending that the writ petitioners who have been admitted to "B" Pharma and "D" Pharma Courses did not possess the eligibility criteria of passing 10+2 examination (academic stream) and that they have passed 12th Standard from the National Institute of Open Schooling.

5. The learned Single Judge having heard the learned Counsel for the parties allowed the writ petition on the ground that even the students who have passed similar examination are eligible for admission to the professional courses and other higher studies and further held that there is no rationality behind, in denying admission to the students. Accordingly, writ petition came to be allowed. Aggrieved by the same, the Pharmacy Council of India has filed these appeals.

6. We have heard Sri S.S. Haveri, learned Counsel appearing for the appellants. Sri Rajendra Sungay, Sri Ramachandra Reddy, Sri Shashidhar S. Karamadi, Sri C. Shashikantha and Sri S.G. Pandit, learned Counsel appearing for the respondents.

7. The main contention of Sri Haveri, learned Counsel for the appellant is that though separate regulations are not framed by the Pharmacy Council of India, the regulation framed by it for D. Pharma Course would be applicable to B. Pharma Course. According to him, "B Pharma" Course has higher value compared to D. Pharma Course because "D" Pharma is only a Diploma in Pharmacy and "B" Pharma is a Bachelor's Degree. When a student has not passed 10+2 examination (academic stream) is not eligible for admission to "D" Pharma Course and such ineligible candidate cannot be admitted to Bachelor's Degree Course of B. Pharma. Therefore, he contends that the learned Single Judge has committed an error in allowing the writ petition in concerning the B. Pharma students. It is also contended by him that when the eligibility criteria has been stipulated by the Pharmacy Council of India by its regulation, this Court could not have interfered with, in granting relief to the ineligible Diploma students. In the circumstances, he requests the Court to allow the appeals.

8. Per contra, the learned Counsel appearing for the respondents submits that when the regulation does not prohibit the students who have passed equivalent qualification from National Institute of Open Schooling to "B" Pharma, since such a prohibition is not there in the regulation and at this length of time, it is not open for the Pharmacy Council of India to contend that the eligibility criteria applicable to "D" Pharma Students is also applicable to "B" Pharma students. If it was the real intention of the Pharmacy Council of India, in the Regulation, necessary amendment should have been introduced by the Pharmacy Council of India. For having not included such conditions in the regulation, the Pharmacy Council of India cannot penalize the students who have been admitted to "B" Pharma.

9. Learned Counsel who is appearing for the "D" Pharma students would contend that since Bachelor's Degree course in "B" Pharma is higher than the "D"

Pharma course and if a candidate can be admitted to "B" Pharma course without passing 10+2 (education stream), imposing such condition to "B" Pharma students are liable to be struck down because the National Institute of Open Schooling has been established by the Union of India to see that drop out students shall be brought into main stream and they also can compete with other eligible candidates. He further submits that long back, Universities have issued a notification stating that the students who have passed from the National Institute of Open Schooling passing 12th Standard is also equivalent to that of 10+2 examination. Therefore, they request the Court to dismiss the appeals.

10. Having heard the learned Counsel for the parties, the following points have to be considered by us in these appeals:

"1. If separate regulations are not framed by the Pharmacy Council of India for the admission of students to "B" Pharma, whether the Pharmacy Council of India can insist the eligibility criteria stipulated for "D" Pharma students as can be made applicable to "B" Pharma Students?

2. Whether the students who have been admitted to "D" Pharma Course and who have already passed, can be denied admission at this length of time?

3. Whether the order of the learned Single Judge requires to be interfered with?"

11. So far as the students who have been admitted to "B" Pharma Course is concerned, admittedly it is higher than the "D" Pharma Course. Pharmacy Council of India, for the reasons best known to it has not framed any separate regulation concerning the admission of the students of B. Pharma and the regulation provides only for the admission to D. Pharma course and not for B. Pharma Course. In the absence of separate regulation to B. Pharma course and considering the certificate obtained by the students from National Institute of Open Schooling for having passed 12th Standard at this length of time, the Pharmacy Council of India cannot be permitted to contend that the regulation framed by it for D. Pharma Course has to be made applicable to B. Pharma. Such an inference cannot be drawn by any Court and if any mistake is committed by the Pharmacy Council of India, it has to blame itself and therefore, we are of the view that the learned Single Judge has not committed an error in granting relief to the students who have been admitted to B. Pharma Course.

12. So far as D. Pharma course is concerned, the said question has to be considered in detail. As rightly pointed out by the learned Counsel for the respondents, the purpose of the Central Government establishing National Institute of Open Schooling is to see that the drop out students shall be brought into main stream and they shall also be permitted to compete with other students (academic students). If the same was not the intention of the Union of India, there was no necessity for the Union of India to establish an Institute for the drop out students.

13. Though the Colleges are admitting ineligible students, the Pharmacy Council

of India till now, has not taken any steps to see that affiliation granted to such Colleges is withdrawn or cancelled. This only shows that indirectly the Pharmacy Council of India is also encouraging such Institutes. If on account of the lapse of Pharmacy Council of India, if gullible students have taken a seat and have passed out, relief cannot be denied to such persons.

14. Be that as it may, since the students have been admitted long back and they have also passed out, at this length of time, if the admission to them is denied, great injustice will be caused to the students who have completed their Course in D. Pharma. Therefore, keeping open the said contention to be considered in an appropriate case, the relief granted by the learned Single Judge to students who have been admitted to D. Pharma shall not be disturbed by us at this length of time.

15. In the result, the appeals are dismissed.