

(2013) 07 MP CK 0206
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1612 of 2010

Prabhu Singh Kushwah

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Madhya Pradesh Sah Chikitsiy Parishad Adhiniyam, 2000 — Section 1(d), 25, 39(1)

Citation : (2013) 07 MP CK 0206

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : B.M. Patel, for the Appellant; M.P.S. Raghuvanshi, Additional Advocate General for Respondent No. 1, Ms. Anuradha Singh, Advocate for Respondent No. 2 and Shri Shashank Indapurkar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S.K. Gangele, J.—Heard. The petitioners have filed this petition against the order, by which the respondent No. 2 Council rejected the application of the petitioners to register themselves with the respondent No. 2 Council.

2. The petitioners passed Post Graduate Diploma from Jiwaji University in Clinical Pathology & Diagnostic Technology [One year/two semesters] course in different years. The Diploma was offered by the University itself. A certificate was also issued to this effect to the petitioners. During the course, the petitioners had also been given practical training of 30 days in each semester at hospital. Jiwaji University issued Diploma to the petitioners. The relevant extracts of one of the Diploma are as under:-

POST GRADUATE DIPLOMA IN CLINICAL PATHOLOGY & DIAGNOSTIC TECHNOLOGY

This is to certify that Prabhu Singh Kushwah of the S.O.S. Jiwaji University, Gwalior having passed with First Division, the Diploma in Clinical Pathology and Diagnostic Technology in this University at the Examination of 2005 is awarded

Diploma in Clinical Pathology and Diagnostic Technology.

3. After completing the diploma, petitioners submitted applications to the respondent No. 2 Council in the prescribed proforma with a requisite fee of Rs. 750/-. Their applications for registration have been rejected on the ground that one year diploma is equal to another diploma, which is of two years named as P.G. Diploma in Clinical Pathology and Diagnostics Technology and if the petitioners are granted registration, they would be above from the students, who had been granted two years P.G. diploma in Clinical Pathology and Diagnostics Technology.

4. During the course of the argument, learned counsel for the respondent No. 2 Council submitted that the course conducted by the Jiwaji University was not recognised by the Council neither any permission had been taken by the Jiwaji University for conducting the course, hence, the Council is not bound to grant registration.

5. Learned counsel for the Jiwaji University has contended that the University had been conducting the course since 1996 and it was closed in the year 2006. Learned counsel admitted the fact that no prior permission was taken by the Jiwaji University for conducting the course from the Council. It is further contended by the learned counsel that the University had been conducting the course since 1996 prior to coming into force the Madhya Pradesh Sah Chikitsiy Parishad Adhiniyam, 2000 (hereinafter referred to as the Adhiniyam 2000), hence, it is not necessary for the University to obtain any permission.

6. It is an admitted fact that respondent No. 3 University had been running the course since 1996. The State Legislature enacted Adhiniyam 2000. It received the assent of the Governor on 5th January 2001 and published in M.P. Gazette on 12th January 2001. It came into existence from the date of notification. Section 1(d) of the Adhiniyam 2000, defines "Recognised paramedical qualifications, which is as under:-

(d)"Recognised paramedical qualification" means a degree, diploma or certificate in any paramedical subject, granted by any University established by law or any other institution recognised by the Sate Government in this behalf.

7. Section 25 of the Adhiniyam 2000 further prescribes permission for certain existing paramedical institution to continue course. The aforesaid Section is as under:-

25. If any person has established a paramedical institution or any paramedical institution has opened a new or higher course of study of training or increases, the admission capacity, such person or paramedical institution, as the case may be, shall seek within a period of one year from the commencement or this Act, the permission of State Government in accordance with the provisions of this Act.

8. Section 39(1) of the Adhiniyam 2000 prescribes Registration and State Register, which is as under:-

39(1). Every person possessing a recognised qualification shall be eligible for enrolment on the State Register on furnishing to the Registrar proof of such qualification and on payment of such fee not exceeding five hundred rupees as may be prescribed and different fee may be prescribed for different qualifications.

9. From Section 39(1) of the Adhiniyam 2000, it is clear that a person is required registration from the Council for the purpose of carrying profession on the basis of recognised qualification. The petitioners received diploma from the Jiwaji University, Gwalior. It is an admitted fact that Jiwaji University did not receive any permission from the Council for the aforesaid course since 1996. At that time, the Adhiniyam 2000 did not come into existence. It came into existence subsequently. It is also an admitted fact that when the petitioners passed the diploma course, the Adhiniyam 2000 was in existence. Section 25 of the Adhiniyam 2000 prescribes permission for existing paramedical institution. It requires that the permission is necessary, but the question is that the petitioners, who are the students, had taken admission in the University for the purpose of completing the course as regular students. They had no knowledge that the University was required to obtain permission. They have completed the diploma successfully and if the Council did not register the petitioners, their future would be adversely affected. The respondent Council has not pleaded in this petition that the qualification acquired by the petitioners is of below standard or the diploma is not in accordance with law. The stand taken by the Council is that the qualification was not recognised qualification, for which permission was granted by the Council. It is also a fact that earlier the Council has granted registration to other candidates, who had passed diploma from Jiwaji University. The University also closed the course of diploma since 2006.

10. In this view of the matter, in my opinion, it is obligatory on the part of the respondent No. 2 Council to register the petitioners in accordance with the provisions of Section 39(1) of the Adhiniyam 2000 considering their qualification i.e. Post Graduate Diploma from Jiwaji University in Clinical Pathology & Diagnostic Technology. Consequently, the petition is disposed of with the following directions:-

(i) That the impugned decision of the respondent No. 2 Council dt. 31.5.2007 (Annexure R/4) is hereby quashed. The respondent No. 2 Council is directed to consider the applications of the petitioners for registration to the effect that their Diploma is a valid one. Necessary orders be passed in this regard within a period of six weeks from the date of receipt of copy of this order.

(ii) No order as to costs.