
(2011) 08 CHH CK 0055

In the Chhattisgarh High Court

Case No : Writ Petition (C) No's. 1568, 1580, 1581, 1626 and 1673 of 2011

Pragya Pawar and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Central Universities Act, 2009 — Section 28
Constitution of India, 1950 — Article 14, 16, 21

Citation : (2011) 3 CG.L.R.W. 22

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prateek Sharma, for the Appellant; V.V.S. Moorthy, Dy. Advocate General, for the State/Respondents No. 1 and 3, Shri Ashish Shrivastava, Advocate, for the State/Respondents No. 2 and 4 and Ms. Meena Shastri, Advocate, for the State/Respondents No. 5, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—W.P. (C) Nos. 1568, 1580, 1581, 1626 & 1673 of 2011, involve the common question of law and facts and, as such, they are being disposed of by this common order. By these petitions, the petitioners pray to set aside the impugned orders dated 7-3-2011, 8-3-2011, 15-3-2011, 19-3-2011 & 21-3-2011 and further seek a direction to the respondent authorities to allow the petitioners to appear in the annual examination of their respective classes in the academic session 2010-11.

2. The facts, in brief, as projected by the petitioners, are that the petitioners are the regular students of respondent No. 3-Shashkiya Mata Sabari Naveen Kanya Mahavidyalaya (for short "the respondent college") duly affiliated with the respondent No. 2-Guru Ghasidas University (Central) (for short "the respondent University") for the academic session of 2010-11 of BA/BCA/B.Com. Part I, II & III. Accordingly, the students filled up their application forms in the month of October, 2010, which were duly accepted by the respondent College as well as

the respondent University. After due scrutiny, the admit cards were issued. In the meantime, the respondent No. 5 has filed a complaint on 18-2-2011 directly to the respondent University stating therein that the attendance of the students of above mentioned classes in one subject i.e. Hindi is short and surprisingly at the fag end acting upon the complaint, the respondent University conducted an unilateral enquiry without affording an opportunity of hearing to the petitioners and without passing any formal order, decided vide impugned order dated 7-3-2011 in the meeting of Academic Council of the respondent University thereby debarring the petitioners from appearing in the annual examinations scheduled to be started from 10-3-2011 and informed the respondent college vide order dated 8-3-2011 whereby certain directions have been issued by the respondent No. 4 without any jurisdiction. The impugned action has been taken without consultation with the respondent State.

3. Despite all the above, vide impugned order dated 14-3-2011 the Academic Council of the respondent University had affirmed the impugned order dated 7-3-2011 and also issued the fresh schedule of examinations of above mentioned classes, which were to be started from 24-3-2011. The meeting of the Academic Council of the respondent University was held on 19-3-2011 & 21-3-2011, copies of the proceedings were served upon the respondent college on 22-3-2011 whereby it was decided that the final examination of above mentioned classes of the respondent college are suspended and would be declared separately, whereas the examination of all above mentioned classes of other colleges affiliated to the respondent University will be conducted as per the schedule starting from 24-3-2011. It is alleged by the petitioners that the said impugned action was taken by the Academic Council of the respondent University without application of mind for no rhyme or reason and have no jurisdiction to pass such order. In fact, the Executive Council alone is competent to take decision with regard to conduct of the examinations or cancellation of any examination. Thus, these petitions.

4. Shri Sharma, learned counsel appearing for the petitioners, would submit that the impugned orders are bad, illegal and arbitrary and, as such, the same are in violation of Articles 14, 16 & 21 of the Constitution of India. The attendance of the petitioners in all other subjects is proper and satisfactory, therefore, particularly short attendance in Hindi subject of all the students is itself unbelievable and there is no reason for the students not to attend Hindi classes only. In fact, earlier the petitioners/students made several complaints against the respondent No. 5 stating that the respondent No. 5 never attended the classes and always tried to bunk her classes. Only to take the revengeful action, the respondent No. 5 filed the complaint against the students with mala fide intention. Even the respondent No. 5 is habitual in making complaints without any rhyme or reason.

5. Shri Sharma would further submit that the Principal of the respondent College stated that the respondent No. 5 was also responsible for the short attendance of

the petitioners. The impugned action has been taken behind the back of the petitioners. Shri Sharma would next submit that the attendance register was maintained by the respondent No. 5 and deliberately the attendance of the petitioners has not been marked by her. As per the ordinance, the attendance is not properly calculated with regard to the petitioners. The attendance is to be counted on the basis of classes, not on the basis of subject. Even otherwise, after issuing the admit cards and receiving the payment of fees, the respondent University cannot take u-turn without affording an opportunity of hearing to the petitioners at the fag end, before commencement of the examination. As per Ordinance No. 5, Executive Council of the respondent University is the competent authority to take decision.

6. Shri Moorthy, learned Dy. Advocate General appearing for the State, would submit that the enquiry committee was constituted and the Additional Director, Department of Higher Education was directed to hold an enquiry into the issue of short attendance of the students in the respondent college. The Additional Director was not permitted to examine the original papers, as the University authorities declined to produce the same before him, thus, he could not complete the enquiry.

7. Shri Shrivastava, learned counsel appearing for the respondents No. 2 & 4/ University, would submit that pursuant to the complaint dated 18-2-2011 made by the respondent No. 5 to the respondent College and a copy thereupon endorsed to the respondent University with regard to short attendance of students of BA/B.Com./BCA Part I, II & III, in Hindi subject, the respondent University constituted a two member committee to enquire into the short attendance of the students. The enquiry committee visited the respondent college on 6-3-2011 and after going through the relevant records, prepared the chart vide Annexure-R2/2 and submitted the report. On the basis of the said report and after following the due process, the impugned orders were passed by the respondent University in accordance with law.

8. Shri Shrivastava would further submit that the authorities of the respondent University found that the students have failed to secure minimum attendance of 75% after condonation of 15%, 60% separately in each subject of the course. The impugned action has been taken by the respondent University after complying with the basic principles of natural justice. Thus, the same are legal, valid, just & proper. It is further submitted that the petitioners' attendance was short of even 60% not only in Hindi, but in other subjects also.

9. Ms. Shastri, learned counsel appearing for the respondent No. 5, would submit that the respondent No. 5 is an Assistant Lecturer (Hindi). She belongs to Scheduled Tribe Category and she is a strict Lecturer. The respondent No. 5 is suffering from cancer and the treatment is going on. The respondent No. 5 has not made any complaint against the students and she has simply informed the Principal of the respondent College vide letter dated 18-2-2011 about the short attendance of the students and copy of the same was endorsed to the

respondent University. Thereafter, the authorities after considering the facts and circumstances of the case, initiated appropriate proceedings and passed the orders. Except making submission with regard to short attendance of the students in Hindi subject, the respondent No. 5 has never misused her authority.

10. Ms. Shastri would further submit that the respondent No. 5 prepared the attendance register properly and attended the classes of her subject regularly, but the students have never appeared in her classes. In fact, in the complaints dated 15-9-2010, 17-9-2010 & 11-11-2010 were made against the respondent No. 5, the details of the complainants are missing. Even the Principal of the respondent college is acting against the respondent No. 5.

11. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

12. There is no dispute that minimum attendance required to appear in the examination after condonation of 15% by the University is 60% both in lectures delivered and in the practical held separately in each subject of the course. On the question that the Academic Council has no jurisdiction, the respondent University has justified the decision.

13. Under proviso to Section 28 of the Central Universities Act and Statutes 2009 (for short "the Act and Statutes 2009") whereunder the present respondent University came into existence, it is clearly prescribed in the first proviso that till such time as first Ordinances are not so made, in respect of the matters that are to be provided for by the Ordinances under this Act and the Statutes, the relevant provisions of the Statutes and the Ordinances made immediately before the commencement of this Act under the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 shall be applicable in so far as they are not inconsistent with the provisions of this Act and the Statutes.

14. Under clause 1 of Ordinance No. 5 (conduct of examinations) it is provided that all arrangements for the conduct of examinations to be held by the University shall be made by the Registrar in accordance with such directions as may be issued by the Executive Council in consultation with the Academic Council.

15. Under clause 8 of Ordinance No. 5 (conduct of examinations) it is specifically provided that the Executive Council may cancel an examination at all centers if it is satisfied that there has been a leakage of question papers or any other irregularity which warrants such a step.

16. Ordinance No. 6 {Examinations (General)} defines the "Regular candidate" and admission of a regular candidate to an examination of the University. Clause 2 (1) provides that no regular candidate shall be admitted to an examination of the University unless he (i) has been enrolled as a student in a University Teaching Department, School of Studies or College in accordance with the Provisions of the Ordinances; (ii) possesses the minimum academic qualification

for admission to the examination to which he seeks admission and has prosecuted a regular course of Study for that examination; (iii) has been enrolled as a student of the University; (iv) satisfies all other provisions, applicable to him, of this Ordinance and any other Ordinances governing admission to the examination to which he seeks admission.

17. It appears that the power has been exercised under Part 2 of Ordinance No. 6 {Examinations (General)} where it is for the University to take decision. Thus, it cannot be held that to satisfy the qualification for admission of a regular candidate to an examination of the University has to be decided by the Executive Council only.

18. In the case on hand, the enquiry, as pleaded by the respondent University, was held and it was reported that the petitioners were short of 60% of attendance in Hindi. Thus, they were debarred from appearing in the examination. The decision was taken by the standing committee of the Academic Council on 7-3-2011, which was communicated by letter dated 8-3-2011. The subsequent letter dated 15-3-2011 of the Registrar and the amended resolution dated 19-3-2011 passed by the standing committee of the Academic Council and thereafter, approval dated 21-3-2011 of the Academic Council headed by the Vice Chancellor whereunder it was decided that the examination of BA/B.Com/BCA in respect of respondent college be cancelled and a fresh date for examination of other colleges be decided.

19. In W.P. (C) No. 1568 of 2011, this Court by order dated 22-3-2011, passed an interim order to the effect that "the enquiry by the State Government is still pending and the examination is going to begin from 24-3-2011, it is directed that the petitioners shall be allowed to appear in the coming examination. However, the result of their examination shall be subject to the decision of the writ petition."

20. In W.P. (C) Nos. 1580, 1581 & 1626 of 2011, this Court by order dated 23-3-2011 directed the University to the effect that "the University is permitted to take the examination of the petitioners as private candidates, which is to commence from 24-3-2011. However, the result and status of the petitioners shall be subject to final decision of the writ petitions."

21. Thereafter, looking to the facts and circumstances of the case and in view of the contradictory submissions made by the parties and particularly, the Additional Director, Department of Higher Education of the State was not supplied with original documents and he could not complete the enquiry, this Court by order dated 12-7-2011, constituted a High Powered Committee headed by Shri Justice Vijay Kumar Shrivastava, Retired Judge, High Court of Chhattisgarh, Bilaspur, and comprising of Registrar, Guru Ghasidas University, Shri B.L. Goel, Additional Director, Department of Higher Education and Shri Sunil Otewani, Advocate, to enquire into the allegations and counter allegations. In the meantime, the counseling for MCA at CSIT department of GGU, Bilaspur,

was postponed.

22. Pursuant to the same, the committee enquired the matter and submitted its report on 19-7-2011 along with a copy of proceedings held on 13th, 15th, 16th, 17th, 18th & 19th July, 2011, by majority.

23. A separate report dated 19-7-2011 was submitted by Dr. M.S.K. Khokhar, Registrar (Acting), of the respondent University, who was also a member of the committee.

24. The committee has afforded an opportunity to all the concerned parties. The respondent University has produced all the original documents before the committee relating to supply of attendance register and admission roll of students. The petitioners and the respondents submitted evidence on affidavits with respect to allegations and counter allegations. They were also afforded an opportunity to file counter evidence in rebuttal on affidavits.

25. Having considered all the aspects of the matter the committee framed the following issues:

10. Following questions emerge for determination in the present proceedings:

A. Whether committee constituted by the University was without jurisdiction.

B. Whether attendance register on the basis of which enquiry committee constituted by the University recording short attendance of the petitioners were manipulated and present or absent recorded therein could not be taken to be correct for recording short attendance of petitioners and also working days mentioned therein was not correct.

C. Whether for calculating attendance, extra classes attended by the petitioners are not been taken into consideration.

D. Whether respondent no. 5 Smt. Sunanda Maravi was recording correct attendance of students and was regular in taking her classes.

E. Whether University discriminated petitioners with other similarly situated students.

F. Whether without affording opportunity of hearing, petitioners were not liable to be disqualified from appearing in the examination.

G. Conclusion.

26. With respect to the question (A), the committee was of the opinion that the Vice Chancellor was fully authorized to constitute the committee and there was no lack of jurisdiction.

27. In respect of question (B), the committee observed as under:

13. It does not remained (sic "remain") in dispute that teachers were given attendance register on 31st of July classes starts from 16th of July but

attendance were not marked for July 2010 in many cases. Even on the basis of Registers supplied by Mahavidyalaya to teachers, attendance recorded in attendance register in the month of July was not acceptable to be correct. As per case of respondent no. 5 she could not get admission roll upto 23rd of August for which she constantly made applications to the Principal, this itself made it clear that she was unable to record any attendance in the month of July and upto 23rd of August. From the above scenario it is clear that for a good number of days students attendance was not recorded in the registers in a correct and acceptable manner.

14. From above discussions it is clear that attendance recorded by teachers was manipulated in a number of place working days counted by one of the teachers which has taken for example was not correct and for a good number of days although classes were continued but recording of attendance was not possible upto last of July and recording of attendance by teacher of Hindi Samanya and Hindi Literature upto 23rd of August was not possible. When register and information contained therein were not correct in all respect how correct calculation sheet can be prepared by anybody. Although the Two member committee constituted by the University relied on those registers have determined the percentage of attendance of students but when the register itself was not acceptable to be correct and information contained therein also appears to be incorrect, report prepared by the aforesaid Committee cannot be said to be accurate having seen the aforesaid deformity in the record and information.

28. On the issue of question (C) it was held that the extra classes have been taken by the teachers and attended by the students, but the enquiry committee of the University failed to consider the same.

29. In respect of question (D) the committee held that some of the petitioners had made complaints against the respondent No. 5 that she was not regular in taking classes and was not taking attendance in the attendance register. Thus, it was further held that:

16....So far as recording of attendance in respect of those days when lectures were not delivered by respondent no. 5 for some or the other reason neither those days can be calculated as working days nor students can be marked absent for the purpose of calculating attendance. In the instant case it appears that although lectures were not delivered by respondent no. 5 on the pretext of no student no class or otherwise still those days have been taken as working days and students were deprived of their attendance.

30. In respect of question (E) i.e. with regard to alleged discrimination against the respondent University, it was held that the petitioners were discriminated with other similarly situated students.

31. In respect of question (F) it was found that there was violation of principles of natural justice.

32. Conclusively it was held that the petitioners' attendance was not correctly calculated by the University on acceptable documents. The petitioners have been discriminated and they were also not afforded an opportunity of hearing before the decision to cancel their examination was taken. It was further held that their attendance does not fall below the percentage of attendance prescribed for attending the regular examination as a regular candidate.

33. The respondent no. 5 had submitted written submission in response to the enquiry report reiterating the same view, as was taken before the committee, however, no allegations of mala fide or arbitrariness was alleged against the committee.

34. The respondent University also submitted its response to the report of the enquiry committee alleging that the finding of the committee is contrary to the rules & regulations of Ordinance No. 6. No extra records were produced to held that they have satisfied the requirements of attendance.

35. On perusal of the documents, in addition to the enquiry report submitted by the committee, it was found that on 5-8-2010 (Annexure-R5/5) the respondent No. 5 has written to the Principal of the respondent college to provide a copy of the admission list. On 23-8-2010 the respondent No. 5 has again written to the Principal of the respondent college that for want of admission list it was not possible for her to record attendance of the students in the class room. Thus, it is clear that till 23-8-2010 the attendance of the students was not recorded in Hindi literature and Hindi language in all the classes. Thereafter, on 2-11-2010 (Annexure R5/8) the respondent No. 5 has reported short attendance.

36. On perusal of the report submitted by the enquiry committee constituted by the respondent University, it was found that there was no short attendance in other subjects and the extra classes of 32 days in case of B.A. in Political Science was taken into consideration. In B.C.A. (1st year) out of 40 students, the attendance of 39 students was reported to be above 60% to 75% and 1 student's attendance was above 75%. In case of B.C.A. (2nd year) the attendance of the students was more than 60%. In B.C.A. (3rd year) also it was found to be more than 60% except in case of 2 students whose attendance was below 60%. In case of B.Com. also the attendance is more than 60%, except in case of 2 or 3 students.

37. In the emergent meeting of the Academic Council meeting held on 14-3-2011 it was observed as under:

The attendance of the students in different subjects including the attendance of Hindi Bhasha and Hindi Sahitya was compiled. As per the attendance record; only 6 students in B.A. part I, 00 in B.A. II, 6 in B.A. part III, 14 in B.Com. part I, 11 in B.Com. part II and 1 B. Com. part III and 30 in B.C.A. part I, 24 in B.C.A. part II and 15 in B.C.A. part III were found eligible to appear as regular students as they are having more than 60% of attendance in aggregate after condoning 15% absence under the provision of Ordinance No. 6.

38. Thus, the contention of the respondent University that there was short attendance in other subjects is rejected.

39. The separate/independent report submitted by the Registrar of the respondent University is not acceptable. The Registrar after being appointed as a Member of the committee was expected to act fairly and objectively, not as an agent of the University while examining the issue along with others in the committee.

40. I do not find any infirmity in the report submitted by the committee, as the report has considered all the aspects of the matter and has clearly come to the conclusion that there was no short attendance and the students have participated, but due to manipulations and ulterior motive of the respondent No. 5, the petitioners were reported to be in short attendance of the required percentage in Ordinance No. 6.

41. In view of the above, I unhesitatingly hold that the petitioners satisfied the basic requirements of attendance. Thus, they shall be treated as regular students for the examination wherein they had already appeared. The result of the said examination shall be declared forthwith within a period of one week from today so that the petitioners could not be deprived of admission to further higher courses.

42. As an upshot, the writ petitions are allowed to the extent indicated above. There shall be no order as to costs.

Writ Petitions allowed.