

(2001) 10 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 962 of 1996 in C.W.P. No. 1660 of 1996

Rashtriya Sanskrit Sansthan

APPELLANT

Vs

Jitendra Kumar Sharma

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Raj 180 : (2002) 1 WLC 788

Hon'ble Judges : M.R. Calla, J;K.S. Rathore, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; Ajay Gupta, for the Respondent

Judgement

M.R. Calla, J.—The respondent herein already holding the qualification of "Shiksha Shastri" from the Rajasthan University which is duly recognised wanted to pursue the same course of "Shiksha Shastri" run by the Rashtriya Sanskrit Sansthan, New Delhi i.e. the institute established under the auspices of the Human Resources Development Department of the Government of India. He was eligible for the admission in the said course of "Shiksha Shastri" run by the Rashtriya Sanskrit Sansthan, New Delhi and had also been found to be entitled for such admission on the basis of the merit and other requirements for admission to the said course but such admission was denied to him by the appellant-institution. The ground of denial of admission was that he was already holding a similar decree from Rajasthan University which was also recognised.

2. He, therefore, preferred a writ petition being SB Civil Writ Petition No. 538/1996 and in that writ petition, the order was passed on 25-1-1996, directing the respondent to decide the matter of the respondent about his admission and thereupon the appellant-institution passed an order dated 22-2-1996 informing him that since he had already passed the Shiksha Shastri course from the Rajasthan University he could not be admitted to the concerned course run by the appellant-institution.

3. Aggrieved from this order dated 22-2-1996, he filed yet another writ petition being SB Civil Writ Petition No. 1660/1996. This writ petition was allowed by the learned single Judge and the order dated 22-2-1996 was quashed with the direction to the appellant-institution that the respondent herein be admitted to the concerned course in the next academic session without any further selection and that he shall also be entitled to receive the amount of cost and other Incidental charges amounting to Rs. 3000/-. It is this order dated 5-8-1996. passed by the learned single Judge, deciding the Writ Petition No. 1660/1996 which is the subject-matter of challenge in this appeal before us, filed by the present appellants u/s 18 of the Rajasthan High Court Ordinance, 1949.

4. We have heard learned counsel for both the sides.

5. Mr. G. S. Bapna, learned counsel appearing for the appellants has submitted that this course is essentially a course meant for teachers and after passing such course, they become trained teachers and, therefore, a candidate who had also passed an equivalent examination which is already recognised cannot be allowed to prosecute the similar course from the other institution. If the candidates are allowed to prosecute the same or similar course from different institutions it would result in loss of public money, it will entail denial of opportunity to other candidates desirous to prosecute that course and it will also not be appropriate because it would add to the dearth of trained teachers at least for a period of one year for which the course is pursued because such person will not be available for trained teaching " during the time he pursues the same and similar course from different institution.

6. Mr. Bapna has also submitted that the part of the direction as was given by the learned single Judge that the respondent be admitted in the next academic session without any further selection, is also wrong and this direction is contrary to the view taken by the Division Bench of this Court in DB Civil Special Appeal (W) No. 405/1996 decided on 24-10-1996 in case of Rashtriya Sanskrit Sansthan (Appellant herein) v. Shivdan Singh. As against it Mr. Ajay Gupta, submitted that if the respondent is eligible, has also been selected, and if he wanted to prosecute the same or similar course from the appellant-institute, notwithstanding the fact that he is already having same qualification from the Rajasthan University, which is already recognised, admission could not be refused to the respondent. His contention is that there is no prohibition or legal bar against pursuing same or similar course from a different Institution and he has also submitted that in the matter of employment, the candidates holding the qualification of "Shiksha Shastri" from the appellant-institute are preferred and therefore, he seeks to improve his candidature for preferential opportunities in matters of employment. He has also cited before us a decision of the Supreme Court in case of Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others,

7. We have considered the submissions urged on behalf of both the sides. We find that in case like this, the right to prosecute a course again from a different institution is not prohibited under any set of rules. No provision whatsoever in

relation to the admission in the appellant-institute could be pointed out by the learned counsel for the appellant so as to deny the admission. On the contrary Mr. Bapna very fairly submitted that there is no such prohibition or legal bar under the Rules in matters of admission and right to prosecute a particular course from different institution. The considerations as have been pointed out by Mr. Bapna as mentioned in the earlier part of this order hardly afford any justification for the purpose of denying the admission in such cases. Even if a candidate has acquired a particular qualification from one University and that is also recognised and yet thereafter he wants to prosecute the same course from some other institution so as to improve his candidature for preferential opportunities for employment, the same cannot be denied on the ground that he is already having the similar degree from some other, institution. The reasons which have been given by Mr. Bapna that it will reduce the chances of admission of some new candidates in the course or that it will add to the dearth of the trained teachers for a period of one year, do not afford any justification so as to deny the admission. Such reasons are only inevitable consequences against the right of the candidates to prosecute such course. If a candidate has passed an examination from one University and thereafter feels that by passing same examination from some other more reputed University, he would be adding more strength to his candidature for employment, it is always open for him to prosecute such course from other more reputed University. The correctness of this principle has to be tested on the touchstone of the right of the candidate to prosecute the course and if he has such a right, the same cannot be made to be defeasible on the grounds as have been stated before us -- as one cannot foresee all the exigencies, he may have to face at the time of seeking employment.

8. It has also been pointed out on behalf of the respondent that the candidates holding qualification of "Shiksha Shastri" from the Rashtriya Sanskrit Sansthan are preferred for employment. It can also be very well appreciated that no candidate already holding a recognised qualification from a University would come forward to qualify the same course again from yet another Institution without any reason or rhyme as it is bound to cost him time, money and energy. Therefore, it cannot be said that the candidate wants the same qualification from other institution just for nothing or for reasons of fancy.

9. So far as the decision of the Division Bench of this Court in the case of Rashtriya Sanskrit Sansthan v. Shlvdan Singh (supra) is concerned, we may, at once, observe that the facts of that case are entirely different. In that case, the admission was granted to the candidate but he could not join the course within the stipulated period because he was living in a remote rural area and, therefore, he could not get the information that he had been admitted. The lapse of time, thus, resulted in automatic cancellation of his admission. It was in the backdrop of the facts as aforesaid that the Division Bench found that no direction could be issued that he should be admitted again in the next academic session without any further selection. Therefore on facts, this Division Bench decision dated

24-10-1996 (supra) is clearly distinguishable.

10. Beside this, we find that the respondent herein had sought the admission to the course of "Shiksha Shastri" in the appellant institution; despite his selection on merit he was not admitted; he filed a writ petition and on Court's direction dated 25-1-1996 the question of his admission was decided on 22-2-1996, denying him admission to the said course and thereupon the second writ petition was filed by him which was decided on 5-8-1996. By the time this petition was decided, it was already mid of the session, and therefore, the learned single Judge directed that he be allowed to prosecute the course in the next academic session without any further selection because it was admitted position that not only that the respondent was eligible but he had also been selected and had been found to be entitled for admission to this course and yet the admission was denied to him on a jejune ground and for reasons which were not at all germane. We have also noticed that against this order dated 5-8-1996 when the present appeal was preferred, the same was admitted on 27-9-1996 by the Division Bench and while admitting the appeal, the operation of the order passed by the learned single Judge on 5-8-1996 was stayed. It is therefore, on account of this Interim order that he was not admitted even in the next academic session as directed by the learned single Judge. In such cases, the *lis pendens* cannot stop the time. The time runs out but merely because at one stage an interim order is passed, such order cannot become a *fait accompli* against the party (which could not get the benefit of a decision in his favour on account of the interim order by the higher Court) even if it ultimately succeeds before the higher Court. Merely because more than one academic session has already passed out during the pendency of this litigation, the necessary and essential delay in the judicial process cannot defeat the rights of a party and, therefore, we are not at all impressed by the argument of learned counsel for the appellants that the direction of the learned single Judge was made only for the academic session i.e. 1996-97 and that whereas such session has already gone he cannot be admitted now. Such session may have gone but the reasons for it cannot be attributed to the present respondent. There was an interim order by the Court i.e. a judicial and legal impediment against the respondent at the instance of the present appellants and the principle is that the Court can do no wrong to any party. It cannot be said that merely because the time has run out he cannot take advantage of the order passed by the Court in his favour. It was beyond the control of the respondent to prosecute this course on account of the helplessness which he had to face in view of Interim order. In this regard the case of *Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others*, as has been cited by Mr. Ajay Gupta on behalf of the respondent affords enough guidance wherein the Supreme Court while dealing with the case, relating to the admission in General Medicine for M.D. degree, observed that the sands of time have run out which is inevitable in judicial process. In that case, the new academic year was to commence some time in the month of September and, therefore, the Supreme Court directed that the petitioner shall be admitted in the

subject of General Medicine for M.D. degree without any further test or selection during the current academic year which would commence not later than middle of September, 1983. On this aspect of the matter, the case of the respondent is very close to the facts and circumstances which were obtaining in the case of Dr. Vinay Rampal (supra) and in our opinion, the direction as had been given by the learned single Judge is quite just and proper and the same does not warrant any interference.

11. We also enquired from the learned counsel for the respondent as to whether the respondent is still keen to prosecute the course from Rashtriya Sanskrit Sansthan and Mr. Ajay Gupta, learned counsel for the respondent has answered that the respondent is a young man of about 29 years only and he is still keen to prosecute the same course.

12. In the result, we find no substance in this appeal and the same is hereby dismissed with the direction that the appellant shall grant admission to the respondent in the course of Shiksha Shastri run by it in the next academic session even now without any further selection as directed by the learned single Judge.

13. In the facts and circumstances of the case, the cost of Rs. 3000/- as was imposed by the learned single Judge is hereby made easy and that part of the order is set aside and it is only to this limited extent that this appeal succeeds and for the rest of the purposes, this appeal stands dismissed as slated above.