

(2015) 07 KAR CK 0229

In the Karnataka High Court

Case No : Writ Petition Nos. 29778/2015 (EDN.RES) and 29844-868 of 2015

Ravichandra R. and Others

APPELLANT

Vs

Karnataka Examination Authority and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 4 AKR 11

Hon'ble Judges : N. Kumar, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : M.S. Bhagwat for Nagaraja Hegde, for the Appellant; N.K. Ramesh, Advocates for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J—The petitioners have preferred these writ petitions seeking a Writ of Mandamus directing the first respondent to consider their case for admission to the Second Year Engineering Courses in the evening college Under Lateral Entry for the academic year 2015-16, holding that they possess two years full time working experience.

2. The petitioners have passed Diploma in Mechanical, Electronic and Communication, Electronic and Electrical, Computer Science and Civil Engineering and have two years full time work experience in their respective fields in the registered companies/establishments. The first respondent has issued a notification-cum-brochure for the year 2015, for filing online application form for admission to II year Engineering courses in the evening colleges under Lateral Entry Scheme for the diploma degree holders. In the said brochure, they have prescribed professional experience of minimum of two years full time work experience in a registered firm/company/industry/education and Government/autonomous organizations in the relevant field in which admission is sought by the student and in which the student held Diploma as on 1st July, 2015 of the year of admission.

3. All the petitioners applied for the entrance test by paying requisite fees. After verification of the applications filed by the petitioners, authorities have issued admission tickets to them to write CET examinations which was held on 05-07-2015. After the examinations, authorities have announced the results and the rank list of the petitioners. Authorities have now notified the date for verification of the documents. The petitioners were expected to appear for verification on 16-07-2015. When the petitioners appeared on the aforesaid date before the authorities, the first respondent did not allow the verification of documents of the petitioners, on the ground that they have not completed 2 years full time work experience as on 1st July, 2015. The petitioners made a representation to the respondents on 17-07-2015 requesting them to verify the documents and allot engineering seats in the Evening College. As the said request was not acceded to, they have approached this Court for the aforesaid relief.

4. After entertaining the writ petition, we issued notice to the respondents. Today, we have heard the learned Counsel for both the parties.

5. The respondents contend a student should possess two years full time work experience as on 1st July, 2015. As all these petitioners do not possess the said qualification, their cases cannot be considered for admission to the Evening Engineering courses. In this connection, they rely on the judgment of the Apex Court in the case of Parshavanath Charitable Trust and others v. All India Council for Technical Education and others passed in C.A. No. 9048/2012 on 13-12-2012, where the Apex Court approved the schedule for admission for the academic year 2013-14. In para 44 of the judgment, it is observed that, the admission to academic courses should start, as proposed, by 1st August of the relevant year. The seats remaining vacant should again be duly notified and advertised. All seats should be filled positively by 15th August after which there shall be no admission, whatever be the reason or ground. Therefore, they contend, the last date for filing applications for the course is fixed as 1st July, 2015. The admissions have to be done on or before 1st of August, and only the remaining seats have to be filled up before 15th of August. The student who wants admission, should satisfy the qualification prescribed as aforesaid before the last date for filing application. Admittedly, none of the students who are before the Court has two years full time work experience on or before 1st July, 2015. Therefore, the authorities were justified in not considering their case and only after verifying the records, they are held to be not eligible.

6. Countering this argument, the learned Counsel for the petitioners submits, the admission to the II year Engineering Courses under Lateral Entry Scheme, Evening College, is governed by the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institutions Rules, 2006 (for short herein after referred to as the "Rules"). The relevant rule applicable to the facts of this case are Rule 3 sub-rule 4 clause (c). Clause (c) has been amended by the Karnataka Selection of Candidates for Admission to

Government Seats in Professional Educational Institutions (Amendment) Rules, 2012, where, in place of one year" the words "two years" has been substituted. Relying on this provision, it is contended, two years period has to be counted from the date of passing the Diploma course till 1st September of the year of admission and not the last date prescribed for filing an application for admission in a particular year. As the said provision in the notification runs counter to the statutory rule, the said notification has to yield to the Rule. In the instant case, all the students have completed two years full time work experience on or before 11th July, 2015, and therefore he submits, even if the date of admission is taken into consideration i.e. 1st August, 2015, all of them have completed two years experience and therefore they are eligible for admission.

7. In the light of the aforesaid contentions, the point that arises for our consideration in these writ petitions is as under:

"A candidate who is seeking for admission to II year Engineering Courses under Lateral Entry Scheme for B.E. courses (Evening Engineering College) should have minimum two years full time work experience on the last day prescribed for filing applications i.e. 1st of July, 2015, the year of admission or 1st of September of the year of admission as prescribed under the Rules."

8. The entire controversy is because of the following instructions contained in the e-Brochure issued by the Karnataka Examinations Authority, Diploma - CET-2015. It reads as under:

"3. WHO CAN APPLY ? ACADEMIC ELIGIBILITY

(i) xxxxx.....

(ii) For B.E. Courses (Evening Engineering College): A candidate who has passed any diploma examination or equivalent examination and obtained an aggregate minimum of 45% marks taken together in all the subjects of the final year (fifth and sixth semester) diploma Examination (Q.E) is eligible for admission to B.E. courses, and 40% of marks in Q.E. in case of SC, ST and backward classes of Karnataka candidates. In addition to this a candidate after obtaining the diploma, must have minimum of Two years Full Time Work Experience in a registered firm/ Company/Industry/Educational/Government Autonomous Organisations in the relevant field in which admission is sought by he/she and in which he/she holds a Diploma as on 1st July, 2015, of the year of admission."

The Rules governing these admissions read as under:

"3. Academic Eligibility. -(1) xxxxxx.....

(2) xxxxxx.....

(3) xxxxxx.....

(4) xxx.....

(a) xxx.....

(b) xxx.....

(c) has on the First September of the year of admission not less than one year's professional experience in the branch of Engineering/Technology, in which the candidate holds a diploma, after passing diploma course."

9. The last date prescribed for filing applications for admission to the said courses is 1st of July, 2015. All the petitioners have completed two years full time work experience as on 11th July, 2015. As could be seen from the aforesaid statutory provision, a candidate to be eligible for admission to part time courses in II year, 3rd Semester, Bachelors degree in Engineering/Technology should as on first September of the year of admission, have not less than two years professional experience in the branch of Engineering/Technology in which the candidate holds a diploma, after passing diploma course. Therefore, it is clear two years work experience has to be calculated after passing diploma course and before 1st September of the year of admission. While issuing the brochure, the authorities have fixed 1st July, 2015 instead of 1st September, 2015. Therefore, it is clear that the date fixed under the brochure is not in conformity with the Rules.

10. It is settled law that when these instructions, circulars and brochures issued are contrary to the Act and the Rules, they have to yield to the requirements prescribed under the Act and the Rules. Therefore, the date prescribed under the Rules, namely 1st September of the year of admission, overrides 1st July, 2015 prescribed under the brochure.

11. It was submitted, this period is prescribed in view of the judgment of the Apex Court, where a scheme is now formulated for admission to these professional courses which has to be complied with. As 1st of August is the prescribed period for admission to these courses and 15th August is the period prescribed for unfilled seats, naturally the admission process has to commence one month in advance and therefore the authorities have prescribed 1st July, 2015 as the last date for making application. If that is so, then the authorities should take steps to amend the Rules accordingly. As on today, the Rules are not amended.

12. Rules prevail over the instructions given in the brochure. That apart, all the students have completed two years of full time work experience as on 11th July, 2015, well before the day on which the classes have to commence for the year of admission i.e. 2015. Therefore all of them do possess requisite educational qualification and also possess the work experience requirement prescribed, and therefore they cannot be denied admission acting on the date prescribed in the brochure. However it is made clear, the applications of these petitioners now have to be considered by taking into consideration the certificate showing work experience and the subject in which they have a diploma and also that professional experience is as prescribed under the instructions/brochures and only if the student satisfies all these parameters, they would be eligible for

admission, subject to merit.

13. It is made clear, in the peculiar facts of this case this order is passed, taking note of the fact that all the petitioners have completed two years work experience before 11th July, 2015. In terms of the Supreme Court order, as admissions have to be closed on 1st August, 2015, and the remaining seats have to be filled up before 15th August, 2015, if any student were to complete two years work experience after 15th August, they are not eligible under the said provision, and the admission process cannot be reopened.

14. In these circumstances, we make it clear, this judgment is delivered in the facts of this particular case and it shall not be treated as a precedent in the years to come.

15. As the admission process starts from 4 "O" clock today, the authorities shall make every endeavour to see that these petitioners are also included in the list and their cases are considered. As the judgment was dictated in the open Court in the presence of the Counsel and the officials of the Karnataka Examinations Authority, they shall not insist on or await for certified copy of the order passed today.

Hence, all these petitions are allowed. No costs.