

(2007) 08 DEL CK 0037

In the Delhi High Court

Case No : WP (C) No. 2735 of 2007 and CM 5103 of 2007

Renu Vashishst

APPELLANT

Vs

State NCT of Delhi and Another

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 08 DEL CK 0037

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S.R. Kalkal in WPC Nos. 2735 and 2743/2007 with CM 5103 and 5115/2007 and Devender Pal Maan, in CWP No. 3000/2007 with CM 5633/2007, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The writ petitioners seek directions under Article 226 of the Constitution to the respondent to impart training of school experience programme (hereafter SEP) and to allow them to appear in the first year examination.

2. In WP Nos. 2735 and 2743/ 2007 the facts are that the Petitioners applied for the entrance exam of two year course for Eliminary Teacher Education (ETE, hereafter "the course") conducted by State council of Research & Training of National Capital region of Delhi. They qualified in the written test; the respondent advertised in the newspaper for the first counseling. At the time of counseling candidates of the reserved category were called. Despite figuring in the merit list, the candidates were allotted seats in reserved categories. It is alleged that they should have been allotted seats in the general category, according to the rules.

3. The petitioners filed writ petitions. This Court issued notice; after a hearing, the petitions were allowed by this Court, on 12-2-2007. The respondents were

directed to admit the petitioners with immediate effect. However, the Respondents delayed the process for 10 days; the Petitioners were granted admission on 28.02.07. The respondents did not allow the petitioners to participate in the SEP. It is alleged that the Director SCERT allegedly issued instructions to the principals of the training institutes that 85% attendance is necessary to complete the training session. The petitioners were not allowed to deposit their examination form as they did not have 85% attendance.

4. In WP 3000/2007, the Petitioner, Reena Mann seeks directions to the respondents to impart training of school experience programme (hereafter SEP) and to allow her to appear in the first year examination. The facts in her case are that she appeared in the entrance test of Diploma course in Elementary teacher Education (ETE) on 4th June 2006. She qualified the said exam and her rank in the merit list was C-71/0-03407 (private institution and sports category). Her counseling was to be held on 29.7.2006 but she could not appear as she was unwell. Thereafter she went to the office of the Respondent and requested them do consider her; the request was not acceded to. She approached this Court and the Respondents were by an interim order directed by the court to allow her for counseling and admit her to the course.

5. The petitioner allegedly went for the counseling and her candidature was rejected there on the ground that her sports certificate was not valid. Her writ petition was allowed by an order dated 11.12.2006 and the Respondents were directed to admit her. The said order was not complied with. The Petitioner filed contempt proceedings. Thereafter, she received a letter dated 19.2.2007 from the Director of Respondent No. 2 asking her to report to the Controller of Examinations within a week of receipt of the admission no ETC course 2006-2008. The Petitioner's admission was considered and she was granted admission in ETE course in the session 2006-2008 under sports category on 28.2.2007.

6. It is alleged that on 8.3.2007 the petitioner requested the Respondent No. 2 to organize School Education Practice (SEP)/ teaching practice before the final exams but her request was not acceded to. She was not issued with the examination form for the reason that she had not fulfilled the requisite conditions. The Petitioner avers that the Respondents delayed her admission process. She cannot be faulted for non compliance with norms, because that was on account of the respondent's deliberate and willful conduct. Since her admission she had been attending her classes regularly.

7. The Ld. Counsel, in all the cases submit that the attendance of the petitioners had to be reckoned from the date of their admission. The respondent could not take refuge in the attendance norms to defeat the petitioner's legitimate claim, because they were guilty in the first instance of not admitting them. The petitioners were forced to approach this Court; in Renu Maan's case, despite interim orders, the respondents did not give admission. The writ petition was allowed in December, 2006; yet admission was given only in end of February,

2007. In the other cases, the respondents wrongly did not admit the petitioners; their writ petitions were finally allowed on 12-2-2007. They had approached the court in September, 2006. In these circumstances, the insistence of the respondents that the attendance norms have to be adhered to strictly, on the basis of total number of classes held, is unjustified.

8. The Petitioners submitted that the SEP test of 100 marks is internal assessment and that they have been regularly attending the classes including even for the period when other students went on preparatory leave. It is submitted that if the condition of 3-4 months of formal training/ teaching experience is essential for each student then it is impossible for the students who were admitted in February 2003 to appear in their examination. Counsel relied on 2003 IV. AD (Del) Ms. Manju v. Lt. Governor and Ors. to say that such conditions cannot be insisted upon; the petitioners can be allowed to appear in the examination, and get promoted to the second year.

9. Ms. Avnish Ahlawat contended that the respondents were directed to grant admission to the Petitioner Ms. Maan, under the sports quota, the certificate produced by the Petitioner was disputed. The Letters Patent Appeal filed by the respondents was decided on 16.1.2007 leaving it open to the respondent to dispute the sports certificate, if fresh or new materials were available. It was thus clarified that in future validity of a certificate issued by the krida bharti can always be questioned in accordance with law after placing relevant materials on record. As regards the other cases, counsel submitted that the judgment directing their admissions, on 12-2-2007, had reserved the condition that the Petitioners will be required to adhere/complete all the requirements/ norms of the examination cell, SCERT in all respects prior to appearing in the examination.

10. The Ld. Counsel submitted that a student can appear in the examination only if he/she fulfills the required rules prescribed in the prospectus. Learned Counsel submitted that SEP (students' education programme) course is held in the first year; it should be undergone by students of the ETC course. The students who missed the SEP or who have less than 85% attendance or have obtained less than 50% marks will not be entitled for promotion to the 2nd year. The SEP course is mandatory before a student can appear for 1st year examination.

11. The Learned Counsel further submitted that in normal course the court would not have allowed admission at belated stage in a professional course like ETT where both practicals and theory are given equal importance. Both are necessary in order to get a degree of ETE. Counsel submitted that passing SEP is a must in the ETE course; it is a separate paper of 100 marks. The SEP comprises of 3 months training in the MCD/NDMC/ directorate of Education Schools conducted by the SCERT from October to December every year and non appearance in SEP will not absolve the Petitioners from fulfilling the necessary criteria for promotion to the 2nd year ETE course.

12. Learned Counsel placed reliance on the decision reported as Rohit Singhal

and Others Vs. Principal, Jawahar N. Vidyalaya and Others, in which the Supreme court held that regular attendance and receiving instructions are a must even if there is no fault is not on part of the student. Counsel also further relied on Maharshi Dayanand University Vs. Dr. Anto Joseph and Others, in which the Supreme Court held that requirements in professional courses are prescribed down to ensure that the full period of training necessary for acquiring the qualification is completed and it is in public interest that they are not lightly deviated from.

13. Counsel for contended that ETE course is a 2 years course to train the students for the post of Assistant teacher. She further contended that the petitioners were admitted into the course in February 2007 subject to the condition that it would not absolve them from fulfilling any other criteria which are necessary for taking up the examination and obtaining the Diploma in ETC course. Counsel urged that there was no delay by the SCERT in granting admission. It was lastly contended that the petitioners would be permitted to attend classes in the first year, and appear in the end of the term, provided they make up the attendance and other norms; they would not be required to seek admission as fresh or new candidates.

14. The conspectus of facts discussed above shows that in the cases of petitioners in WP 2735 & 2743/2007, the respondent did not grant them admission in 2006 initially having regard to the manner in which counseling had to be carried out in respect of reserved category candidates. The matter was settled in their favor on 12-2-2007. The court directed the respondents to admit them; they were admitted on 28-2-2007. In WP 3000/2007, the petitioner had occasion to approach the court earlier as the respondents were refusing to admit her; the rationale was that they did not recognize the sports certificate relied upon by her. Initially an interim order was made; it was apparently not complied with; the writ petition was allowed on 11-12-2006; the Division Bench dismissed the respondents' appeal on 16-1-2007. The student was able to secure admission only on 28-2-2007.

15. There is no doubt that in both cases, all the students were kept out of the course due to the actions of the respondents, which were declared unlawful. The question is Therefore, whether in these circumstances they can claim special equities, for not fulfilling the minimum attendance norms, spelt out for the course, and also not fulfilling the criteria of having to qualify the SEP which is mandatory, (under which the candidate has to perform actual three months teaching) he or she is examined on that score; the marks allocated for the test are 100.

16. The conditions relied upon by the respondents read as follows:

2. Students shall not be allowed to appear in the theory examinations in case their attendance is less than 85% attendance in the session. These students shall not be promoted to IInd year. They will have to seek readmission in the 1st year.

Relaxation of 5% in shortage of attendance can be granted by the Principal of Institute and additional relaxation of 10% in attendance may be also granted by the Director, SCERT on medical ground or extra ordinary circumstances on the merit of the case.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx 5. Students shall not be promoted from 1st year to 2nd year course if they have missed their SEP (School Education Programme) or have less than 85% attendance after relaxation or have secured less than 50% marks in SEP.

17. It is evident from a reading of the above that much emphasis is placed by the ETE course on attendance; a very high minimum percentage of 85% norm has been prescribed. That is relaxable ordinarily by 5%. A further 10% relaxation on medical grounds, or extraordinary circumstances is permissible. That would mean that given all concessions, the candidate has to under all circumstances, attend at least 70% of the classes. That norm is not under challenge here; it cannot Therefore be undermined by the court. The question is whether the court can direct the respondents to ignore that, and the condition of having qualify in the SEP (which the petitioners admittedly did not, as it was conducted before their admission) in the circumstances of the case.

18. In several judgments, such as Medical Council of India Vs. Madhu Singh and Others, ; Maharshi Dayanand University Vs. Dr. Anto Joseph and Others, C.B.S.E. and Another Vs. P. Sunil Kumar and Others, the Supreme Court has cautioned the courts against taking a liberal approach in regard to compliance with eligibility and attendance norms. It has been ruled that such requirements are laid down to ensure that the full period of training necessary for acquiring the qualification is completed and it is in the public interest that they are not lightly deviated from. In The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another, , the Supreme Court affirmed the observations in State of Maharashtra Vs. Vikas Sahebrao Roundale and others, as follows:

Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.

19. There is no doubt that the quandary faced by the petitioners is not of their making. They should have been given admission in time; they sought recourse to law and were successful. Yet these equities should not, in my opinion blind the court into waiving what are clearly public interest norms prescribed for uniform adherence. As is often said, hard cases make bad law.

20. In the above circumstances, the relief claimed by these petitioners cannot be granted, since they did not possess the minimum attendance norms, nor did they qualify in the SEP. The respondents need not declare their results. Nevertheless, it would be a complete travesty of justice if the petitioners are denied relief altogether. In the circumstances of the case, having regard to the stand of the respondents that the petitioners would be continued, but in the first year, the respondents are hereby directed not to collect fees for the current academic

session (for 2007-2008), i.e. the first year of the present petitioners. The respondents shall continue the petitioners as first year candidates. In the peculiar circumstances of the case, although the reliefs claimed are not being granted, the respondents shall bear costs of these proceedings, quantified at Rs. 15,000/- for each petitioner. The costs shall be paid to them within four weeks.

21. The writ petitions are dismissed, but subject to the directions to the respondents in para 20 above.