
(2016) 12 MP CK 0067
In the Madhya Pradesh High Court
Case No : W.P. No. 5955 of 2016

Sanjay Jaitwar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-12-2016

Acts Referred:

Citation : (2017) 2 MPLJ 72

Hon'ble Judges : Sheel Nagu and S.K. Awasthi, JJ.

Bench : Division Bench

Advocate : Shri Prashant Sharma, Counsel, for the Petitioners; Shri Vijay Sundaram, Panel Lawyer, for the Respondent No. 1/ State; Shri Gaurav Mishra, Counsel, for the Respondent No. 2/ Board of Secondary Education

Final Decision : Dismissed

Judgement

1. The instant petition, under Article 226 of the Constitution of India, seeks the following reliefs:

(i) Respondents may kindly be directed to permit the petitioners to appear in the final year examination of D.El.Ed. conducted from 23.08.2016.

(ii) If it is not possible to permit the petitioners to appear in the examination then petitioners may kindly be permitted in the supplementary examination which will be conducted in the December, 2016.

2. The above said reliefs are sought on the strength of factual matrix attending the present case which is described below:

2.1 The petitioners were admitted to two years" D.El.Ed course in July, 2014. In the first year examination of the said course conducted on August, 2015 the petitioners were declared successful. Thereafter, the second year examination was scheduled to be held in August, 2016 for which it is submitted by the petitioners that on account of being unaware of the last date of submission of examination form the same could not be filed within the prescribed period of

time.

3. Therefore, the only reason given for not being able to fill up the examination form is ignorance of the last date prescribed Sanjay Jaitwar and others v. State of M.P. & others for the same.

4. It is settled principle of law that the courts are meant to assist the vigilant and not an indolent litigant. Mere reason of ignorance of the last date for submission of examination form which every aspirant examinee is supposed to know, is not an acceptable excuse in law. In this background, the petitioners have prayed for allowing them to appear in the supplementary exam which is scheduled to be held from 28th December, 2016.

5. Learned counsel for the petitioners referring to the amended clause 9 contained in order dated 17.12.2012 issued by the Board providing for availing of two chances (Main and Supplementary) by student in a D.El.Ed. course subject to certain conditions including existence of unforeseen circumstances for availing second chance contends that the said order needs to be ignored as it runs contrary to the statutory provision contained in clause 2 of the D.El.Ed Norms (Norms and standards for diploma in elementary teacher education programme leading to Diploma in Elementary Education) which are the part of Appendix-2 appended to the National Council For Teacher Education [Recognition Norms And Procedure] Regulations, 2014.

5.1 For ready reference and convenience Clause 9 of order dated 17.12.2012 and Clause 2 of the Norms are reproduced below:

"fcUnq dzekad 9 %& Mh0,M0 ijh{kk esa dksbZ Hkh O;fDr Lok/;k;h mEehnokj ds :i esa ugha cSB ldsxk] fdUrq izFke ,oa f}rh; o"kZ ds fu;fer izf"k{k.kkFkhZ dks tks izFke volj dh ijh{kk esa vuqRrhZ.k gks x;k gks] ;k U;wure mifLFkfr dk izfr"kr iwjk djus ds i"pkr~ Hkh fdUgha vifjgk;Z dkj.kksa ls ijh{kk esa u cSB ldk gks rks mls Lok/;k;h :i ls ijh{kk esa lfEefyr gksus gsrq mlh l= dh vuqxkeh ijh{kk esa dsoy ,d volj vksj fn;k tkosxkA"

Clause 2 of the Norms:

2. Duration and Working Days

2.1 Duration:

The D.El.Ed. programme shall be of a duration of two academic years. However, the students shall be permitted to complete the programme within a maximum period of three years from the date of admission to the programme.

2.2 Working Days:

(a) there shall be at least two hundred working days each year exclusive of the period of examination and admission.

(b) The institution shall work for a minimum of thirty six hours in a week (five or six days), during which physical presence in the institution of all the teachers and

student teachers is necessary to ensure their availability for advice, guidance, dialogue and consultation as and when needed.

(c) The minimum attendance of student-teachers shall be 80% for all course work including practicum, and 90% for school internship.

5.2 In this regard, it is submitted by the petitioners that since coming into effect of the said clause of the said Norms the two years D.El.Ed. course is required to be completed within a Sanjay Jaitwar and others v. State of M.P. & others maximum period of three years. In this legal background, learned counsel for the petitioners submits that since the statutory provision under clause 2 does not provide for any additional chance for D.El.Ed. student to complete the two years course, the amended clause 9 of the order dated 17.12.2012 which is a mere executive instruction providing for two chances (main and supplementary) for clearing the D.El.Ed. course runs counter to the statutory Clause 2 creating inconsistency between the two provisions. It is therefore submitted that to resolve the inconsistency the statutory provision (Clause 2 of Norms) should prevail to the total exclusion of the executive instruction dated 17.12.2012. For this purpose, the decision of the Apex Court in the case K.P. Sudhakaran and Anr. v. State of Kerala and Ors. (2006) 5 SCC 386 (para 17) is pressed into service. In addition, page 1041 and 1042 of the 14th edition of principles of the statutory interpretation is also relied upon.

5.3 Supplementary argument raised by petitioners is that the executive instruction vide order dated 17.12.2012 gets eclipsed on coming into force of the statutory provision of clause 2 of the said Norms for the reason of both occupying the same field.

5.4 Though this petition deserves to be dismissed at this very stage for the reasons mentioned above but since certain additional contentions have been raised by the learned counsel for the petitioners the same deserve to be taken note of.

6. There is no dispute in regard to the law laid down by the Apex Court in the case of K.P. Sudhakaran (supra) cited by the petitioners and also the relevant portion of the principles of statutory interpretation. Sanjay Jaitwar and others v. State of M.P. & others

6.1 It is true that the said statutory provision merely provides for maximum permissible period of three years for completion of two years D.El.Ed. course without specifying the additional number of chances which a student may avail to complete the two years D.El.Ed. course in the extended period of three years. On the other hand, the said executive instruction dated 17.12.2012 provides for two chances (main and supplementary), without laying down the maximum period of time within which the said two years" D.El.Ed. course can be completed.

6.2 If both the provisions are read harmoniously, both can coexist and supplement each other.

6.3 Importantly, the 17-12-2012 executive instruction held the field till coming into effect of Clause 2 of the Norms in 2014, where after the executive instruction played a subservient role of though being operational but subject to Clause 2. Thus, the said executive instruction played a supplemental role by filling the gap (non-provision of number of chances to clear D.El.Ed. exam) left open by Clause 2.

6.4 Keeping in mind the time tested principle of law that statutory provision cannot be supplanted by an executive provision and the possibility and need for co-existence of both these provisions, this Court holds that a student of D.El.Ed. course can avail chances prescribed in the executive instruction dated 17.12.2012 provided such availing does not allow the student to complete the course beyond the maximum permissible period of three years. In this manner, the statutory provision and as well as the executive instruction can co-exist harmoniously thereby obviating the peril of sacrificing the Sanjay Jaitwar and others v. State of M.P. & others executive instruction at the alter of the statutory provision.

6.5 An executive instruction can very well fill up the gaps left open in a statute as held by the Apex Court in the case of Sant Ram Sharma v. State of Rajasthan and others [AIR 1967 SC 1910). Para 7 of the said judgment is reproduced below:

"7.....It is true that Government cannot amend or supersede statutory Rules by administrative instruction, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

Thus, Clause 9 of executive instruction supplements and compliments the statutory provision of Clause 2 of Norms without creating any inconsistency.

6.6 In view of the above the contention of the learned counsel for the petitioners, that the executive instruction in question supplants the statutory provision does not hold water.

6.7 The decision of K.P. Sudhakaran (supra) relied upon by the petitioners is of no avail since the same pertains to question of grant of seniority to LDCs transferred on own request to another district within the department of registration in the State of Kerala where the seniority list of LDCs was maintained district-wise. This judgment further holds that statutory rules governing the field render the prior executive instruction redundant. In the State of Kerala, Rule 27-A of Kerala State Subordinate Services Rules 1958 provides that seniority of member of services shall be counted from his first appointment to the service, class, category or grade. The said rule was amended by executive instruction dated 13.01.1976 inserting a Sanjay Jaitwar and others v. State of M.P. & others proviso to the said rule 27-A to the extent of carving an exception for those LDC who request for inter-unit or inter departmental transfer within the same department or from one department to another, by providing that such persons

would earn seniority in the transferred unit or department from the date of joining in the new department or unit and thus shall lose their seniority earned prior to their transfer. The Apex Court while interpreting the said provision held the said proviso to be reasonable and beyond the scope of judicial review. Thus, this case before the Apex Court was not of executive instruction filling gaps left by the statutory provision (as is the case herein) but was a case where the proviso of statutory provision was held to be subservient to the main statutory provision and not in conflict thereof.

6.8 The attempt on the part of learned counsel for the petitioner to press into service page 1041 & 1042 of Principles of Statutory Interpretation (14th Edition) to bring home the point that an existing executive instruction becomes otios on coming into force of statutory provision on the same subject, may not be of any assistance since present is not a case of complete replacement or coverage of field by a statutory provision which was earlier occupied by an executive instruction, but is a case where the field was initially covered (as regards number of chances) by executive instruction dated 17.12.2012 but on enforcement of statutory provision (Clause 2 of the Norms), the field got partially covered to the extent of prescribing maximum period of three years for completion of D.El.Ed. 2 years course without prescribing the number of additional chances available for doing so, thereby leaving the aspect of number of chances to Sanjay Jaitwar and others v. State of M.P. & others be availed still open for the executive instruction to fill up. As explained above the instant is thus not a case of substitution but a case of filling up of gaps left open by the statutory provision.

6.9 More so, the present is not a case where petitioners have been able to make out any unforeseen circumstances which prevented them from filling up the examination form in June/July, 2016 for appearing in the IInd year examination scheduled in the month of August, 2016 and therefore the judgment of this Court in the case of Sheela v. The Board of Secondary Education and Ors. (WP No. 8643/2016) passed by this bench on 19.12.2016 comes in way of the petitioners.

7. In view of the above discussion, this Court has no hesitation to hold that petitioners are not only sleeping litigants but are also not entitled to the benefit of appearing in Dec. 2016 exam by way of second chance under amended clause 9 of Order Dated 17.12.2012 for having failed to prove that petitioners were prevented by unforeseen circumstances beyond their control to avail the second chance of appearing in examination held in August, 2016 .

8. Consequently, this petition fails and is thus dismissed sans cost.