

(2016) 09 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12873 of 2016.

Smt. Ankita Shukla - Petitioner @HASH State of M.P. and another

Date of Decision : 14-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 4 MPLJ 478

Hon'ble Judges : Shri R.S. Jha and Shri C.V. Sirpurkar, JJ.

Bench : Division Bench

Advocate : Shri Ashok Kumar Jain, learned counsel, for the Petitioner; Shri Tabrez Sheikh, learned counsel, for the Respondent No. 2/Board

Final Decision : Dismissed

Judgement

Shri R.S. Jha, J. - The petitioner has filed this petition challenging order dated 17-12-2012, issued by the respondent/Board, whereby the Board has taken a decision in its Executive Committee meeting held on 17-12-2012 to amend its previous instructions/regulation dated 26-02-2010 regarding admissions to the course of Diploma in Education.

2. The learned counsel appearing for the petitioner submits that by the aforesaid orders dated 17-12-2012 the Board has informed that the Executive Committee in its meeting dated 17-12-2012 has amended regulation/instruction Nos. 6 and 9 contained in the previous order dated 26-02-2010 relating to the course of Diploma in Education and has provided that the students of D.Ed. first year course can avail only two continuous chances (main and supplementary examination) to clear the first year course and that in case a student fails to clear the first year or second year examination of the D.Ed. Course in spite of availing two continuous chances, he would have to take re-admission in the D.Ed. Course and pursue the same.

3. Learned counsel submits that the aforesaid amendment made in instructions No. 6 and 9 by the impugned order dated 17-12-2012 is discriminatory and unconstitutional inasmuch as it violates the fundamental rights enshrined under Article 14 of the Constitution of India as it permits the students who have taken

admission in D.Ed. Course prior to 17-12- 2012 to avail unlimited chances to clear the first and second year course whereas it restricts the number of attempts available to only two continuous chances in respect of students who have taken admission to D.Ed. Course after 17-12-2012.

4. The petitioner is also aggrieved by the stipulation in the order that in case the student fails to clear or pass the first year or second year course in spite of availing two attempts, he would have to take readmission in the D.Ed. Course and pursue the same afresh.

5. It is submitted by the learned counsel for the petitioner that the impugned order results in creating two category of D.Ed. students, the first are those who have taken admission prior to 17-12-2012 and the second are those who have taken admission after 17-12-2012 and discriminates between the two set of students by giving unlimited chances to clear the course to the first category of students while restricting the second category of students to clear the course in two continuous attempts only.

6. The respondent Board has filed a return and has submitted that the issue regarding restricting the chances to clear the first and second year D.Ed course in two chances by amendment in the Rules/Regulation dated 17.12.2012 is no longer res integra as the same has already been affirmed and upheld by a Division Bench of this Court in Ram Kishore Yadav and others v. M.P. Board of Secondary Education and others, (W.P No. 5478/2016 and connected matters) decided on 28.06.2016. It is submitted that in such circumstances, the petition filed by the petitioner challenging order dated 17.12.2012 which has already been upheld and affirmed by this Court, is not maintainable and deserves to be dismissed.

7. It is submitted that the petitioner had taken admission in the D.Ed. course in the year 2014 and after passing the first year she had appeared in the second year examination in July-August 2015 wherein she was declared failed. It is submitted that the petitioner was thereafter granted the second chance to clear the second year examination by appearing in the Supplementary examination that was held in December 2015 but has again been declared failed. The respondents have submitted that as the petitioner has exhausted her two chances to pass the second year course, no further chance is available to her and the only course open to the petitioner is to take fresh admission in the D.El.Ed course, if she so desires.

8. We have heard the learned counsel for the parties at length. From a perusal of the record it is clear that the contention of the respondent to the effect that the impugned order dated 17.12.2012 has already been affirmed and confirmed by order dated 28.6.2016 passed in the case of Ram Kishore Yadav (supra) is correct and deserves to be accepted. From a perusal of the order passed by this Court in the case of Ram Kishore Yadav (supra) it is apparent that the Division Bench of this Court had taken into consideration the previously existing

Regulations which granted unlimited chances as well as the amended Regulation notified by the impugned order dated 17.12.2012 restricting the chances and attempt to clear the examination to two and has affirmed the same by holding that no fault can be found with the impugned curtailment of chances as no student or person has a right to claim unlimited chances to pass the D.Ed. Course. Pertinently, the Division Bench has taken into consideration the provisions of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014, framed by the National Council for Teacher Education (hereinafter referred to as "the NCTE") in exercise of powers under section 32(2) of the NCTE Act 1993 and has specifically quoted and taken note of Clause 2.1 of Appendix (ii) of the Regulation of 2014, which prescribes the duration of the D.El.Ed. Programme and is in the following terms:-

"2.1 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."

9. The Division Bench, after taking note of the aforesaid Regulation, has held that once the Regulation framed by the NCTE provides that the D.El.Ed. programme shall be of a duration of two years which may be extended to a maximum period of three years, unlimited chances to clear the D.El.Ed. course cannot be granted to any person and the impugned order dated 17.12.2012 restricting chances to two attempts, being in conformity with the aforesaid Regulation, has been upheld.

10. We are in respectful agreement with the conclusion recorded by the Division Bench of this Court in the case of Ram Kishore Yadav (supra), moreso as the Regulation framed by the NCTE under the Act of 1993, which has been framed under Entry 66 List-I of the VIIth to the Constitution of India, specifically provides that the D.El.Ed. programme shall be of two years which may be extended to a maximum period of 3 years.

11. Once we have expressed our respectful agreement with the view taken by the Division Bench of this Court in the case of Ram Kishore Yadav (supra), we are not required to say anything further in the present petition. However, we think it appropriate to state that the field of Teacher Training and Teacher Education has been treated to be of special importance and, therefore, for the maintenance of high standard and for co-ordinated development of Teacher Education Programme, the Parliament in exercise of its powers under Entry 66 List-I of the VIIth to the Constitution of India, has enacted the NCTE Act of 1993 and has also framed Regulations thereunder in furtherance of the aims and objects of the Act.

12. From the aforesaid provisions of law it is apparent that the Parliament as well as the State is committed to ensure the high standard of Teacher Education courses and programmes with a view to ensure that those persons who obtain degrees/diplomas in such Teacher Education Programmes are of sterling quality

and possesses the necessary high level of intelligence and knowledge so that they are able to impart education to students as it is these persons who, after obtaining D.Ed. and other degrees/diplomas in Teacher Education Programmes, are given jobs as teachers in Government and Non-Government Schools/Institutions. As the expectation of high level of knowledge and standard in education is expected from these teachers, the Regulations provide that the course has to be of a duration of two years. The respondent authorities, having found that persons obtaining admission in D.El.Ed. courses were not having the necessary academic quality and standard as they were taking years together to clear the D.El.Ed. course by availing unlimited chances to pass the examination, therefore, with a view to maintain the high standards necessary for Teacher Training and Education Courses, the respondent authorities have rightly amended the Regulation and provided that the person concerned must pass/clear the necessary academic course in two continuous attempts and, therefore, we unhesitatingly express our agreement with the view taken by the Division Bench of this Court in the case of Ram Kishore Yadav (supra) and uphold the impugned order dated 17.12.2012.

13. We also think it appropriate to advert to the issue regarding discrimination raised by the petitioner in the present petition.

14. To appreciate the rival submissions made by the parties, the amendment made by the Board in its Executive Committee meeting dated 17-12-2012 which is in the following terms requires to be examined :-

c-1& fcUnq dzekad 6%& l= 2012&2013 ls Mh0,M0 izFke o"kZ ds Nk=ksa dks ijh{kk mRrhZ.k djus gsrq vc dsoy fujUrj nks volj eq[; rFkk vuqxkeh ijh{kk iznku fd;s tkosaxsA ;fn vH;FkhZ nks fujUrj nks voljksa dk ykHk ysus ds mijkar Hkh izFke o"kZ vFkok f}rh; o"kZ dh ijh{kk esa vuqRrhZ.k jgrk gS rks vH;FkhZ dks iqu% izos"k ysdj fu/kkZfjr ikB~;dze iw.kZ djuk gksxkA

2- fcUnq dzekad 9%& Mh0,Q0 ijh{kk esa dksbZ Hkh O;fDr Lok/;k;h mEehnokj ds :i esa ugha cSB ldsxk fdUrj izFke ,oa f}rh; o"kZ ds fu;fer izf"k{k.kkFkhZ dks tks izFke volj dh ijh{kk esa mRrhZ.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

mijksDr (c) vuqlkj la"kkf/kkr vkns"k leLr "kkldh;@v"kkldh; MkbV laLFkku ,oa izf"k{k.kkFkhZ;ksa ij vkxkeh o"kZ 2013 dh Mh0,M0 ijh{kk ls ykxw gksaxsA

15. A bare perusal of the first line of the amendment made in instruction No. 6 makes it clear that the amended instruction No. 6 would be applicable from the Session 2012-2013. The last line of the order makes it further clear that the aforesaid amendment in instruction No. 6 would be applicable to all Government, non-Government DIET institutions and the students from the oncoming 2013 D.Ed. examination. A perusal of the aforesaid makes it further clear that the amendment made in the instruction No. 6 does not create two class of students

as stated by the petitioner. On the contrary, it specifically clarifies that the amendment regarding clearing the first or second D.Ed. examination in two attempts would be applicable to all the students from 2012-2013 session onwards and would be applicable for the examination that would be held in 2013. To put it differently, a bare perusal of the amended instructions makes it clear that it would be applicable to the D.Ed. Course from the Session 2012-2013 onwards and the examination that would be held in the year 2013 and the D.Ed. students, would be permitted only two chances to clear the first year or second year examination. A bare perusal of the aforesaid amended regulation makes it further clear that the amended regulation/circular would be applicable to all students pursuing the D.Ed. Course from the 2012-13 session onwards irrespective of the fact that the student has taken admission prior to the issuance of the impugned order dated 17-12-2012 or thereafter and from the 2012-13 session only two attempts would be available to all the students to clear the D.Ed. Course.

16. To avoid any further confusion and to provide clarity to the same, we think it appropriate to refer to another Division Bench decision of the Gwalior Bench of this Court rendered in the case of Reena and others v. Board of Secondary Education and others, (W.P No. 3502/2014 and connected matters) decided on 30.11.2015.

17. The aforesaid petitions were filed by the students who had taken admission in the 2011-12 D.Ed. Course and had successfully passed the first year. However, when they sought to take up their second year examination in the second chance, they were restrained from doing so on the basis of the impugned order dated 17.12.2012. The Division Bench of this Court, relying upon the decision of the Supreme Court rendered in the case of Zile Singh v. State of Haryana and others, 2004 (8) SCC 1, held that the circular/amendment in the Regulation could not be made applicable to the 2011-12 batch on account of the fact that the impugned order dated 17.12.2012 did not specifically state or expressly provide that the amendment in the Regulation would apply retrospectively. In the aforesaid case the Division Bench of this Court has held that in the absence of any specific provision in the amendment, applying it retrospectively or giving it retrospective effect, the same could not be applied to the 2011-12 batch.

18. We are in respectful agreement with the proposition of law enunciated by the Division Bench of this Court in the case of Reena and others (supra). However, we are of the considered opinion that though the impugned order dated 17.12.2012 does not contain any stipulations with regard to its retrospective application, it does contain a specific mention of a stipulation regarding its prospective applicability from the 2012-13 session and the exam held in 2013 to all students pursuing D.Ed. course irrespective of their year of admission.

19. We are of the considered opinion that as the impugned order dated 17.11.2012 amending the Regulations nos. 6 & 9 specifically and clearly provides that it would be applicable to the 2012-13 session and shall be implemented

from the examination that would be held from the year 2013, therefore, the general principles of interpretation regarding the date of implementation of the Regulations that are applicable in cases where the provision is silent in that regard onwards would not apply or be applicable in the instant case in view of the specific stipulation and clear intent of the Regulation regarding its applicability to all students from 2013 session and the examination that is to be held in the year 2013. It is worth noting that unlike the facts of the case in *Reena and others* (supra), the petitioner in the present petition is a person who had taken admission in the D.Ed. course in the year 2014 and, therefore, she cannot be permitted to avail of the unlimited chances to pass the examination.

20. The second contention of the learned counsel for the petitioner is that the impugned amendment to instruction No. 6 provides that a student who is unable to clear the second year examination in two attempts would have to take re-admission in the D.El.Ed. course in spite of having passed the first year, thereby forcing him to pursue the first year D.Ed. Course again. It is submitted that in view of the aforesaid eventuality as the student would have to pursue the D.Ed. Course again in spite of passing the first year course, the impugned amendment in the regulation is unconstitutional and deserves to be quashed.

21. We are of the considered opinion that a perusal of the amendment in the instructions makes it abundantly clear that the student who has failed to clear the second year D.Ed. Course in two attempts would be treated as failed as the word "Anutteern" has been specifically used therein. Once the student fails to clear the D.Ed. Course after exhausting the number of attempts for passing, the question of his being permitted to take up second year course directly without having to take re-admission, would be unjust and unreasonable and would in fact amount to amending and nullifying the regulation as permitting such a student to take admission, or continue studies, in the second year would render the regulation restricting the number of attempts to pass the examination meaningless and of no use.

22. We are also of the considered opinion that the clause which provides for re-admission in the D.Ed. Course in fact is a concession and benefit given to students who fail to pass the course. We are constrained to say so as the student who is unable to clear the second year D.Ed. Course in two attempts and is thereby not entitled to take up any further chance to clear the second year course in terms of amended clause No. 6, would find himself in an anomalous situation wherein he has cleared the first year and remains stranded in that state of animated suspension as he would be unable to and would never be able to pass the second year having exhausted his attempts to pass the same and, therefore, would be deprived of obtaining a D.Ed. Degree for all times to come. The authorities, keeping in mind the aforesaid eventuality and with a view of giving benefit of passing the course, has made a provision to take readmission and clear and pass D.Ed. Course, therefore, the impugned instruction is in fact to the benefit of the students who would otherwise be stranded and unable to clear

the course and would be treated as failures.

23. In view of the aforesaid facts and circumstances of the case, we do not find any illegality or infirmity in the impugned order dated 17-12-2012. The petition filed by the petitioner being meritless is accordingly dismissed.