
(2014) 02 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1157, 1441, 1303, 1358, 1360, 1361, 1366, 1447, 1449, 1440, 1536, 1539, 1542, 1565, 1578 and 1581/2014

Vandana and Others

APPELLANT

Vs

Raj. University of Health Sciences and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 02 RAJ CK 0039

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Gajendra Bhawan, Bharat Saini, R.K. Kasana, Munesh Bhardwaj, Kamlesh Kumar Sahu, Vidhut Gupta, Rajendra Sharma, Rameshwar Sharma and Gajendra Sharma, Advocates for the Appellant; M.A. Khan, Advocates for the Respondent

Judgement

M.N. Bhandari, J.—These writ petitions involve common question of facts and law, thus were heard and decided by this common judgment.

2. All these writ petitions pertain to B.Sc. (Nursing) where petitioners took admission somewhere in the month of July, 2011. As per the Ordinance, the course is of four years. As per the schedule of examination, the respondent - Rajasthan University of Health Sciences (for short "the University") should hold two examinations every year with the gap of 4 to 6 months. After admission of the petitioners, the first year examination should have been conducted somewhere in the month of July or August, 2012 followed by another examination in the same year. The University conducted examinations of first year in the month of November, 2012 followed by declaration of result in the month of April, 2013.

3. It is stated that due to delay, the petitioners have been deprived to appear in Part II Examination and in the similar writ petition/s, the Coordinate Bench have given favourable directions. A reference of judgment in the case of Vijay Singh Panwar & Ors. v. Rajasthan University of Health Sciences, Jaipur & Ors. in SB

Civil Writ Petition No. 1379/2013 decided on 01.02.2013 and Krishna Kumar v. Rajasthan University of Health Sciences, Jaipur & Ors. in SB Civil Writ Petition No. 711/2013 decided on 29.01.2013 has been given and accordingly, prayer is made to allow the petitioners to appear in Part II Examination of B.Sc. (Nursing).

4. It is stated that delay should not come in the way of petitioners, more so when, the University was under an obligation to hold examination in time and, that too, when it is mandated by the Ordinance.

5. Learned counsel appearing for the respondent - University submits that examination of B.S. (Nursing) has been conducted within time schedule and whenever there was some delay, the candidates were given benefit to appear in the examination even without completing one year's course, thus even if there was a delay, it had not come in the way of the petitioners.

6. Coming to the facts, it is stated that all the petitioners appeared in Part I Examination in November, 2012 and on declaration of result, it was found that they have failed in more than two papers, hence, as per the Ordinance 299 V-3(c), a candidate is not eligible to appear in Part II Examination, if he has not passed out more than two papers of Part I Examination or passed out all the papers. If a candidate has passed more than two papers of Part I Examination then he is promoted for B.Sc. (Part (II) Examination and can appear in the examination on completion of one year but result is to be declared subject to passing out all the papers of Part I Examination. With the aforesaid scheme, if the facts of these cases are looked into, there was no delay in holding examination or declaration of result.

7. A chart has been produced before this Court to show that as to when examinations were held in the year 2013.

8. I have considered the submissions made by learned counsel for the parties and scanned the matter/s carefully.

9. Before applying the provisions of Ordinance, as referred by the parties, it would be necessary to refer the facts of this case and then simultaneously, to refer the provisions of Ordinance.

10. All the petitioners herein were given admission to the course in the month of July, 2011. As per the Ordinance, one becomes eligible to appear in Part I Examination on completion of one academic year, which obviously in the instant case was completed somewhere in the month of June/July, 2012. The examination then became due in the month of July/August, however, in the instant case, it was conducted in the month of November, 2012, i.e., with the delay of around five months. The result was also delayed as it was declared in the month of April, 2013 whereas reasonable time can be of two months as is given in the case of Krishna Kumar (supra). If the delay aforesaid is to be noticed and is to be taken to the benefit of petitioners then obvious consequence would be that instead of November, 2012, the examination should have been in the

month of July or August, 2012 followed by result in the month of September or October, 2012. If the aforesaid schedule would have been maintained by the University, then anybody, who qualify in all the papers or more than two papers, would have admitted in Part II Examination of one year. In that eventuality, July or August, 2012 would have been crucial to reckon the period of one year for appearance in Part II Examination but it is only for those, who either qualified in all the papers of Part I Examination or it is more than two papers. If one has failed in two papers only or less than two, is promoted to Part II Examination.

11. In the instant case, all the petitioners have failed in all the papers of Part I Examination or more than two. As a consequence of which, they were required to undertake again one year course of Part I. If the schedule given above is taken note of, then again July or August became crucial period from which, one year period for Part I Examination is to be reckoned for the petitioners, which then ends in the month of July or August, 2013 and in that eventuality, the examination should be held for the petitioners in those months of year 2013 whereas it was held in the month of December, 2013. The facts aforesaid show only delay of few months in holding examination for the petitioners.

12. The respondent - University gave advantage to the petitioners by permitting them to appear in the examination of remanded paper/s in December, 2013, though they had not completed one year period for Part I Examination after declaration of their result in the month of April, 2013 where they failed in more than two papers. In fact, petitioners would have been given chance to appear in the examination in the month of April, 2014, if the Ordinance is strictly adhere to but herein, the petitioners were given benefit of few months by permitting them to appear in examination in the month of December, 2013 itself. The result of said examination has not yet been declared, though two months' time is reasonable period, by which, result should be declared but then even if result is declared in the month of February, none of the petitioners would be due for appearance in Part II Examination as they are under an obligation to undertake Part II Examination after pursuing one year's academic course. The period aforesaid has not been undertaken by the petitioners so as to make them eligible for Part II Examination.

13. In the background aforesaid, prayer made in the writ petitions cannot be granted. Herein, a reference of Ordinance 299 V-3(c) and 299 V-5(a) is relevant, thus are quoted hereunder for ready reference:

"O.299-V-3(c)

A candidate who has passed B.Sc. Nursing part-I examination and has completed the regular course of studies for one academic year will be admitted to B.Sc. Nursing-II course and shall eligible for B.Sc. Nursing Part-II Examination.

OR

A candidate who has failed in any two subjects/papers (two theory or two

practical or one theory and one practical) will also be admitted to the B.Sc. Nursing Part-II course and shall also be eligible for examination to B.Sc. Nursing Part-II. The result of examination of B.Sc. Nursing Part-II will be kept withheld at declared only when the candidate has passed all the papers of B.Sc. Nursing Part-I examination. There shall be two examination in one academic year, the main and the subsequent examination within a period 4-6 months for the remanded candidates.

O.299 V-5 (a)

(i) Candidates who have failed at the examination failed in more than two papers are required to reappear at the examination in all papers for which they should rejoin classes from the beginning of the session.

(ii) The candidate who has failed at the B.Sc. Nursing Part-II Examination being in service candidate will be required to obtain permission from the appointing authority, for further study otherwise such candidates will be relieved from the college because the training will not be completed within two years.

(iii) A candidate who has obtained 75% or above will be declared having distinction in the subject. In all main subjects both theory and practical the minimum pass marks shall be 50% whereas in a qualifying subject minimum pass marks shall be 36%."

14. The perusal of the provisions, quoted above, reveals Scheme of Examination of B.Sc. (Nursing) and the duration of examination of Part I & II onwards.

15. If the Ordinance aforesaid is strictly applied then none of the petitioners are eligible for Part II Examination at present. Accordingly, prayer cannot be granted.

16. A reference of judgments of this Court in the cases of Vijay Singh Panwar & Ors. (supra) and Krishna Kumar (supra) has been given.

17. I have gone through the facts of those cases and find that delay was considered to be a ground to allow the petitioners to appear in the examination but in the instant case, the aforesaid aspect has been taken note of on the facts of this case and finding that delay has not come in the way of the petitioners, as they were allowed to appear in remanded papers of Part I Examination in the month of December, 2013 itself, otherwise if the University would have gone strictly as per the Ordinance, then it should have been in the month of April, 2014 after completion of one year's academic course. Thus, on the facts of this case, the judgment supra do not apply.

18. The grievance of petitioners is even against the colleges.

19. It is stated that after appearance in the Part I Examination, the colleges allowed the petitioners to pursue the study of Part II Examination and even charged the fee. If the petitioners were not eligible to study in Part II Examination of B.Sc. (Nursing) course then there was not reason to charge the fee. They had even charged examination fee from the students, thus colleges

have exploited the petitioners if the Ordinance does not permit them to appear in Part II Examination unless they passed out all the papers or at least more than two papers. A prayer is accordingly sought against the colleges to refund the fee and at the same time, a direction to the University to take action against those colleges.

20. The aforesaid aspect needs attention, however, the colleges have not been served by notice looking to urgency of hearing shown by the petitioners. In any case, when issue has been raised by the petitioners then appropriate directions are required to be given.

21. Looking to the facts of this case, the respondent University is directed to take up the matter at their instance to find out whether any of the college, involved in this case, has charged the fee for Part II Examination from the petitioners apart from other charges. They should be asked under what provisions, the aforesaid arrangement was made and as to why they should not be de-affiliated by the University, if fee was charged unauthorizedly and has not been refunded.

22. The aforesaid action may be initiated by the respondent - University after giving an opportunity of hearing to the colleges and if they come forward with some justification or refer legal provision in defence, then University would be expected to take a proper view strictly in accordance to the rules. In case of their default, the respondent - University would pass an appropriate order. Apart from the aforesaid, the petitioners would further be at liberty to seek damages against the colleges by maintaining a proper suit for damages, if they so choose.

23. Before parting with the judgment, it would be necessary to comment for schedule of studies and examination again. The respondent - University should determine the Schedule of Examinations of B.Sc. (Nursing). The admission followed by the examination should then be conducted strictly as per the schedule. Any deviation for it should not be permitted. For that purposes, they can take guidance of the calendar given by the Government of India for MBBS and PG Courses and has been reiterated by the Hon"ble Apex Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, .

24. Accordingly, the respondent - University would give schedule month of admission to the courses of the academic year followed by examination immediately on completion of one year course. The result thereof should be declared maximum within a period of two months thereafter followed by the next examination within a period of 4 to 6 months but with the arrangement to have two examination in one year so that a candidate can appear in the main and remanded paper/s, as the case may be.

25. The Schedule may accordingly be prepared within a period of two months from today and be produced before this Court in compliance so that onwards the University may complete the course and examination as per the Schedule to be prepared by them. It would then avoid litigation also.

26. With the aforesaid, all these writ petitions are disposed of so as the stay applications.

27. This writ petition bearing SB Civil Writ Petition No. 1157/2014 may be listed again on 15th April, 2014 to see compliance of the direction/s given above.