

(2015) 12 MP CK 0006

In the Madhya Pradesh High Court

Case No : W.P. Nos. 7490/2015 (O), 8726, 11224, 11501, 11511, 11551, 11829, 11886, 12217, 12220, 12341, 12418, 12419, 12435, 12509, 12632, 12670, 12723 and 13036/2015

Vindhya Shiksha Samiti College Khairi and Others

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Citation : (2015) 12 MP CK 0006

Hon'ble Judges : Rajendra Menon and Rajendra Mahajan, JJ.

Bench : Division Bench

Advocate : J.K. Pillai, Siddharth Gupta and V.K. Shukla and Brindawan Tiwari, Learned Counsel, for the Appellant; Mahendra Pateriya, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. As common questions of law and fact are involved in all these petitions, they are being decided by this common order.
2. All these petitions are filed either by the institutes imparting education in the faculty Diploma in Education (D.Ed) or students studying for the said course and the dispute is with regard to the admission of the students to the said course for the academic session and conduct and declaration of their results.
3. According to the petitioners, the students were admitted to the institute for the course in question on the basis of the procedure prescribed for admission, the students deposited their fees and started attending the classes regularly. However, at the time of filling up the forms for admission to the examination in question, it was found that certain students have been admitted to the Course in question who had not passed the qualifying examination from the Board of Secondary Education, Madhya Pradesh. They had acquired the eligibility from the Boards belonging to the different State or Open School. On this count and also

on account of the fact that they did not submit the prescribed form and certificates within the scheduled date, they were prevented from appearing in the examination or their forms accepted. The matter came to this Court and initially certain directions were issued by the Benches of this Court at Jabalpur, Gwalior and Indore. Subsequently at the instance of respondent Board of Secondary Education, matter travelled to the Hon''ble Supreme Court and the Supreme Court with regard to the orders passed by the Gwalior Bench in various Special Leave Petitions on 2.2.2015 stayed the interim directions given by the High Court. In the meanwhile, with respect to certain students being Dharmendra Padiyaar & Ors. v. State of M.P. & Ors. On 23.7.2015 in W.P. No. 4776/2015, the Indore Bench of this Court rejected the interim prayers and did not permit the students to appear in the examination. At the instance of the students, the matter went to Supreme Court and in Special Leave to Appeal (c) No. 21977/2015 and an interim order was passed by Hon''ble Supreme Court, whereby subject to final decision of the Special Leave to Appeal and on the condition that their result would not be declared, they were permitted to participate in the examination. This Court also permitted the institutes and directed the Board to accept the forms of the students and permit the students to appear in the examination and thereafter it was directed that their appearance will be provisional subject to final decision of these petitions and their result would not be declared.

4. Now we are informed that in view of order passed in Special Leave to Appeal (c) No. 21977/2015, Hon''ble Supreme Court has allowed the SLP and certain directions have been issued and following the same, identical writ petitions bearing W.P. Nos. 3432/2015, 3433/2015, 3434/2015, 3611/2015, 3790/2015, 4048/2015, 4236/2015 and W.P. No. 4776/2015 have been allowed and by a detailed order passed on 18.11.2015 a Coordinate Division Bench of this Court at Indore has allowed similar petitions and based on the directions issued by the Hon''ble Supreme Court, results have been directed to be declared.

5. Learned counsel appearing for the petitioners brought to our notice the order dated 4.9.2015 passed by the Hon''ble Supreme Court in Special Leave to Appeal (c) No. 21977/2015 and order passed by Indore Bench on 18.11.2015 and prayed that in view of above, these petitions be also disposed of directing the Board of Secondary Education to dispose of the matter as indicated in the order dated 18.11.2015 which is nothing but a direction based on order already passed by Supreme Court on 4.9.2015.

6. Shri Mahendra Pateriya, learned counsel appearing for the Board of Secondary Education has filed a written objection to the same and points out that even though the Hon''ble Supreme Court has passed the order on 4.9.2015, it is at the instance of certain students and now the same benefit cannot be granted to the petitioners'' institute as Special Leave to Appeal filed by Board of Secondary Education are pending before the Supreme Court and on 2.2.2015 an interim order has been passed in Special Leave Petition (Civil) 2549-2568/2015.

According to Shri Mahendra Pateriya as matters are pending before Hon''ble Supreme Court, the prayer made by the petitioners cannot be permitted and he invites our attention to the orders passed on 5.11.2014 by the Gwalior Bench whereby certain interim protection was granted in the matter of appearing in examination and the interim order passed on 2.2.2015 of the Supreme Court, staying the order passed by the High Court on 5.11.2014. Accordingly, Shri Mahendra Pateriya submits that now the prayer made by the petitioners cannot be acceded to in view of the fact that the matter is pending in the Supreme Court.

7. We have considered the rival contentions and we find that initially the Indore Bench in the case of Dharmendra Padiyaar & Ors. v. State of M.P. & Ors., in W.P. No. 4776/2015 passed an interim order on 23.7.2015 whereby in view of stay granted by Supreme Court with reference to interim relief granted by Gwalior Bench, stay was refused by the Indore Bench. At the instance of Dharmendra Padiyaar and other students prosecuting the same course, matter traveled to Supreme Court in Special Leave to Appeal. Hon''ble Supreme Court permitted the students to appear in the examination and there was prohibition in the matter of declaration of their result. Now from the order dated 4.9.2015 we find that SLP and Writ Petition filed by Dharmendra Padiyaar have been allowed and Board has been directed to declare their result. The order passed by the Hon''ble Supreme Court reads as under:--

"a"" We have heard Mr. Saurabh Suman Sinha, learned counsel appearing for the petitioners and Mr. Harshvardhan Jha, learned counsel appearing for respondent Nos. 2 & 3 a"" the Board of Secondary Education and gone through the disputed fact that it is the case where the eligibility form was submitted by the petitioners belatedly. However, the petitioners got admitted and continued their study.

By interim order passed by this Court on 14.8.2015, the petitioners were allowed to appear in the examinations but the result shall not be published till further orders of this Court.

Taking into consideration the entire facts and the circumstances of the case, we dispose of this special leave petition directing the Respondent-Board to publish the result of the examination forthwith.

As a sequel to the above, interlocutory application for exemption from filing official translation is disposed of a""

8. Taking note of all these factors more than seven writ petitions identical in nature have been allowed by the Indore Bench on 18.11.2015 and direction issued to the Board to declare the result of the students. Now the question before us is as to whether we should also direct for declaration of the result in view of order passed by Hon''ble Supreme Court in the case of Dharmendra Padiyaar (supra) and the order dated 18.11.2015 or as objected to by Shri Mahendra Pateriya the matter is required to be stayed in the light of the interlocutory order dated 2.2.2015 passed by Hon''ble Supreme Court. From the

facts as are narrated herein above, it is clear that after the order was passed by Hon''ble Supreme Court on 2.2.2015 staying the interlocutory order passed by High Court of M.P., Gwalior Bench in the matter of granting protection to the students, even though Hon''ble Supreme Court initially stayed the matter but in the case of i.e. an identical case Dharmendra Padiyaar (supra) students were permitted to appear in the examination and following the interim order passed in Dharmendra Padiyaar (supra) not only this Court but also the Indore Bench permitted the students to appear in the examination and finally now on 4.9.2015 i.e. much after passing of interlocutory order on 2.2.2015, Hon''ble Supreme Court itself has issued specific direction as reproduced herein above in the case of Dharmendra Padiyaar (supra). The order passed in the case of Dharmendra Padiyaar (supra) being a final order subsequent to order dated 2.2.2015, while disposing of identical petitions Indore Bench of this Court on 18.11.2015 has followed the same. Merely because the Supreme Court on an earlier occasion on 2.2.2015 has passed certain orders of stay, we see no reason to keep the matter pending. The students and institutions in all these petitions are identically situated like in the case of Dharmendra Padiyaar (supra) who have granted relief by Supreme Court on 4.9.2015 and similar writ petitions decided by the Indore Bench on 18.11.2015. That being so, the objection of Shri Pateriya that at the instance of the Board certain interim orders have been passed on 2.2.2015 and SLP are pending before the Hon''ble Supreme Court, is no good reason to postpone hearing of the matter when the Hon''ble Supreme Court itself has decided identical issue subsequent to order dated 2.2.2015 by a detailed order passed on 4.9.2015 and when Indore Bench of this Court has granted benefit to similarly situated petitioners, there is no reason for us to keep the matter pending and uphold the objection raised by Shri Mahendra Pateriya.

9. Accordingly, keeping in view all these factors, we allow all these petitions and in the light of directions issued by Hon''ble Supreme Court and Indore Bench, we dispose of all these petitions with a direction to the respondent Board to publish the result of the students who have participated in the examination forthwith and communicate the same to the students through their institutes.

10. It is also reported that with respect to the students who had participated in the same examination in time and whose results have been declared, and such of the students who have failed in certain subjects and are eligible to participate in supplementary examination, the supplementary examination are to be held on 14th December 2015, if any of the student involved in the present petition is declared failed he be permitted to appear in supplementary examination and permitted to fill the forms subject to his fulfilling all the condition to appear in the supplementary examination as per rules.

11. With the aforesaid, this petition stands allowed and disposed of. No orders on costs.