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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 30th September, 2010

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W.P.(C) No.9514/2009

AARTI CHHIKARA & ORS.

..... Petitioners

Through: Mr. R.K. Saini & Mr. Vikas Saini,
Advocates.

versus

STATE COUNCIL OF EDUCATIONAL
RESEARCH AND TRAINING & ANR.

..... Respondents

Through: Mr. Nitesh Kumar Singh & Ms.
Latika Choudhary, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The three petitioners were, in the year 2005 admitted to various District Institutes of Education and Training (DIETs) for pursuing the two year Elementary Teacher Education (ETE) Diploma course. The petitioners appeared in the first year examination held by the respondent no.1 State

Council of Educational Research & Training (SCERT) in May, 2006 and passed in all the papers thereof save the theory paper of 'Teaching of Health & Physical Education' (I). The petitioners were however promoted to the second year with liberty to clear the paper in which they had failed, in the subsequent/supplementary examination. The petitioners took the supplementary examination held in November, 2006 but could not clear the said paper. The petitioners again took the examination in the said paper in May, 2007 along with their second year examination but again failed in the said paper though cleared all the papers of the second year also. The petitioners in accordance with the rules of the respondent no.1 SCERT were not entitled to another chance and thus were not given the Diploma. The petitioners applied for re-evaluation of their answer sheets in the said paper and even though in re-evaluation, the marks of each of the petitioners were increased but each of the petitioners still remained short by two marks below the minimum required for clearing the said paper. The representations of the petitioners having met with no success, the petitioners have filed this petition challenging the rule of the respondent no.1 SCERT disentitling the petitioners from the Diploma for failure in one paper only out of the total twenty two papers. It is further the case of the petitioners that though qua

result of the first year students who had taken the same paper which was repeated by the petitioners along with their second year examinations, moderation was applied but the same was not extended to them. The alternative relief claimed in the petition is of directing the respondent no.1 SCERT to extend the benefit of moderation applied to the result of the same examination taken by the first year students, to the petitioners also.

2. Notice of the petition was issued. Counter affidavit has been filed by the respondent no.1 SCERT. The counsels for the parties have been heard.

3. As far as the first relief of quashing the rule requiring the students to clear all the twenty two papers for being entitled to the Diploma is concerned, the counsel for the petitioners has not argued on the same. Even otherwise, education in a course cannot be said to be complete till proficiency is attained in all the subjects that constitute the bouquet of the course. The test of proficiency is the examination and failure in examination shows that the petitioners have not attained proficiency in the subject of 'Teaching of Health & Physical Education'. The petitioners thus cannot be held entitled to the Diploma merely because they have cleared the examination in the other subjects. Rather, I find the first relief claimed to be preposterous. Even otherwise once the Educational Institution and the

experts manning the same have found the proficiency in ‘Teaching of Health & Physical Education’ to be necessary to be entitled to the Diploma and which would enable the petitioners to impart Elementary Education to others, this Court cannot interfere with such policy decisions of the Educational Bodies.

4. The counsel for the petitioners has drawn attention to the minutes of the meeting of the Moderation Committee held on 4th October, 2007. In the said meeting the result of the first year of the course was reviewed and it was recommended that in view of promotion rules, grace marks to those students who had to re-appear in more than five or six subjects be awarded in any two subjects so that the students had to re-appear only in four subjects and may qualify for promotion to second year. Certain other conditions were also prescribed in that regard but which are not relevant for our purpose.

5. The aforesaid minutes would show that moderation was applied not for the reason of any flaw in the examination or any of the questions therein being out of course or for the reason of the paper being very difficult for the students; had that been the reason for applying the moderation, the petitioners would have been right in contending that the said criteria for moderation should be applied to all the students who had taken the exam be

they taking it for the first time as students of the first year or taking it on re-appearance. Also the moderation was agreed to be applied across the board in all the papers of first year examination and not qua the subject of 'Teaching of Health & Physical Education' only. The counsel for the respondents has explained that since a large number of first year students had failed in more than four papers and who had by the time of declaration of the result already completed part of the next year, it was decided to moderate their result to enable more number of students to continue the second year rather than remain detained in the first year.

6. In my opinion, the reason for moderation qua the result of the first year students does not apply to the petitioners and thus it cannot be said that the petitioners are entitled to the extension of moderation to them also. It is not as if the question of extending the said moderation in results to the petitioners has not been considered. In response to the representations of the petitioners, the said question was considered but a decision taken not to extend the moderation to the petitioners and not to give additional marks to the petitioners to enable them to clear the paper.

7. The Supreme Court in *The Dental Council of India v. Subharti K.K.B. Charitable Trust* (2001) 5 SCC 486 and recently in *Dr. Basavaiah v.*

Dr. H.L. Ramesh 2010 (7) SCALE 529 has held that jurisdiction of the Court to interfere with the decision of the expert bodies is limited. A Division Bench of this Court in ***Dr. V.K. Agrawal v. University of Delhi*** 125 (2005) DLT 468 held that the Court cannot interfere with the decision of experts unless there is a violation of some statute or there is some shocking arbitrariness and that in Academic/Educational matters, Courts should be reluctant to interfere; whether a candidate fulfills the requisite qualification or not is a matter which should be left entirely to be decided by the Academic Bodies and the concerned Selection Committees which invariably consist of experts on the subjects. Reference may also be made to ***Maharshi Dayanand University v. Surjeet Kaur*** JT 2010 (7) SC 179 laying down that the Court has no competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of statutory provisions. It was held that the High Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.

8. The petitioners though have not claimed the relief in this regard, have in the petition also contended that the rule limiting their chances to re-appear to two is bad; that they should be given more chances to re-appear in the

exam; that the rule was not even contained in the admission brochure.

9. The brochure filed with the petition is the admission brochure. The same contains the rules of admission and not the rules governing the course. Again such rules framed by the respondent no.1 SCERT cannot be tinkered with by this Court. The respondent no.1 SCERT in its counter affidavit has stated that the course being a professional course, it was deemed expedient to provide for two chances only to re-appear and not to give any further chance.

10. The petitioners have also sought to take advantage of their marks having been increased in re-evaluation by contending that it creates a doubt as to the result of the said examination. Merely because the marks are increased on re-evaluation cannot be indicative of errors in the examination process.

11. Merely because the petitioners had taken admission to the course does not assure them the Diploma/Degree. The petitioners having failed to clear all the papers required to be cleared to be entitled to the Diploma are not entitled to the Diploma. The respondents along with the counter affidavit have annexed the minutes of the Emergency meeting held to deal with the various pleas of the petitioners and the Examination Advisory Committee of

the respondents decided to reject the various pleas of the petitioners.

12. Before parting with the case, I may also add that it is also a plea of the respondent no.1 SCERT that the writ jurisdiction cannot be invoked against it. Reliance in this regard is placed on *Lt. Governor of Delhi v. V.K. Sodhi* JT 2007 (10) Supreme Court 137 which was a case relating to the employees of SCERT. However having considered the matter on merits, need is not felt to advert to the said plea.

There is no merit in the petition. The same is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 30, 2010

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(corrected and released on 26th November, 2010)