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C.S. 106/L

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IN THE HONOURBLE HIGHT COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. ²³⁷⁹/2014.

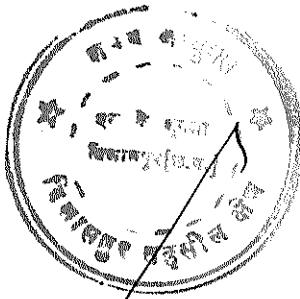
PETITIONER:

Akash Hirwani S/o Rakesh Kumar Hirwani aged about ¹⁸19 years, through: his father & natural guardian Shri Rakesh Kumar Hirwani S/o Late Punaram Hirwani, aged about 52 years, R/o: Qr. No. 12/ A, Cross Street -1, Bhilai, Civil & Revenue District: Durg, Chhattisgarh.

R.No. 2379/14
Presented by Shri M.K. Baghel
Date 02/12/14
Devi versus

RESPONDENTS:

1. State of Chhattisgarh, Through its Deputy Secretary, Department of Department of Technical Education, Manpower Planning, Science & Technology, Mantralaya, Mahanadi Bhawan, Naya Raipur, C.G.- 492002.
2. Director, Department of Technical Education, Chhattisgarh, Govt. Girls Polytechnic Premises, Byron Bazar, Raipur, Civil & Revenue District: Raipur, Chhattisgarh - 492 002.
3. Commissioner Cum Joint Director, Technical Education, Chhattisgarh, Indravati Bhawan, Naya Raipur, Civil & Revenue District: Raipur, C.G. - 492 002.
4. Chhattisgarh Swami Vivekanand Technical University, through its Registrar, Bhilai, Civil & Revenue District; Durg, Chhattisgarh.- 491 001.
5. Shri Shankaracharya Technical Campus, through its Director, Junwani, Bhilai, Civil & Revenue District; Durg, C.G.- 491 001.



WRIT PETITION U/A 226 OF THE CONSTITUTION OF INDIA.



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HIGH COURT OF CHHATTISGARH, BILASPUR
W.P. (C) No. 2379 of 2014

PETITIONER

Akash Hirwani

Versus

RESPONDENTS

State of Chhattisgarh & others

Shri Rajkamal Singh, counsel for the petitioners.
Ms. Smiti Sharma, Dy. Govt. Adv. for the State.
Shri Malay Shrivastava, counsel for respondent No.4.

SINGLE BENCH : HON'BLE SHRI PRASHANT KUMAR MISHRA, J.

ORAL ORDER
(08/01/2015)

Petitioner, a student of IIIrd Semester in Mechanical Engineering in the Shankaracharya Technical Campus, Bhilai has preferred this petition seeking quashment of the impugned order Annexure P/1 issued by the State Govt. amending the policy of transfer of students from one institution to another and one branch to another in different Engineering/Polytechnic Colleges in the State. Petitioner has also prayed for allowing him to change the subject from Mechanical Engineering to Computer Science and Engineering (CSE) in the current/III Semester and to permit him to prosecute further students in the said institution.

2. It is the case of the petitioner that one seat of Computer Science was vacant in Shri Shankaracharya Engineering College, therefore, he applied for transfer from Shankaracharya Technical Campus (Mechanical Engineering Branch) to the Shankaracharya Engineering College (Computer Science and Engineering Branch) and on the said application, required NOCs by the name T-1 and T-2 were issued vide Annexure P/3 and thereafter he moved an application before the Directorate, Technical Education on 04/09/2014 itself for issuance of the 3rd NOC i.e. T-3, however, during pendency of the said application the State Govt. has amended the Rules to impose a condition that for transfer from one Branch to another the candidate has to clear all the subjects of Ist Semester, when the transfer is sought in the IIIrd Semester examination and similarly he has to clear all the subjects of Ist, IInd and IIIrd Semester when the transfer is sought in the Vth Semester. He would submit that the petitioner has not cleared one subject in the Ist Semester





examination, therefore, under the amended Rule he has become eligible to seek transfer. Learned counsel would submit that the application for transfer filed by the petitioner being kept pending and in the meanwhile the amendment having been issued, it would not apply in the petitioner's case as the same was to be processed under the old Rules. He would submit that the petitioner having already obtained T-1 and T-2 NOCs, a right accrued in his favour to change the branch for which both the institutions have agreed, therefore, the petition deserves to be allowed to prosecute the studies of IIIrd Semester in the subject of Computer Science & Engineering.

3. Learned State counsel would submit that merely on the basis of issuance of T-1 & T-2 NOC's no right has accrued in favour of the petitioner, therefore, his case will also be governed under the amended Rule wherein he is ineligible to seek transfer of College / Branch, therefore, his application cannot be considered.

4. In the guidelines permitting transfer of College/Branch which existed immediately prior to 18/09/2014, there was no such bar of clearing all the subjects of Ist Semester examination, however, since after the subject amendment having been incorporated in the Transfer Policy, the petitioner, who is yet to clear one subject in the Ist Semester Examination, has become ineligible. There is nothing in the Rules to indicate that any enforceable right would accrue in favour of any student to seek transfer of College or Branch on issuance of T-1 and T-2 NOC's. True it is the application for transfer is pending consideration but since during this period the policy of transfer has suffered amendment to the detriment of the petitioner, there being no accrued right in his favour for consideration on his case under the old set of Rule/guidelines, this Court would not issue any mandamus contrary to the Rules.

5. It is settled law that writ Court cannot issue any direction contrary to or in violation of the rules. Even if the order Annexure P/1 is not statutory, the same having been issued in exercise of executive power of the State, it has the force of law, therefore, no mandamus can be issued contrary to the said prescription unless the same is found to be arbitrary being in violation of Article 14 of the Constitution. The impugned instruction Annexure-P/1 has only incorporated some amendments in the existing guidelines for transfer of



institution or subjects. It operates uniformly to all the students. Even if it is not strictly legislative in character, the order being executive instructions, it cannot be attacked on the ground of *malafide* or arbitrary unless it is shown to be in violation of Article 14 of the Constitution of India. Merely because it operates against the petitioner, the order does not become arbitrary or unreasonable.

6. There is no substance in this writ petition, which fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

