

CWP Nos. 7161 of 2015
Date of decision: 6.07.2015**Dimple Rani and others**

.....Petitioners

versus**State Council of Educational Research and Training, Haryana and others**

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain**Present:** Mr. Manjeet Singh, Advocate
for the petitioners.Mr. Sudhanshu Makkar, Advocate
for respondent No. 2.Mr. D.K.Khanna, Advocate
for respondent No. 3.**Rakesh Kumar Jain, J.(Oral)**

The petitioners have prayed for a writ in the nature of mandamus seeking a direction to the respondents to allow them to appear in Diploma Education (D.Ed.) Ist semester examination scheduled to be held from 15.04.2015.

In short, the petitioners had applied for admission in the D.Ed course. They were allotted respondent No. 2 college in the Central Counselling, held by State Council of Educational Research & Training, Haryana (respondent No. 1). The petitioners deposited their admission fee of Rs. 25,800/- each and also filled up the examination form in time. It was now the turn of the college to send the examination fee as well as examination form to respondent No. 3 which is the body conducting the exams. There is no dispute that respondent No. 2 college sent the

examination fee of Rs. 1200/- each to respondent No. 3 in time but the examination form reached respondent No. 3 on 21.01.2015, after the cut off date of 15.01.2015 published by respondent No. 3. As a result thereof, respondent No. 3 was not allowing the petitioners to appear in the examination as they were not issued Roll numbers. At the time of notice of motion issued by this Court, the petitioners were allowed to appear in the examination which was held from 15.04.2015 to 17.04.2015 but that arrangement was made provisional without conferring any right upon them.

Respondent Nos. 2 and 3 have filed their separate replies.

Respondent No. 2 has averred that due to inadvertence much less because of the illness of the dealing clerk who had to send the examination form of the petitioner, the delay of 5 days had occurred.

Respondent No. 3 has also averred that on 18.02.2015, in a letter addressed to respondent No. 2, they were told that the forms have been received late but neither they assigned any reason for the delay, nor any request was made for condonation of that delay.

In response to that letter, respondent No. 2 tendered the reason vide its letter dated 27.02.2015 in which it was averred that the delay was caused only because of the illness of the dealing clerk and it was also said that such a mistake would not be repeated in future.

Counsel for the petitioner has submitted that there is no fault of the petitioners as they had submitted their examination fee and examination form duly filled to their college/respondent No. 2 in time and respondent No. 2 had sent their examination fee in time to respondent NO. 3 but as ill luck would have it, the dealing clerk fell ill and sent their examination form after the cut off date. It is also submitted that the respondent has the

competence to condone the delay which is only of five days in submitting the examination forms which is apparent from a letter dated 18.02.2015 in which respondent No. 3 had asked respondent No. 2 to atleast disclose the reason for sending the admission form late and as to why there was no request for on their behalf for condoning the delay. It is thus, submitted that since the reason for the delay has been assigned and respondent No. 3 has also assured that such a mistake would not be repeated in future, the educational prospects of the present petitioners may not be jeopardised only because of the reason that the college in which they are studying has committed some mistake in sending their forms in time. On the other hand, counsel appearing on behalf of respondent No. 3 has vehemently argued that the Court should not show sympathy with the petitioners as it would open pendor box and in this regard, he has relied upon the decision of the Hon'ble Supreme Court in the case of ***Mahatma Gandhi University and another vs. Gis Jose and others 2009(1) RSJ 438*** . However, at the same time, he has not denied that respondent No. 3 has the jurisdiction to condone the delay if the reason assigned for it is genuine.

After hearing learned counsel for the parties and examining the record, am of the considered opinion that so far as the decision of the Hon'ble Supreme Court in ***Mahatma Gandhi University and another case (supra)*** is concerned, there is no quarrel with the proposition laid down therein but the facts of this case are altogether different because the petitioner, who are the students of respondent No. 2, had submitted their examination fee and examination form in time to the college and it was the duty of the college to send their fee and form to respondent NO. 3 before the cut off date. Though the examination fee was sent in time but only

because of the illness of the dealing clerk the submission of the forms were delayed and as a result thereof, they were not allowed to sit in the exams. Since the respondent NO. 3 had the jurisdiction, as submitted by the counsel appearing on its behalf to condone such kind of delay if a genuine reason has been assigned, therefore, I am of the considered opinion that reason assigned by respondent No. 2 that the forms could not be sent because of the illness of the dealing clerk is genuine, and hence respondent No. 3 is directed to accept the forms sent by respondent No. 2.

In view of the aforesaid discussion, the present writ petition is allowed and the order dated 13.04.2015 by which the petitioners were allowed to take the examination provisionally is hereby made absolute.

6th July, 2015
Shivani Kaushik

[RAKESH KUMAR JAIN]
Judge