

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.1046 of 2015

Date of decision: 20.07.2015

Shiva Education Society

.....Appellant

Vs.

State of Haryana & others

.....Respondents

**CORAM: - HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. J.P.Dhull, Advocate, for the appellant.

Mr. Vishal Garg, Addl. AG, Haryana, for respondent Nos.1 & 2.

Mr. D. Khanna, Advocate, for respondent Nos.3 & 4.

HEMANT GUPTA, J.

The present appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Judge on 10.07.2015, whereby the writ petition challenging the order suspending affiliation of the Institute for D.Ed. course for a period of one year for the academic session 2015-16, was dismissed.

The appellant is running an educational institution imparting education for degree leading to D.Ed. The appellant-Institute was granted permission/recognition for running D.Ed. course vide letter dated 20.08.2008 (Annexure P-1) with annual in-take of 50 students. The appellant was granted temporary affiliation by respondent Nos.3 & 4 for the session 2008-09. Such affiliation continued on year-to-year basis. It was on 29.01.2014, a Committee constituted by respondent No.3 inspected the Institute of the appellant and found the strength of the students less than normal for the 1st Semester and 3rd Semester. A show cause notice was issued to the appellant on 11.03.2014 for withdrawal of the affiliation. In the reply to such notice, the stand of the appellant was that the inspection was carried out when annual practical

examination for the 1st Semester and 3rd Semester were going on as a result of which the students were not attending classes. The premises of the appellant-institute was again inspected on 08.07.2014, but the affiliation for D.Ed. course was suspended for one year i.e. academic session 2015-16 vide order dated 10.12.2014. The appellant filed an appeal against the said order, which was dismissed on 20.03.2015. It is, thereafter, the appellant invoked the writ jurisdiction of this Court by way of writ petition, which was dismissed vide order impugned in the present appeal.

Learned counsel for the appellant has vehemently argued that an order of suspension of affiliation is under Regulation 10 of the Rules and Regulations of the Board of School Education Haryana and an appeal against an order under Regulation 10 lies to the Board of School Education, Haryana through its Chairperson within 30 days from the date of issue of such orders. It is also pointed out that during the pendency of appeal, the Regulations were amended, which permitted imposition of penalty instead of suspension. The relevant Regulations read as under:

“10. Refusal, suspension or withdrawl of affiliation and other penalties:

In the cases where it is noticed that an institution affiliated to this Board has violated any of the rules/regulations or flouted any instructions/directions given to it by the Board's office, the Chairperson may impose penalty as per criteria laid down by the Board for imposing such penalties from time to time.

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11. Appeal:

1. Any institution aggrieved by the order of the Chairman regarding refusal/withdrawal/suspension of its affiliation may make an appeal against the same to the Board of School Education Haryana through its Chairman within 30 days from the date of issue of such orders.

2. The appeal so made shall be considered by the Board which may sustain/reject/modify the impugned order or pass an appropriate order on such appeal as deemed fit.”

It is, thus, contended that instead of suspension of affiliation for one year, the penalty could be imposed for the alleged deficiency of students found at the time of inspection.

The learned Single Judge dismissed the writ petition filed by the appellant on the ground that the provisions of imposition of penalty came into existence on 13.01.2015, whereas order of suspension of affiliation for one year was passed on 10.12.2014. Therefore, the provisions of imposition of penalty cannot be applied retrospectively.

Before this Court, learned counsel for the appellant contended that an appeal under Regulation 11 is in continuation of *lis*, therefore, the provisions of penalty, which became applicable before the decision of the appeal by the appellate authority, should have been taken into consideration. It is, thus, contended that the finding of the learned Single Judge that the provisions of imposition of penalty cannot have retrospective effect is not tenable in law.

We have heard learned counsel for the parties at length and find that the argument raised by the learned counsel for the appellant is meritorious. The fact is that the order of suspension is an appealable order. Once an appeal is filed, then any subsequent procedural amendment not affecting the rights of the parties, but liberalizing the provisions beneficiary to the Institution, are bound to be taken into consideration by the appellate authority. The amended Regulation, as reproduced above, provides for imposition of penalty. Therefore, the order of suspension could be substituted with that of imposition of penalty in terms of the amended Regulation.

Consequently, while allowing the appeal as well as the writ petition, we direct the respondent-Board to communicate the imposition of penalty in terms of the amended provisions of the Regulations instead of suspension of the affiliation for a period of one year.

(HEMANT GUPTA)
JUDGE

20.07.2015
Vimal

(LISA GILL)
JUDGE