

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

386

CWP-18369-2010

Decided on : 06.12.2016

Neena Sood

... Petitioner

Versus

MDU, Rohtak

.. Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.N.K.Nagar, Advocate
for the petitioner.

Mr.Anurag Goyal, Advocate for respondent-University.

G.S.Sandhawalia, J. (Oral)

The petitioner seeks quashing of the order dated 15.12.2008 (Annexure P/11) whereby, it has been held that she is possessing a bogus B.Ed Detailed Marks Card and Degree under Roll No.152122 (Registration No.88-CC-3280) for the Session May, 1990. Resultantly, the Vice Chancellor in exercise of the powers vested to him under Rule 31 of the ordinance 'General Rules for Examinations' has quashed her above result/DMC/Degree of B.Ed. Exam.

It is not disputed on the subsequent representation, the said order was reiterated on 18.02.2010 (Annexure P-27) while declining to accept the fact finding report dated 19.11.2009 (Annexure P-23) submitted by Shri Hari Ram, District and Sessions Judge (Retd.). Vide the subsequent order (Annexure P-27), the reasoning given by the Vice Chancellor of the respondent-university was that no evidence has been produced that the

petitioner had actually appeared in May, 1989 vide roll No.221801 and got compartment in the said exam. It was noticed that there was a gap after Roll No.221800 and there was no record of the petitioner's Roll No. The result (RLE) had been declared as per appearance in May, 1990 and therefore, her eligibility itself was doubtful. The fate of her earlier writ petition was not available and the decision passed by this Court had also not been produced by the petitioner. It was, thus, concluded that there was no record to substantiate that she appeared in April, 1989 against Roll No.221801 and therefore, in the absence of the record and the fact whether the candidate actually appeared in April, 1989, the result of May, 1990 as recorded in the tabulation register was fake. Thus, the subsequent DMC issued to the candidate was on the basis of fake record prepared by Sudesh Gupta, the then dealing Clerk.

It is to be noticed that the dispute stems 17 years later from the date of passing out on account of the fact that the petitioner had migrated to Canada and from there, had addressed a representation in the year 2007 by way of e-mail confirming her admission which would be clear from Annexure R-1. She had sought a verification letter which was to be given by the Registrar on account of which she has lost out on the degree concerned. It is thus, to be noticed that the university on its own never found that the certificate issued was bogus and only in view of the fact that she has sought confirmation 17 years later, the impugned order has been passed on 15.12.2008 which would be one good reason to set aside the order which has been passed in spite of the fact, that there was a inquiry report on 19.11.2009 by the District Judge (Retd.) in her favour (Annexure P/23). It is

also to be noticed that while passing the subsequent order dated 18.02.2010 (Annexure P-27), the Vice Chancellor of the respondent-university did not issue any such notice to the petitioner that the inquiry report should be discarded and recorded reasons as noticed above, and rejected the right of the petitioner to claim the degree in her favour.

Counsel for the petitioner has rightly relied upon the principle of law which has been laid down by the Apex Court in ***Punjab National Bank Vs. Kunj Behari Misra, 1998(7) SCC 84*** to submit that before this was to be done at least the authority should have issued a show cause notice giving the petitioner an opportunity to represent as to why the findings in the inquiry report were liable to be discarded.

Apart from this, there are certain issues, on which count this Court feels the impugned order is not justified. The most important aspect which is to be noticed, is that the petitioner as noticed had taken admission in the year 1988 by way of correspondence in the said course. The dispute had arisen at that point of time as to whether the candidate who had failed or been placed in compartment in the final examination of the B.A. and taken admission to the B.Ed. Correspondence course after passing B.A exams in September, in the supplementary examination could be permitted to continue. The petitioner filed CWP-5462 of 1989 in which it was specifically alleged that she had been enrolled for the year 1988-89 at Enrollment No.88-CC-DL-3280 and she had got compartment in one paper of B.A. Examination from the Delhi University. She had appended the communication dated 19.04.1989 (Annexure P-2) whereby her eligibility had been questioned by the respondent-university, the same reads as

under :-

*“Maharshi Dayanand University Rohtak
Registered: No.88-CC-DL-3280
Dt.19.4.89*

*To
Neena Sood,
WZ-30, Val Udyan Marg
Uttam Nagar Extension,
New Delhi-59,*

Sub: Eligibility.

Memo

Reference your application dated 19.4.89 on the above subject.

In this connection, you are hereby informed that you are not eligible as you have cleared your qualifying examination in September, 1988 instead of April, 1988 (Annual).

Sd/-

*Dy. Superintendent (B.Ed.corr.Cell)
Maharshi Dayanand University,
Rohtak. 19.4.1989.”*

Thus, it is apparent that way back in the year 1989, she was already before this Court seeking protection on the strength of admission in the B.Ed. Course which has been doubted by the impugned order on the ground that nothing has been shown that she was a student of the respondent university in the said year in which she eventually got re-appear.

On 24.04.1989, petitioner was granted ad interim order in the same terms as passed in CWP No.2309 of 1989 dated 27.02.1989. The interim direction was that the respondents were to continue to supply the petitioner postal lectures and thereafter, in view of the interim order, as per the communication dated 26.04.1989 (Annexure P-4), she was allowed to continue in the B.Ed. Course. The said letter reads as under:-

*“Maharshi Dayanand University Rohtak
(B.ED. Correspondence Cell)
No.MDU/CC/1205
Dated 26/4/89*

To

*Neena Sood
D/o Sh. O.P.Sood
WZ-30-A, Bal Udyan Marg
Uttam Nagar, Extn.
New Delhi 59.*

*sub:- Provisional Admission to B.Ed.
Correspondence Course -1988-89.*

Memo:

In the light of orders of the Punjab and Haryana High Court, you are admitted provisionally to B.Ed. Correspondence Course 1988-89 subject to the result of the Writ petition No.5462/89 of 1989.

Your Enrollment No. is 3280.

*Dy. Supt. B.Ed. CC
for CHAIRMAN
26/4/89”*

The writ petition was thereafter disposed of along with bunch of writ petitions and the lead case was CWP No.11741 of 1998 titled as ***Trilochan Singh Vs. M.D. University and another***, decided on 30.05.1989. It was held that such students were entitled for the benefit of the admission in the correspondence course. The relevant paras of the said order reads as under :-

Keeping in view the rules and regulations of the University as provided in the Calender and in the Prospectus as discussed above as well as on equitable grounds based on the ratio of the decisions discussed above, the cases in hand are to be disposed of. In the Prospectus issued for admission, the B.Ed. Correspondence Course, there was no prohibition for provisional admission of the candidates to B.Ed. Correspondence Course who had taken B.A. Final Examination and their result had not been declared. Furthermore, if such candidates could get admission in the said course, there was no reason why candidates who had taken B.A. Final Examination in April and were placed in compartment in one of the subjects could not get admission as students were not required to attend the entire session for B.Ed. Correspondence Course personally and they were to get the lessons by post in installments on deposit of requisite fees. During this session, such of the students could not be denied the benefit of passing B.A. Final Examination held in September (Supplementary Examination, for all intents and purposes, they would be eligible to take B.Ed. Final Examination (One year Course) in April next.

For the reasons recorded above, all the writ petitions are allowed with no order as to costs directing the respondents to regularize the admission of the petitioners in B.Ed. Correspondence Course and to declare their result as they have taken the final examination which is being held.”

Apart from the above fact, the petitioner has also placed on record Annexure P/1 issued by the University which would show that she had initially taken admission in the year 1988. Perusal of the same would go on to show that her registration number is mentioned as 88-CC-DL3280 and she had been advised to reconcile various documents by 15.07.1988. Annexure P-2 is an identity card issued on 12.05.1988 for the B.Ed. Correspondence course. A joint reading of the all documents would go on to show that basis of the order that petitioner was not a student in the year 1989 and had not brought on record the necessary information, is against the record. Rather the University being respondent in the abovesaid litigation had access to all the record.

Counsel for the petitioner has referred to the fact that on account of getting re-appear in the course 1989, she had appeared in the supplementary examination in May, 1990 and her result had been shown as Result Later Eligibility (RLE). Thereafter, it is not disputed that even a degree was issued to her on 01.07.1992 (Annexure P/6/A), and examination certificate on 18.02.1993 (Annexure P/7). The subsequent documents are also not disputed and cannot be, by the university as such.

However, the controversy arose mainly on account of the fact that two DMCs which were issued in her favour against Serial No.5117 against the same registration 88-CC-3280. Both the DMCs were of even date i.e. 18.12.1990 (Annexure P/6 and P/8). One DMC carried Sr.No. 5117 whereas other number is 5652. The employee namely Sudesh Kumar who

had prepared the DMC, was also proceeded against departmentally, In a preliminary inquiry conducted by Professor KPS Mahalwar, there was a admission by the employee that DMC with Serial No.5652 had been prepared by him and he had put his signatures on the backside of the DMC (Annexure P/9).

Initially, vide Annexure P/10, the District and Session Judge (Retd.) Shri Hari Ram had given adverse finding against the petitioner on the ground that the said serial numbers had also been issued to other two candidates namely, Ashu Ahuja and Ms. Rekha Rani and therefore, the DMC could not have been issued to the petitioner. At that point of time, neither the petitioner nor her father had produced the original DMC which was one of the reasons for the adverse finding recorded. Resultantly, the first impugned order dated 15.12.2008 had been passed. As noticed, there is no dispute that on the subsequent representation, the matter was re-looked into, and the subsequent inquiry report came in favour on 19.11.2009. It is also to be noticed that in the second inquiry, one Shri Rajesh Malhotra had appeared and admitted that he had prepared the DMC bearing Serial No. 5117 on the basis of the result-sheet which has been declared vide notification No.13 dated 18.02.1990. Similarly, one Kuldeep Singh, Clerk of the Engineering Cell had also appeared and given a statement on 12.11.2009 that he had checked the DMC bearing No.5652 and put his initial at the back of the DMC which had been issued to Ashu Ahuja. The employee who was dismissed from service, Suresh Clerk in his statement, had admitted that DMC bearing No.5652 was prepared by him and he had put his initial at the back of the DMC. In the cross-examination, he had

admitted that he did not know the petitioner personally, directly and indirectly.

It is also to be further noticed that as per Annexure P/22 which is equivalent to Annexure R-2 produced by the university which is a result-sheet, the name of the petitioner figures against the roll No.512122 and the detailed marks in her DMC which are depicted as 390 in different subjects are as per the result sheet. It is to be noticed that the petitioner had passed her said degree in 3rd division which was one of the relevant reasons to weigh with the inquiry officer also that if the degree had been prepared fraudulently, the petitioner would not have only opted for 3rd division, and would have preferred a 1st division, if a fraud was being carried out. The said reasoning does not suffer from any infirmity in the opinion of this Court.

The inquiry officer had noticed that page No.268 of the register has been torn off and in consultation with the result branch, the page has been reconstructed and the petitioner was not present therefore, the same could not be accepted. The record had not ever been properly maintained. It was also noticed that she had taken admission in the B.Ed. Course under the orders of this Court. It is further noticed that the original degree has also been produced. Resultantly, the benefit of doubt was to go to the petitioner and thus while passing the impugned order without issuing any notice as such, these facts have not been kept in consideration.

Counsel for the petitioner has been at pains to submit that the departmental proceedings against the concerned clerk has been initiated and in the inquiry report dated 04.11.2009, it has been noticed that DMC

bearing No. 5652 (Annexure P/8), and the result-sheet Annexure P-22, were accepted as Annexures A8 and A-4 in the said inquiry proceedings. Even the said inquiry officer came to the conclusion that marks of the DMC tallied with the entry in result-sheet against Roll No.152122 of the petitioner, and therefore, DMC could not have been issued to her against serial No.5117 when it has been issued against 5652.

Counsel for the petitioner also pointed out that from the cross-examination of PW-2 namely, Suraj Bhan, Superintendent in the departmental proceedings which had been initiated, who deposed that the B.Ed. Course was a distant course. As such the classification and grouping of Roll Nos. was reserved for different zones/States like of Punjab, of Rajashtan etc. and on that account, there had been a huge gap between Roll Nos.221801 to 222000. Reference had also been made to Exhibit A-13 by the said witness which is the photocopy of the result sheet of B.Ed. Examination May, 1989 and as per it, there is gap between two roll numbers.

Keeping in view the above discussion, this court is of the opinion that the finding that the record of 1989 was not present which led the Vice Chancellor to pass the impugned order, is without any justification as noticed. The petitioner had already approached this Court seeking protection against the disqualification. The registration number clearly shows that the petitioner was a student and therefore, it could not have been held that petitioner was not a student in the year 1989 which is the basic reason for discarding the DMC and the degree issued. As noticed, subsequent documents only substantiate that the petitioner was one of the

students of the respondent university and sufficient material has been placed on record why there is a gap in the roll numbers, which was one of the reasons which lead to the passing of the impugned order again.

Sufficient material also came on record in various enquiries to show that there was some record which had been torn due to which the petitioner's Roll Number could not be tallied. In such circumstances, all these facts have not been taken into consideration while passing the impugned order.

Accordingly, this Court is of the opinion that the impugned order is not justifiable and the same is liable to be quashed. This Court does not feel that it is appropriate to remit the matter for fresh consideration at this stage keeping in view the fact that the petitioner had already passed out in the year 1990, as it would give a fresh lease of life to the litigation and fresh round of litigation again would adversely affect the life of the petitioner.

Accordingly, the present writ petition is allowed.

[G.S. SANDHAWALIA]
JUDGE

06.12.2016
sd/naveen

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes