

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22365 of 2015

Decided on : 27.10.2016

Jasjeet Singh & others

... Petitioners

Versus

State of Panjab & others

... Respondents

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

Present : Mr.Nitin Kant Setia, Advocate, for the petitioners.

Mr.S.S.Chandumajra, Addl.A.G., Punjab.

Mr.Sarabjit Singh, Advocate, for respondent No.2.

Mr.S.S.Brar, Advocate, for respondent No.3.

G.S. Sandhawalia, J. (Oral)

The petitioners, who are nine in number, seek direction for acceptance of their examination forms for the General Nursing & Midwifery (GNM) 1st year and pray for being allowed to appear in the examinations held in October-November, 2015, for the 1st year of the said course.

It is pertinent to mention that no interim protection was granted to the petitioners when they approached this Court in October, 2015 and resultantly, they have not given the examinations, as prayed for. However, counsel for the petitioners submits that since they had taken admission in October, 2014, they would lose 2 academic years, if the writ petition is dismissed.

The pleaded case of the petitioners is that they are students of 1st year of GNM course with respondent No.3-Jeewan Jot Nursing Institute, Jagraon, situated in District Ludhiana. It is not disputed that the

said institute had permission to admit 40 students, as per the provisional permission granted for the GNM course for the session 2014-15 as per communication dated 10.07.2014 in which the present 9 petitioners claim to have taken admission. It is their case that admission fee was deposited by them with the said respondent-Institute between 16.08.2014 to 30.09.2014. It is not disputed that 40 forms have been received by the respondent No.2-Council on 12.11.2014 (Annexure R1) vide demand draft No.202895, from the respondent No.3-Institute. It is also their case that petitioner No.1 belong to the reserved category and he had applied for grant of scholarship on 01.08.2014 (Annexure P2) with the Punjab Government. The petitioners along with the other 30 students of their batch had been attending classes and were of the *bona fide* belief that they would be allowed to take admission in the next year's GNM course in October, 2015.

On account of the online system of uploading of the admission and the examination forms to be taken by the respondent-Council, the dispute has arisen as they had not been uploaded in the list by the respondent-Council (Annexure P3, equivalent to Annexure R2), in April, 2015. It has, accordingly, been pleaded that the students who are not candidates of the 1st year have also been shown in the list uploaded and there were other students who were never part of the said batch but had also been shown in the list. Reference is made to Annexure P4 to show that one Poonam Saini was student of 2nd year as her result had been declared on 17.09.2015 in the examination held in February, 2015.

On account of the uploading of the wrong names and the examination forms having not been accepted, the petitioners had approached this Court. It was further averred that as per the eligibility certificate issued by respondent No.3-Institute dated 30.09.2015 (Annexure P6), the petitioners have the requisite attendance and therefore, they had wrongly been denied the admit cards.

Respondent No.2, in its initial short reply, took the plea that against the sanctioned strength of 40 students, the list of students which had been added was as per list submitted by the above-said Institute along with the original record. The names of petitioners had not been uploaded as their admission forms were not available in the official record. The respondent-Institute had never approached respondent No.2 regarding issuance of roll numbers of the petitioners. In view of the reply, interim relief was denied on 21.10.2015.

Respondent No.3-Institute, thereafter, filed its reply supporting the writ petitioners that they were admitted in the batch of 2014-15 and were due to appear in the 1st year examination but could not appear on account of not having shown in the list of online students. It was submitted that the students shown at Sr.Nos.16, 20, 21, 22, 24, 28, 29 & 30, as per Annexure R2 (equivalent to Annexure P3) had only paid small portion of the fee and their names had been struck off. The petitioners had been admitted in place of the students mentioned above on 12.11.2014. The list of 40 students had been supplied, which inadvertently carried the names of the 8 students who had abandoned the

course along with one Poonam Saini, who was student of the 2nd year. The error had been noticed in October, 2015 and a representation had been given on 30.11.2014 (Annexure R3/1). The respondent-Council had ensured the respondent-Institute that necessary changes would be carried out but the same was not done. The list containing names of dropped out students and old students were uploaded on the portal. Reference was made to the representation dated 08.04.2015 and 17.06.2015 (Annexure R3/2) which are communications addressed to the respondent-Council, to show that the Institute had communicated regarding the mistake which had occurred. The lists of students of the Institute reflecting the names of Jaideep, Pooja and Sunita were attached as Annexure R3/3, to show that they had been studying in the respondent-Institute but had actually taken admission in the other colleges. The petitioners were regularly studying and attendance register and the practical training fee were also attached as Annexures R3/4 & R3/5, respectively, in response.

In the detailed reply filed by respondent No.2, the plea taken was that the Institute had the sanctioned strength of 40 students and the admissions started on 15.11.2014 and the last date of receipt of the admission forms was 30.11.2014. The admission forms of 40 students which had been submitted, had been duly displayed on 30.04.2015. More admissions had been made in the GNM 1st year course but the Council had never been informed of those students and there was no record available and accordingly, the roll numbers had not been issued to those students. The Institute had obtained the roll numbers of 33 students out

of 40 students admitted, which were shown on the website (Annexure R4). The admissions might have been made after 30.11.2014 and therefore, Council had not been able to accept the admissions made after the cut-off date. The admission forms of Poonam Saini was also submitted by the Institute and the same was available with the original record. Therefore, roll numbers were not liable to be issued to the students. The online system was adopted to remove the deficiencies and it was introduced for the first time in 2013-14 and was running successfully, thereafter.

Vide order dated 20.05.2016, it was directed that a fact finding enquiry would be conducted by the respondent-Council and the report be submitted. The relevant material to prove that the petitioners had taken admission in the month of October, 2014 and attended the theory and practical classes, were directed to be made available to be examined. Resultantly, a detailed report dated 14.07.2016 had been submitted by the respondent-Council, through its Registrar. The same has been objected to by counsel for the petitioners and the respondent-Institute.

Counsel for the petitioners has, thus, tried to persuade this Court that the petitioners had been duly admitted and the mistake was on the part of the Institute.

Mr.Brar, appearing for the respondent-Institute has also supported the petitioners, as also done in the pleadings.

The same had been vehemently opposed by Mr.Sarbjit

Singh, counsel for the respondent-Council, on the ground that the respondent-Institute is only supporting the case in order to avoid further complications at the hands of the petitioners who were given admission after the cut-off date, under the assurance that their admissions would be regularized. Reference was also made to the earlier writ petition, viz., CWP-24007-2014, which was decided on 04.08.2015 and the writ petition had been dismissed inspite of an interim order having been passed in favour of the students of the 2013 batch, on the ground that the students had been admitted by the respondent-Council but the examination fee had never been deposited. It is pertinent to mention that the LPA-1287-2015, filed against the said order on the ground that the examination fee had been duly deposited, has been allowed on 16.09.2015. It was, accordingly, noticed that the result would be declared in pursuance of the interim order dated 23.12.2014.

It has, accordingly, been contended by counsel for respondent No.2 that even thereafter, another writ was filed by the same Institute, through its Trust, to take benefit of another 22 students, in view of the orders passed in the LPA. The writ petition was dismissed by this Court by noting that nothing had been brought to the notice of the Learned Single Judge or before the Division Bench that there were 22 similarly situated students who had taken re-admission, though the Trust was before this Court, through the Institution. The following observations were made on 21.07.2016 in CWP-22695-2015 titled *Baba Nand Singh Ji Memorial Trust (Regd.) Vs. State of Punjab & another*:

“As noticed neither this fact had pointed out during the period of 7 months when the litigation was pending before this Court nor any communication in this regard was made with the respondent-council. Counsel for the petitioner has vehemently referred to the photocopies of the attendance registers to submit that the students were readmitted and they were attending the classes. The said photocopies of the attendance registers also do not inspire any confidence. A perusal of the said photocopies of the attendance registers would go on to show that names of these 22 students have been mentioned at the bottom after the names of sanctioned strength of 40 students and their names are not even spread out amongst the other 40 students. Thus chances of tampering with the attendance register cannot be ruled out by the petitioner in order to get favourable decision. The only conclusion this Court can draw against the institute is adverse that these 22 students were never admitted in January, 2015 and the plea taken is apparently without any basis and misconceived on the face of it.

The petitioner institute is a teaching institute and is expected to conduct itself professionally for the benefit of the students and not to make it a commercial shop to extract the fees from the students and allure them on the promise of the degree without classes being attended. The students are being taught in the career of nursing inspired by legendary figure of Florence Nightingale but unfortunately the said principles do not seem to be applying to the institute.

Accordingly, the present writ petition is dismissed. It will be open to the said 22 students to seek refund of fee which they have deposited with the institute along with compensation in the facts and circumstances of the case.”

It is, accordingly, submitted that no reliance can be placed upon the self-serving communications addressed by the respondent-Institute. Reliance is also placed, accordingly, upon the enquiry report and the documents, namely, the attendance register of November and

December, to show that the petitioners had never been adjusted as new admission by the Institute and the attendance only started from 02.12.2014 (page 317). It was further pointed out that some of the students are from places outside the State and some were from Delhi and therefore, they had only been adjusted against the students who had left the course, after the cut-off date, on account of the fact that the admission fee had been duly deposited for the 40 students.

It is also to be noticed that even for petitioner No.1, though he claims that he had applied for scholarship on 01.08.2014 (Annexure P2) with the Punjab Government, the receipt (Annexure P3) shows that the fee had been received on 28.10.2014. The question of attending the classes from 08.10.2014, in such circumstances, would not arise, if he had deposited the fee 20 days later. As per the admission register maintained, the admission of 48 students had been shown against the institutes sanctioned strength of 40 seats only and after Sr.No. 41, new admission had been shown. These discrepancies only go on to show that the conclusion which had been arrived at in the fact finding enquiry are well justified.

It is well settled that once disputed questions of fact arise, the writ Court will not indulge in the same and on the basis of the affidavits, grant the benefit. The conduct of the institute has also been noticed in the earlier set of litigation. The effort to utilize the 40 seats is apparent from the record as would be clear from the fact finding enquiry. The name of students, at one point of time, is at Sr.Nos.40 to 62 and an

effort was also made to regularize those students by way of earlier writ petition. The enquiry report shows that the register is maintained by one person and filled in by one pen and not duly signed by the teachers.

There is a dispute whether the students had been attending classes or not before the cut-off date. Rather a perusal of the record goes on to show that if the admission had been made before the cut-off date on 30.11.2014, their names would have been reflected in the attendance register of November and not from the month of December. Counsel for respondent No.2 has also pointed out that the 40 applications which had been submitted by the Principal of the institute had been duly uploaded. Even the attendance register which shows the petitioners' attendance (Annexure R3/4) for the month of November, would go on to show that some of the petitioners only figured at the bottom, at Sr.No.35 to 40, which is in contradiction to the register which has been produced in the enquiry proceedings, which has now been appended as Annexure R5.

Accordingly, in view of the above discussions, finding no merit in the present writ petition, the same is, hereby, dismissed.

OCTOBER 27th, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No