

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

Civil Writ Petition No.22695 of 2015

Date of decision: 21.7.2016

Baba Nand Singh Ji Memorial Trust (Regd.)

...Petitioner

Versus

State of Punjab and another

...Respondents

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

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

Ms. Lavanya Paul, Assistant Advocate General, Punjab

Mr. Sarabjit Singh, Advocate for respondents no.2

G.S.SANDHAWALIA, J. (Oral)

The present petition seeks direction for acceptance of examination forms of 22 students as mentioned in Annexure P/2 (colly) and to allow the students to appear in the examinations to be held in October-November, 2015 for Ist year of GNM course which is admittedly a 3-1/2 year course.

The case of the petitioner-Trust is that in June, 2010 the Indian Nursing Council had given permission for making admissions for the academic year 2010-11. In pursuance of the same as per sanctioned strength 40 students were admitted as per list dated 19.10.2010 (Annexure P/2-Colly). The prayer made is for 22 students, names thereof are given at page 22 onwards. It is not disputed that 18 students have already been granted the benefit of taking the said examination in LPA No.1287 of 2015 decided on 16.9.2015 (Annexure P/9).

The present writ petition is filed by Baba Nand Singh Ji

Memorial Trust on behalf of the Jeewan Jot Nursing Institute which is running the course in question.

The case of the petitioner is that NOC granted to the Jeewan Jot Nursing Institute was cancelled by the State Government on 13.7.2010 which was challenged by the Institute itself by filing Civil Writ Petition No.12824 of 2010 and the same was allowed on 19.10.2011(Annexure P/3). A direction was issued to the respondent therein to consider the report of the inspection team and in case deficiencies pointed out by the Punjab Nursing Registration Counsel (PNRC) had been removed, the petitioner-institute would be permitted to admit students in accordance with the Government policy. The students earlier admitted were also to be reverted to it if the NOC was restored. Vide order dated 22.3.2012 (Annexure P/4) passed in Civil Misc. Application No.17580 of 2011, it was clarified that the students who were earlier admitted were at liberty to seek readmission in the petitioner-institute and institutes could not force any of the students to continue with their studies. In the meantime, the State Government on 14.11.2011 (Annexure P/5) had restored the NOC.

On account of the students who were readmitted in pursuance of earlier orders (Annexures P/3 and P/4) passed by this Court, the petitioner institute approached this Court by filing Civil Writ Petition No.24007 of 2014 that the readmitted students were not being permitted to take examination in January, 2015. Resultantly, interim order dated 23.12.2014 (Annexure P/6) was passed while noticing that there were 18 students who were more than the sanctioned strength of 40 students and they could not be clubbed with intake of the subsequent years. Thus, it is apparent that dispute was only regarding 18 students who were readmitted at that point of

time.

The writ petition was dismissed vide order dated 4.8.2015 (Annexure P/7) on account of the fact that there was nothing to show that the examination fee had been deposited as per interim order. Thereafter, review application was dismissed on 21.8.2015 (Annexure P/8). The institute thereafter filed LPA No.1287 of 2015 which was allowed on 16.9.2015 (Annexure P/9) on the ground that counsel for the PNRC made a concession that examination fee had been deposited on 26.12.2014 and therefore, the fact not being brought to the notice of learned Single Judge, it was directed that result of 18 students for the Ist year GNM Course shall be declared. The present writ petition was thereafter filed in this Court by the petitioner-Trust on 19.10.2015 wherein the plea has been taken in paragraph 12 of the petition that out of the batch of 40 students once the benefit had been granted to 18 students, remaining 22 students had also come back to rejoin the course which they had to abandon due to earlier circumstances. No interim relief was granted thereafter.

Counsel for the petitioner has taken a plea that remaining 22 students have rejoined the institute in January, 2014 and the Indian Nursing Council during periodic inspection had found that they were studying in the institute. Accordingly, plea taken is that they cannot be treated and clubbed with the sanctioned permissible strength and denied permission to sit in the examinations on this ground.

Short reply has been filed by respondent no.2-PNRC. The plea taken is that the earlier dispute was regarding 18 students only and there was no mention regarding these 22 students. The earlier writ petition was filed

by the Jeewan Jot Nursing Institute and the present writ petition has been filed by the Baba Nand Singh Ji Memorial Trust. Respondent-council has no record of these 22 students and therefore, they could not be allowed to sit in the examination.

Replication has been filed alleging that these 22 students had been attending classes of Ist year GNM Course since January, 2015 and they had even completed their practical training and are eligible for sitting in the examination. The photocopies of the attendance registers have been appended as proof in support of the said claim (Annexure P/12). Thus, it is apparent that benefit is sought in view of the fact that there was a decision in favour of the institute on an earlier occasion and the Division Bench on 16.9.2015 (Annexure P/9) had allowed the appeal and ordered for declaration of result of examination which had been taken by the students in view of interim order dated 23.12.2014 (Annexure P/6). It is not disputed that the said writ petition remained pending before this Court for almost 7 months. At that point of time nothing was brought to the notice either before the Single Judge or before the Division Bench that there were 22 more similarly situated students who had taken readmission though the petitioner trust was here before this Court through its institute.

As noticed immediately after the decision of LPA No.1287 of 2015 on 16.9.2015, the present writ petition came to be filed within a period of about one month taking the plea that remaining 22 students have been studying since January, 2015 and therefore similar orders have been prayed for. The respondent-council is well justified in holding out that they had no record of the said students who allegedly took readmission in January, 2015.

Neither anything has been placed on record by the petitioner-Trust to show that any correspondence was addressed to the respondent-council bringing to its notice that they had readmitted 22 students in pursuance of the relief granted earlier by this Court on 19.10.2011 (Annexure P/3) and subsequently clarified on 22.3.2012 (Annexure P/4). If the admissions had been made, the petitioner institute would have necessarily corresponded with the affiliating body that the students were readmitted and attending classes and needed to be protected. The absence of any communication on this aspect obviously leads to a conclusion that thereafter an effort has been made to get the orders on behalf of those 22 students only on account of the fact that a similar petition had been decided in favour of the students.

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.

July 21, 2016
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(G.S.SANDHAWALIA)
Judge