

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

Date of Decision : 13.11.2017

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CWP No.9346 of 2007 (O&M)

Dr. Samrity Paul and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

COCP No.584 of 2008 (O&M)

Dr. Gagandeep Kaur and others

..... Petitioners

Versus

Dr. R.L.Jain, Principal and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Amit Jain, Advocate
for the petitioners.

Mr. H.S.Sitta, Asstt. Advocate General, Punjab.

Mr. Munish Kumar Singla, Advocate
for respondent No.4.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two petitions.

The petitioners in CWP No.9346 of 2007 took admission in
Master of Dental Surgery (MDS) course in the academic session 2006-2007.

There were two disputes; one the amount of fees which can be charged by
the respondent No.4-Guru Nanak Dev Dental College and Research

Institute, Sunam (in CWP No.9346 of 2007) and, second the entitlement of the petitioners for receipt of stipend.

It is admitted that the fees have to be specified by the respondent No.1-State of Punjab. Section 7 of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 as it stood on the relevant date (for short 'the Act') lists out the various factors which have to be kept in mind while fixing the fees and further stipulates that hearing has to be given to the affected persons. It also lays down that before the final fees is fixed the respondent may fix provisional fees. It is the case of the petitioners that by notification (Annexure P-2) the provisional fees for MDS courses was fixed at Rs.1.50 lacs but when the petitioners went to actually take admission in the fresh graduates quota of 40%, the respondent No.4 refused to grant them admission till they paid a sum of Rs.2.60 lacs. At that point of time under the pressure of respondent No.4 the amount was paid (It may be mentioned here that subsequently by an interim order the petitioners have given bank guarantee for the disputed amount of Rs.2.20 lacs for the subsequent years which is still alive). As per the petitioners since they were admitted in the 40% fresh graduate quota they were also entitled to stipend.

The case of the respondent No.4 on the other hand is that infact the notification (Annexure P-2) was superseded by the notification (Annexure P-4). It has further been pointed out that the stipend is to be paid only by Government institutions to the 40% students who are admitted in the fresh graduate quota (It may be specified here that no replication was filed by the petitioners).

The argument of counsel for the petitioners is that as regards the fees structure sub Section 3 of Section 7 of the Act is as follows :-

“(3) Notwithstanding anything contained in sub section (1) and (2), the State Government may in public interest, determine a provisional fee;

Provided that the State Government shall fix in accordance with the provisions of sub-Section (1) and sub-Section (2) within a period of ninety days from the fixation of such provisional fee.”

The argument raised is that a notification fixing provisional fees can be replaced only by a notification fixing final fees and Annexure P-4 can not be taken to be a final notification because the relevant factors which were specified in sub Section (1) and sub Section (2) of Section 7 of the Act have not been complied with. As per the learned counsel for the petitioners the notification (Annexure P-4) can not determine the fees which has to be paid by the petitioners.

Learned counsel for respondent No.4 and the learned Assistant Advocate General are not in a position to show how the notification (Annexure P-4) could have been issued without following the requirements of sub Section (1) and sub Section (2) of Section (7) of the Act. They then fell back on the alternative argument that notification (Annexure P-4) was also a notification which fixed the provisional fees. Learned counsel for the petitioners has then argued that firstly there is no power to replace a notification fixing provisional fees with another notification fixing provisional fees and, in any case the actual fee which has to be paid by the petitioners can only be as per the final notification and in the absence thereof Annexure P-2 will prevail.

In my considered opinion, the stand taken by both the sides is too extreme. It can not be denied that the Act does not envisage a second provisional notification. Equally it can not be said that if a final notification is not issued within 90 days then the provisional fees would become the final fee because that would end up giving completely uncanalized power to the State since provisional notifications could be issued and then allowed to become final by the simple expedient of not issuing a final notification on the ground that as per the proviso sub Section 3 of Section 7 a final notification could only be issued within 90 days of the issuance of the provisional notification.

Resultantly, it has to be held that the State Government has acted illegally in not issuing a final notification. In the circumstances of the present case the only fair and just option would be to now direct the State Government to fix the final fees in accordance with the Act (for the session 2006-2007). Let the necessary order be now passed within 90 days of the receipt of certified copy of this order, failing which, it would become the responsibility of the State Government to pay the entire disputed amount to the respondent No.4-College.

As regards the second prayer of claim of stipend, it has to be held that the scheme of stipend is only for Government institution since in its reply the respondent No.4 has quoted chapter and verse from the notification and no replication has been filed thereto to show that infact private colleges also have to pay any stipend to their students.

Writ petition stands disposed of.

COCP No.584 of 2008 has been filed under Sections 11 and 12

their willful disobedience to the orders dated 12.06.2007 passed by this Court in CWP No.9346 of 2007 and for punishing the respondents.

The contempt petition has been filed on the ground that in an attempt to browbeat and force the petitioners into paying the fees the respondents forced the petitioners to vacate the hostels. In reply the stand taken is that in any case the provisional fee is only for the academic purposes and does not include hostel and mess charges and the action of asking the petitioners to vacate the hostel was taken only because they obdurately refused to pay anything over and above Rs.1.50 lacs on the ground that that was the total fees they had to pay in accordance with P-2.

Learned counsel for the petitioner has argued that in the notice issued to the petitioners the respondents had nowhere claimed that the amount which was being sought was on account of hostel fees but it was claimed on the ground that the petitioners had refused to pay the extra Rs.1.10 lacs.

In my opinion, again there is some merit in the arguments of both the sides. Even though on the one hand notice to vacate may have been given for the non-payment of Rs.1.10 lacs, on the other hand, it can not be held that the fees which has to be determined under the Act would include hostel and other charges also. Today it has been argued that after the bank guarantee was given this matter was resolved and the petitioners continued to study and have passed their courses. It is also been stated that the alleged contemner has offered an unconditional apology for any mistake which he may have committed and he has since retired as Principal more than a decade ago.

In the totality of circumstances, I do not deem it appropriate to take any further action in the contempt.

Contempt petition also stands disposed of.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

13.11.2017
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No