

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

CM-12368-2017 in/and
CWP-18929-2017
Date of Decision : 05.09.2017

Raminderveer Kaur and others

..... Petitioners

Versus

Baba Farid University of Health Science, Faridkot and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Vivek Sethi, Advocate
for the non-applicant-petitioners.

Mr. K.S. Dadwal, Advocate
for non-applicant-respondent No.1.

Mr. Piyush Aggarwal, Advocate
for the applicant-respondent No.2.

Mr. S.B. Kaushik, Advocate
for respondent No.3.

AJAY TEWARI, J. (Oral)

This writ petition relates to the right of the petitioners to take the examination of the B.Sc. (Nuring) 3rd year run by the respondent No.1. The petitioners took admission in this course in the respondent No.2-College in the year 2014 and in normal course would have taken their third and final year examination which is scheduled to be starting today. The petitioners have had a chequered career. They failed in certain subjects in

the Ist year examination which was held in May-June, 2015 but were permitted to take admission in the IInd year. They took the supplementary examination in December, 2015 for the subjects in which they remained unsuccessful in the Ist year but unfortunately again they failed to clear the said examination. Thereafter they were sought to be stopped from taking the IInd year examination which was to commence in the month of August, 2016. They filed a writ petition bearing CWP No.17474 of 2016 on 05.08.2016 praying for a direction to the respondents to take the IInd year examination. That writ petition was dismissed on 27.08.2016 and with the dismissal of that writ petition the petitioners irrevocably lost the opportunity to take IInd year examination which had taken place in the month of August-September, 2016. On 21.12.2016 the petitioners filed a review application bearing RA No.429 of 2016 in CWP No.17474 of 2016. By order dated 08.02.2017 the review application was allowed and, the order dismissing the writ petition (dated 27.08.2016) was recalled and the petitioners were permitted to provisionally take the IInd year supplementary examination which commenced in the month of February-March, 2017. They took that examination and the result thereof has still not been declared because that writ petition is pending and is now fixed for 24.10.2017.

The present writ petition was filed on 22.08.2017, again in the very nick of time. It was prayed that the petitioners be permitted to take the IIIrd year examinations (which were earlier scheduled for 01.09.2017 & were postponed to today i.e. 05.09.2017). The present petition came up for hearing on 23.08.2017 and, in view of the urgency in the matter notice was issued for the very next day i.e. 24.08.2017. On that date a short reply on

behalf of respondent No.1 was filed denying that the petitioners had the right to pursue their studies in the IIIrd year. The petitioners then filed an application bearing CM No.12044 of 2017 in which the following order was passed on 29.08.2017:-

“This is an application for preponing the hearing of the main case. The issue in this case is related to the right to take the examination. When the petition came up for hearing on 23.08.2017 it was informed to this Court that the exams were scheduled to be started from 25.08.2017 and that is why notice of motion was issued for 24.08.2017. On 24.08.2017 the reply was filed by the respondent No.1 and the counsel for the respondent No.1 informed the Court that there was no extreme urgency in the matter since the exams had been postponed and consequently on this statement the case was directed to be listed on 01.09.2017 alongwith another writ petition bearing CWP No.18367 of 2017. Now this application for preponement has been filed by the applicants-petitioners whereby it has been mentioned that on that very date i.e. 24.08.2017 a revised date-sheet was issued as per which the exams were to start on 01.09.2017.

In this age of instant communication I fail to understand why the respondent No.1 could not inform its counsel in this Court that the exams have been postponed to 01.09.2017.

Keeping in view the entire conspectus of facts, I deem it appropriate to permit the applicants-petitioners to provisionally take the examination. Ordered accordingly.

Application stands disposed of.”

Yesterday the respondent No.2 filed another application bearing CM No.12368 of 2017 in which it was brought out that the examinations were postponed to 05.09.2017 and apart from the merits of the

case another seminal fact is that the petitioners can not be permitted to take

the IIIrd year examination because they took admission in the IIIrd year only in the month of March, 2017 (after they were permitted to provisionally take the IInd year examination) and have not been able to complete 80% mandatory attendance so as to be entitled to take the examination. Since the counsel for the petitioners was not present the matter has been listed for today.

Notice of the application bearing C.M No.12368 of 2017.

Mr. Vivek Sethi, Advocate has accepted notice on behalf of the petitioners and has filed a reply. The said reply is taken on record.

In the reply it has been alleged that the Principal of the respondent No.2-College permitted the petitioners to attend the IIIrd year classes from November, 2016 to January, 2017 and also that the petitioners have regularly attended the classes from March, 2017 till the end of the IIIrd year academic session i.e. till a few days ago and that in the summer vacations the petitioners got their practical training in some Government/Private Hospitals.

Counsel for the respondent No.2-College states that the first assertion that the petitioners attended the IIIrd year classes from November 2016 to January 2017 is ex-facie wrong since at that stage they had been barred from even taking the IInd year examination and even the writ petition filed by them had been dismissed. In those circumstances, neither was there any occasion nor the respondent No.2 could legally permit them to attend the IIIrd year classes.

In my opinion, this argument cannot be brushed aside. It is trite to say that to successfully complete any course of education it is equally

important to pass the examinations as to attend the requisite number of teaching hours. There is also no explanation why the petitioners chose to file this writ petition one week before the starting of exams and why they could not agitate this earlier. In any case, the counsel for the respondents No.1 and 2 have pointed out that they can finish the course of study and take the exam in February, 2018 if the previous petition bearing CWP No.17474 of 2016 is allowed.

In the totality of circumstances, the writ petition is dismissed. The order dated 29.08.2017 permitting the petitioners to provisionally take the IIIrd year examination is recalled.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

September 05, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No