

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2865 of 2018**

- Aabha Mishra, D/o Shri Chaturbhuj Mishra, aged about 20 years, R/o H-1/53, Kiran Kunj, Behind Bellezza saloon, Narmada Nagar, District Bilaspur (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Higher Education Department, Mantralaya, Mahanadi Bhawan, Raipur, District Raipur (CG)
2. Chhattisgarh Swami Vivekanand Technical University, Bhilai, through the Vice Chancellor, Chhattisgarh Swami Vivekanand Technical University, Bhilai, North Park Avenue, Sector-8, Bhilai, District Durg (CG)
3. The Registrar, Chhattisgarh Swami Vivekanand Technical University, Bhilai, North Park Avenue, Sector-8, Bhilai, District Durg (CG)
4. Government Engineering College, Bilaspur, through the Principal, Government Engineering College, District Bilaspur (CG)

---- Respondent

For Petitioner : Shri Chandresh Shrivastava, Advocate.
 For Respondent/State : Smt. Astha Shukla, Panel Lawyer.
 For Respondents 2 & 3 : Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****05/12/2018 :**

1. The petitioner was admitted in the BE Course in the respondent No.4 college in the year 2016. The petitioner passed her first semester examination in November-December, 2016, but could not appear in the 2nd semester examination in April-May, 2017 owing to some difficulty. However, the petitioner was allowed to appear in the 3rd semester examination on the strength of the subject Ordinance No.14, Clause-3 thereof relating to examinations despite the amended Ordinance being operative at that point of time. The petitioner has already cleared 3rd semester examination and

has also appeared in the 2nd semester examination held in August, 2018. After the Ordinance No.14, clause-3 suffered amendment with effect from 5.4.2017, the impugned order has been passed denying admission to the petitioner in the 5th semester examination and cancelling 3rd semester examination directing her to appear in the 3rd semester examination once again as a regular student.

2. Assailing the order, it is argued that at the time when the petitioner was admitted to the Course, the subject Ordinance made it permissible for the petitioner and the like candidates to take admission and appear in the examination in the manner indicated in para-3.4.1 (a) and 3.4.1 (b), therefore, the said scheme of examination applicable to the petitioner cannot be changed to her detriment because subsequent amendment in the Ordinance can only be prospective and not retrospective.
3. Learned counsel for the University would submit that the subject course is of 4 years, therefore, in either condition, the petitioner has to complete the course in 4 years. If the petitioner saves 6 months time for the present, at the stage of final semester examination, she will have to wait for 6 months to write the said examination even under the unamended Ordinance. Therefore, in the ultimate analysis, the petitioner would not be adversely affected while securing BE Degree.
4. The issue as to whether or not the petitioner would be benefited for the present or would be benefited at the end of final semester examination on the strength of unamended Ordinance would not drive the present discussion for the reason that in the impugned order, the petitioner's 3rd semester examination has been cancelled even though she has cleared the said examination. A candidate who has passed a particular examination under the scheme of examination prevalent at that point of time cannot be compelled to write the same examination again on the basis of some

amendment made in the Ordinance subsequent to the examination. Clauses 3.4.1(a) and 3.4.1(b) of the unamended Ordinance entitle a candidate to appear in the odd or even examination depending upon the group in which he has taken admission, therefore, if the said Ordinance works in favour of the petitioner and against the University qua the impugned order, the same cannot be allowed to stand against the petitioner merely because it is permissible under the amended Ordinance.

5. In the matters of **Vikas Bhaskar Vs. University of Delhi and Another** {WPC No.1944/2018 & other connected matters, decided on 11.5.2018} and **Nainaram Vs. Board of Secondary Education** reported in **2016 (2) MPLJ 410**, the Delhi High Court and the M.P. High Court have held that a law or amendment thereto including amendment of Ordinance cannot operate retrospectively so as to divest a person of his/her vested legal rights.
6. Undoubtedly, at the time the petitioner secured admission in the said Course, the whole BE Course was controlled by Clause-3 of Ordinance No.14 (Annexure-P/4) under which the petitioner appeared in the 3rd semester examination and is entitled to appear in the 5th semester examination. Therefore, the said right of the petitioner cannot be taken away in view of the new Ordinance which would apply to the students who have taken admission in the BE Course on or after 5.4.2017.
7. For the foregoing, the Writ Petition is allowed and the impugned order is set aside. The petitioner shall be allowed to appear in the semester examinations of her BE Course in accordance with the Pre-Amended Ordinance. The University shall act accordingly.

Sd/-
Judge
 (Prashant Kumar Mishra)

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