

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.4134 of 2018

ORDER:

In the present writ petition, the order of detention dated 25.11.2017, passed by the respondent University and the consequential action of the respondent University in not permitting the petitioners to attend the next higher class is under challenge.

2. Heard Sri Pratap Narayan Sanghi, learned counsel for the petitioners and Sri P.B.Vijaykumar, learned Standing Counsel for the respondent University.

3. According to the petitioners, they are the students of Law, prosecuting their studies in the respondent University. Admittedly, petitioners herein could not clear certain papers either in the 2nd year or in the 3rd year. Precisely, on the said ground they have been detained by the respondent University by way of the orders under challenge.

4. According to the learned counsel for the petitioners, the impugned action is highly illegal, arbitrary, unreasonable and discriminatory and is violative of Article 14 of the Constitution of India. In elaboration, it is submitted by the learned counsel, reiterating the averments in the writ affidavit, that 35 students who failed in first semester examinations were given promotion to the 3rd year by the University. It is also submitted by the learned counsel that the respondent University in deviation to the examination Rules passed resolution on 02.11.2017, resolving to promote the students to next semesters who have one backlog and giving exemption to the pass in English paper. According to the learned counsel, the said action on the part of the respondents tantamounts to creating the sub-class in the

same set of students, which according to the petitioners' counsel is unconstitutional and discriminatory.

In support of his submissions and contentions, learned counsel for the petitioners places reliance on the judgments of the Hon'ble Apex Court in *BHARTIYA SEVA SAMAJ TRUST TR. PRES. AND ANR v. YOGESHBHAI AMBALAL PATEL AND ANR*¹ and *STATE OF PUNJAB AND ORS v. SENIOR VOCATIONAL STAFF MASTERS ASSOCIATION AND ORS*².

5. Per contra, it is contended by the learned Standing Counsel for the respondent university Sri P.B.Vijay Kumar, that the relief, as claimed in the writ petition, cannot be granted and in reality there is no discrimination on the part of the respondent university, offending Article 14 of the Constitution of India. It is further contended by the learned Standing counsel that the petitioners herein cannot claim any relief contrary to the examination Rules nor they can allege any discrimination by quoting the resolution dated 02.11.2017 of the University. It is further contended by the learned counsel that there are no *mala fides* attributed to the respondents.

In support of his submissions and contentions, learned Standing Counsel places reliance on the judgment of the Hon'ble Apex Court in *MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION v. PARITOSH BHUPESHKUMAR SHETH*³, judgment of the Gujarat High Court, dated 22.02.2013 passed in *LETTERS PATENT APPEAL No.1488 of 2012* and the judgment of the Delhi High Court in *S.N.SINGH v. UNION OF INDIA (UoI) AND ORS*⁴.

¹ AIR 2012 SC 3285

² AIR 2017 SC 4072

³ (1984) 4 SCC 27

⁴ 106 (2003) DLT 329

6. In order to resolve the issue on hand, it may be appropriate to refer to the examination Rules framed by the respondent University. Rule 2 of the said Rules is relevant for the purpose of adjudicating the issue in the present writ petition. Rule 2 deals with the Promotion Scheme for the Five Year B.A., LL.B (Hons) Programme. Rule 2.2.1 stipulates that students shall be promoted to the third year only after he/she clears all the subjects offered in the first year and Rule 2.2.2 stipulates that the student shall be promoted to the fourth year only after he/she clears all the subjects offered in the second year and according to Rule 2.2.3 student shall be promoted to fifth year only after he/she clears all the subjects offered in the third year. According to Rule 2.3, if a student fails to clear as per Rule (2.2), he/she shall not be promoted to the next year and he/she shall repeat the year after seeking re-admission to the same class, on payment of the yearly fees according to the fees structure of the year.

7. In the instant case, obviously in deviation to the said Rules, University passed the resolution on 02.11.2017, giving exemption for one paper and complete exemption for English paper. According to the learned counsel, the said resolution would give benefit only to a certain group of people and the same would tantamount to creating a sub-division in a class, as such, the petitioners herein shall also be permitted.

8. On the other hand, it is contended vehemently by the learned Standing Counsel for the respondent University that even assuming that such action is illegal and impermissible, the same cannot be sought in perpetuity and that there is no perpetuity in illegality and Mandamus to the said effect cannot be issued by this Court under Article 226 of the Constitution of India.

9. Admittedly, the examination Rules as mentioned *supra* are not under challenge and obviously the only contention of the petitioners is discrimination in treatment.

10. In *BHARTIYA SEVA SAMAJ TRUST TR. PRES. AND ANR (supra 1)*, the Hon'ble Apex Court at paragraphs 21 to 23, held as under:

"21. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim 'allegans suam turpitudinem non est audiendus'. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong. (Vide: *G. S. Lamba & Ors. v. Union of India & Ors.*, AIR 1985 SC 1019; *Narender Chadha & Ors. v. Union of India & Ors.*, AIR 1986 SC 638; *Molly Joseph @ Nish v. George Sebastian @ Joy*, AIR 1997 SC 109; *Jose v. Alice & Anr.*, (1996) 6 SCC 342; and *T. Srinivasan v. T. Varalakshmi (Mrs.)*, AIR 1999 SC 595).

This concept is also explained by the legal maxims 'Commodum ex injuria sua nemo habere debet'; and 'nullus commodum capere potest de injuria sua propria'. (See also: *Eureka Forbes Ltd. v. Allahabad Bank & Ors.*, (2010) 6 SCC 193; and *Inderjit Singh Grewal v. State of Punjab & Anr.*, (2011) 12 SCC 588).

22. Thus, it is evident that the appellant has acted with malice alongwith respondent and held that it was not merely a case of discrimination rather it is a clear case of victimisation of respondent No.1 by School Management for raising his voice against exploitation.

23. After going through the material on record and considering the submissions made by learned counsel for the appellant and the respondent No.1-in-person, we do not find any cogent reason whatsoever to interfere with the aforesaid findings of fact."

11. In the said case an advertisement was given for filling up the vacancies of the teachers in the school run by the appellant therein. By adopting a discriminatory treatment, the respondent No.1 therein was removed from service while continuing the persons who were holding the

similar qualifications. In those circumstances, the Hon'ble Apex Court deprecated the impugned action as discriminatory. In the instant case, in the considered opinion of this Court, the said contingency does not exist.

12. In *STATE OF PUNJAB AND ORS (supra 2)*, the Hon'ble Apex Court, at paragraphs 14, 17 and 18, held as follows:

"14) It is a cardinal principle of law that government has to abide by rule of law and uphold the values and principles of the Constitution. Respondents herein alleged that creating an artificial distinction between the persons in the same cadre would amount to violation of Article 14 i.e. equality before law and hence, such an act cannot be sustained. The doctrine of equality is a dynamic and evolving concept having many dimensions. Articles 14-18 of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination which lacks the object of achieving equality, in matters of employment. It is well settled that though Article 14 forbids class legislation but it does not forbid reasonable classification. When any rule of statutory provision providing classification is assailed on the ground that it is contrary to Article 14, its validity can be sustained if it satisfies two tests, namely, that the classification was to be based on an intelligible differentia which distinguishes persons or things grouped together from the others left out of the group, and the differentia in question must have a reasonable nexus to object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the Statute or the Rule.

17) The principle of equality, is also fundamental in formulation of any policy by the State and the glimpse of the same can be found in Articles 38, 39, 39A, 43 and 46 embodied in Part IV of the Constitution of India. These Articles of the Constitution of India mandate that the State is under a constitutional obligation to assure a social order providing justice- social, economic and political, by inter alia, minimizing monetary inequalities, and by securing the right to adequate means of livelihood and by providing for adequate wages so as to ensure, an appropriate

standard of life, and by promoting economic interests of the weaker sections. Meaning thereby, if the State is giving some economic benefits to one class while denying the same to other then the onus of justifying the same lies on the State specially in the circumstances when both the classes or group of persons were treated as same in the past by the State. Since Vocational Masters had been drawing same salary as Vocational Lecturers were drawing before the application of 4th pay commission, any attempt to curtail their salary and allowances would amount to arbitrariness which cannot be sustained in the eyes of law if no reasonable justification is offered for the same.

18) We are conscious of the fact that a differential scale on the basis of educational qualifications and the nature of duties is permissible. However, it is equally clear to us that if two categories of employees are treated as equal initially, they should continue to be so treated unless a different treatment is justified by some cogent reasons. In a case where the nature of duties is drastically altered, a differential scale of pay may be justified. Similarly, if a higher qualification is prescribed for a particular post, a higher scale of pay may be granted. However, if the basic qualifications and the job requirements continued to be identical as they were initially laid down, then the Court shall be reluctant to accept the action of the authority in according a differential treatment unless some good reasons are disclosed. Thus, the decisions relied upon by learned senior counsel are clearly distinguishable and are not applicable to the facts of the present case.”

13. While referring to the above said principle laid down by the Hon'ble Apex Court, it is contended by the learned counsel for the petitioners that creating a sub-class in one homogeneous class is discriminatory and it offends Article 14 of the Constitution of India. In the considered opinion of this Court, the said Judgment also would not render any assistance to the petitioner herein as in the instant case the resolutions referred to supra which were subsequently passed on 02.11.2017 do not stipulate any restriction to a particular set of people. Therefore, the impugned action cannot be said to be discriminatory.

14. Coming to the judgment cited by the learned Standing Counsel for the respondent University _ in the case of *MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION (supra 3)*, the Hon'ble Apex Court while dealing with the matters pertaining to education at paragraph 29, held as under:

"29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

15. In *L.P.A No.1488 of 2012 (supra 4)*, a Division Bench of Gujarat High Court, at paragraphs 23 to 27, held as under:

"23. It is also settled law that a Court an always take judicial notice of a valid law of the land. In the cases before us, there is no dispute that the Examination Rules of 2011 has been passed in exercise of the power of enactment by way of delegated legislation and once we find that there is no illegality in passing the said delegated legislation, we can also take note of the fact that by the said Rules which are part of Regulation framed under the Act, the earlier Rules for examination have been superseded. Therefore,

when the examinations in question were held for the purpose of being promoted to the next year, the examination Rules of 2011 were very much in existence and those Rules are the only Rules applicable to the examinations in question. Such being the position, we approve the action of the University on the ground that the same is consistent with the latest Rules enacted for that purpose.

24. As regards the allegations of giving preferential treatment to some of the students by declaring them “cleared” after they were detained, we find that the same is consistent with the Rules, and even the respondents before us also availed of such provision but could not become successful. Therefore, after availing of the opportunity given to them by the University but having failed, they now cannot complain that the said opportunity was wrongly given.

25. Mr. Rao made a desperate attempt to convince us that some of the examinees were illegally cleared on the basis of re-evaluation of marks though they did not obtain the required marks on the basis of Rules fixed for re-evaluation of marks. In our opinion, within the narrow scope of the Special Civil Applications, out of which these LPAs arise, there is no scope of going into that question in the absence of those students who were subsequently cleared by virtue of the reevaluation of marks. Mr. Rao, of course fairly contended that he did not want that those students should be declared failed or detained, but all that he wanted is that his clients should also be cleared. Even if we accept for the sake of argument that there were certain irregularities in conferring marks on the basis of re-evaluation to those students, such wrong decision cannot give any right to the respondents to have the benefit of the same wrong. [See Indian Council of Agricultural Research vs. T. K. Suryanarayan reported in (1997) 6 SCC 766]. Therefore, the said contention is also not tenable.

26. We, however, find substance in the contention of Mr. Rao that 2 marks given for ‘goodness’ cannot be held to be justified without making any guidelines for giving such marks when such 2 marks is compulsory for success.

27. In the cases before us, however, no student has been detained for such ‘goodness’ marks. Be that as it may, we approve that part of the findings of the learned Single Judge where the learned Single Judge has rightly declared the provisions for giving

‘goodness’ marks as illegal in the absence of any guidelines for awarding such marks. Authorities of the appellant GNLU will frame appropriate guidelines for allocation of such marks if it intends to maintain the same in the Examination Rules.”

16. In *S.N.SINGH (supra 5)*, the High Court of Delhi, at paragraphs 34 to 37, held as under:

“34. By order dated 30.10.2002 promotion of students to the Second and Third year of LL.B. Course which was in contravention of the rules was stayed. Some of the students moved applications that the order should be vacated. It was alternatively contended that they be allowed to submit the examination forms for the ensuing exams. On 29.11.2002 the interim order dated 30.10.2002 was confirmed. However, the students were permitted to take the exams subject to the decision in the writ petition. We are informed that these students have taken the third and fifth Term examination.

35. We are now confronted with a situation where by throwing all norms to the wind, the University granted promotion to the second and third year to students who were not entitled to be promoted. However, the fact remains that these students were allowed to take the examinations under the orders of this court. They claim equity in their favor and in particular the loss of one academic year.

36. In matters pertaining to education no court can permit total violation of the norms. LL.B. Degree Course is expected to produce trained legal minds, ready to take on the challenges of the 21st Century. Decline in education norms in professional law courses was noted by the Supreme court as far back as 1989. In the judgment titled Baldev Raj Sharma Vs. Bar Council of India, it was observed that there is a substantial difference between a course of study pursued as a regular student and a course of study pursued as a private candidate. It was observed that regular attendance for the requisite number of lectures, tutorials etc. has a purpose. Rules framed by the Bar Council of India were upheld. Whatever be the equities, we cannot permit a total violation of the norms. Promotion of all students who have cleared only 4 or 14 papers respectively to the third term and fifth term are thus quashed.

37. For future, directions contained above, namely, no relaxation would be given from the requirement of clearance of 5 or 15 papers as the case may be for promotion to the third and fifth term shall be adhered to by the University. Further, the attendance rules shall be amended by the University of Delhi and shall be brought in conformity with the attendance rules framed by the Bar Council of India. The permissible relaxation would be as per the rules framed by the Bar Council of India and manner of exercise shall be as so framed there under. “

17. It is a settled and well established proposition of Law that there cannot be any perpetuity in the illegality even assuming that the resolutions passed by the respondent National Law University are contrary to the examination Rules. Simply because the said resolutions do confer certain benefits contrary to the Rules, the same cannot be taken advantage by the writ petitioners.

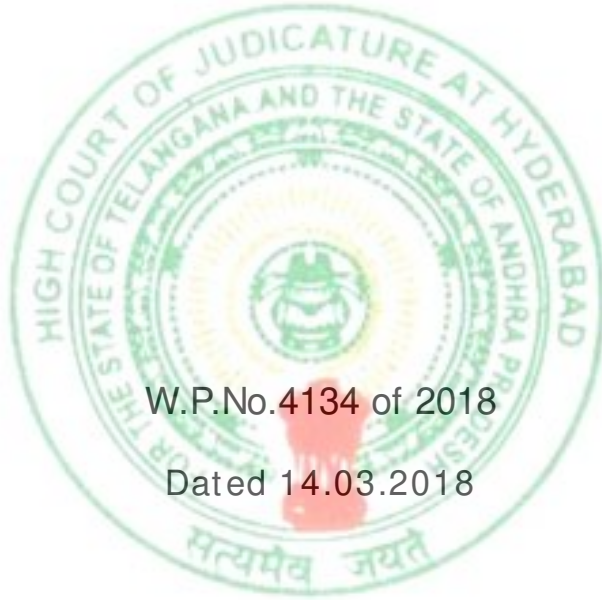
18. Having regard to the principles laid down in the above referred judgments cited by the learned Standing Counsel for the respondent University and in view of the reasons recorded *supra*, this Court is of the opinion that there are absolutely no merits in the present writ petition.

19. Writ petition is accordingly dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 14.03.2018
grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



grk