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Court : Allahabad

Decided On : Sep-11-2000

Reported in : 2000(4)AWC2956; (2001)1UPLBEC175

Judge : V.M. Sahai, J.

Appeal No. : C.M.W.P. No. 39687 of 2000

Appellant : Sunil Kumar

Respondent : Director, Rajya Shaikshik Anusandhan Aur Prashikshan Parishad, Lucknow and Others

Advocate for Def. : S.C. Verma, Adv. and ;S.C.

Advocate for Pet/Ap. : Ashok Bhushan and ;Anil Bhushan, Advs.

Judgement :

V. M. Sahai, J.

1. The petitioner a candidate for Special Basic Training Certificate Course (in brief (S.B.T.C.) has approached this Court by way of second writ petition for redressal of his grievance. The basic facts cannot be disputed, as they are clear from the documents filed by the petitioner before the respondents at one or the other stage.

They are also mentioned in the Impugned order passed by the Director. Therefore, this petition is being disposed of at the admission stage, without calling for any counter-affidavit, but after hearing the learned standing counsel.

2. An advertisement was Issued on 8.3.1998 by the respondents inviting applications from eligible candidates for S.B.T.C. as large number of vacancies were existing. Last date of receipt of application was 30.3.1998. Petitioner belonged to general category. He was eligible, therefore, he applied on 16.3.1998. Along with his application, he claims to have submitted mark sheets of the examination passed by him, from High School to B.Ed, but his name did not find place in the first list. In the first week of May, 1999, a news-item was published permitting candidates of all categories to make representations with complete details, if they, had secured more than quality point marks mentioned in the news-item but their names did not appear for any reason, for inclusion in second list. Since the petitioner had secured 55.22 quality point marks which was much more than 52.99 the quality point marks determined for general candidate, he made representation along with documents including the mark sheets but it was not accepted as his name did not find place in the district list as is clear from Annexure-2 to the writ petition. Being aggrieved by the order, he filed Civil Misc. Writ Petition No. 23660 of 1999, and prayed that he may be permitted during pendency of the writ petition to undergo S.B.T.C. training. Interim order was passed in the petition on 1.6.1999 permitting him provisionally to join the course. He completed his training with effect from 8.6.1999 to 30.6.1999. He was also issued a certificate on successful completion of training. By letter dated 12.7.1999, he was sent for practical training but before its completion, he was relieved from training by the Basic Education Officer. He was not permitted to appear in the examination of S.B.T.C. training as the Director had issued a general order on 11.8.1999 in furtherance of an order dated 28.7.1999 passed by this Court in Civil Misc Writ Petition No. 27948 of 1999, Ghanshyam and others a. State of V. P. and others, vacating interim order, in not only the writ petition. but all other petitions. The petitioner's writ petition was finally disposed of along with 248 other writ petitions. The learned Judge categorised the petitions in three groups one, where the candidates had obtained their degrees from outside the State, second where the candidates had obtained degrees by correspondence course or from parallel

institutions and the remainder were placed in the third category. The writ petitions of the first two category were not decided. The third category was further divided in four groups on the nature of controversy involved. The leading decision was delivered in Civil Misc. Writ Petition No. 19715 of 1999. Smt. Manju Devi v. Director, Rajya Shaikshik Anusandhan Aur Prashikshan Parishad, Uttar Pradesh and others, decided on 9.12.1999. The petitions were disposed of with a direction that petitioners shall make a fresh representation by 21.1.2000, which shall be decided by the Director by a speaking order. The learned Judge further framed a detailed scheme about the manner in which a representation should be made, what it should contain, who should make it and how it should be decided. The petitioner in pursuance of the directions given in the decision made a fresh representation before respondent No. 1 on 11.1.2000 along with copies of 14 documents including marks sheets from high school to B.Ed. examination and other relevant documents. This representation has been rejected by the Director by order dated 31.3.2000. A copy of the order has been filed as Annexure-4 to this petition. It has been challenged In this writ petition.

3. I have heard at length Sri Ashok Bhushan, the learned counsel for the petitioner and Sri S. C. Verma, the learned standing counsel appearing for the respondents.

4. The main question, and in my opinion a very important question, that arises for consideration in this petition is whether the respondent No. 1, who is the Director, Rajya Shaikshik Anusandhan Aur Prashikshan Parishad, U. P., Lucknow, was Justified either in law or in propriety In rejecting the representation of petitioner without advertng to the documents filed by him In complete disregard of the directions Issued by this Court. For this, it is necessary to extract paragraphs 8 and 9 of the order dated 9.12.1999 :

'Fresh Representation may be filed

8. All writ petitions, which are being decided, are of the year 1999. In many of these writ petitions the candidate claim that they were entitled for quality point marks on the basis of degrees, sports activity, N.C.C. or extra curricular activity etc. and reservation and had filed necessary certificates ; yet necessary quality marks were notawarded. The respondents claim that no certificates were

submitted. In some of the petitions, there is bona fide calculation mistake also.

9. The respondents themselves had published a news-item for filing representations. In most of the writ petitions, the claim of the petitioners have not been decided or it is by a non-speaking order. In view of this, it would be proper that petitioners may file their representation again and the Director or any officer nominated by him may dispose of the representation by a speaking order.'

5. I have extracted these paragraphs as in my opinion they are very necessary for deciding this petition. Paragraph 8 makes clear the stand of the department in those petitions and paragraph 9 the purpose for directing the petitioners to make fresh representations. The department contested those petitions and their specific claim was that since petitioners had not filed certificates to enable the department to calculate their quality point marks, they were not entitled to any relief. But this Court did not agree with this submission as the State itself published news-item permitting petitioners to make representation. The Court construed the news item as permitting the applicants to produce certificates, etc. to enable the department to determine their quality point marks. For instance, if someone had not filed the mark sheet even though certificate was filed or someone did not produce the certificate that he was entitled to be selected under reserve category or under sports quota, even though he had claimed to be selected on this basis, then he could produce it by way of representation in furtherance of the news item. The Court was obviously persuaded by its concern for Justice and its anxiety to avoid any hardship to any petitioner for technical reasons, specially when it was admitted to the respondents that there were still 4,000 vacancies, therefore, it permitted the petitioners not only to make representation but widened its scope by permitting them to furnish such information and file such documents as they considered relevant for decision of their representations.

6. I would now examine whether the respondent No. 1 in deciding the representation filed by the petitioner followed the directions issued by this Court either in letter or spirit. In the representation filed by the petitioner in January, 2000 which is extracted in the order of respondent No. 1, it was stated that the petitioner was a general category candidate whose quality point mark was 55.22 but his

name was not included in the list for S.B.T.C. training and no attention was paid even though he brought it to the notice of the respondents. In support of his claim, he filed the documents as directed by this Court. One of such document was mark-sheet of B.Ed. The respondent No. 1 noticed this fact in his order. He did not dispute its correctness. But he rejected the representation, as according to him. the petitioner was not eligible. It was held that the petitioner's application, that is the one filed in 1998, was incomplete as even though he had filed the P Ed. certificate, he had not filed the mark sheet to enable the respondents to determine quality point mark, therefore, his candidature could not be accepted and he was ineligible. The respondent No. 1 did not calculate the quality point on the mark sheet submitted by the petitioner as it was filed after 30.3.1998 the last date for receipt of application. In support of his view, he referred to two decisions of this Court In paragraphs 7 and 8 of the order, one in Civil Misc. Writ Petition. No. 29107 of 1999, Alok Kumar Pandey v. State of U. P. and others, decided on 19.7.1999 in which the notification Issued by the State Government on 9.1.1998 was upheld, on the basis of which advertisement was issued on 8.3.1998. And the other in Civil Misc. Writ Petition No. 20159 of 1999. Babu Ram Bhartiya and others v. State of U: P. and others decided on 18.5.1999 in which this Court held that in absence of any provision, no papers could be accepted after the last date for receipt of S.B.T.C. forms. In paragraph 9, it was mentioned that a list of 27,000 candidates had been prepared. The last date for any candidate of the list to file any document was 30.3.1998.

7. It is thus obvious that the only defect in the application form filed within time was that the petitioner had not attached the mark sheet of B.Ed. Even though petitioner denies it but assuming it to be so, once this Court permitted petitioner to file it, the respondents should have calculated the quality point mark taking into account the marks of B.Ed. But the respondent No. 1 rejected the representation because in view of the decision of this Court referred in paragraph 8 of his order no document or paper could be accepted after the last date. He was also of the view that calculation of quality point mark on the basis of mark sheet or any certificate filed after 30.3,1998 could not be done. In other words, no mark sheet or certificate could be accepted after 30.3.1998. In taking this view, he committed manifest error of law. I do not propose to discuss how far the ratio in Babu Ram Bhartiya (supra),

referred in paragraph 8 was applicable and how it has been misapplied as I am firmly of the view that the respondent No. 1 did not comply with the directions Issued by this Court. The order dated 9.12.1999 was passed after considering the objection, raised on behalf of the respondents, that the petitioners had not filed necessary papers to enable the respondents to determine quality point marks, yet the Court permitted, the petitioner in paragraph 11 of its order, not only to file representation and the documents filed along with the application but, 'any other information or document which the petitioner considers relevant for decision of his representation' and directed respondent No. 1 to decide the representation by a speaking order. The directions were clear and explicit. It did not leave any option to the respondent No. 1 except to consider documents filed by petitioner and decide whether he had requisite quality point marks. The respondent No. 1 could not go behind the direction. He was bound to accept the document filed by petitioner. Once he did not dispute its authenticity, he should have calculated the quality point mark. The respondent No. 1 in observing that no document could be accepted after 30.3.1998 acted in complete disregard of the order passed by this Court. He did not appreciate that it was direction issued by this Court in writ jurisdiction. It had become final. The order was neither challenged in appeal before this Court nor before any higher Court. The department was bound by it unless it was recalled or set aside. The respondent No. 1 was not exercising review jurisdiction over the order passed by this Court nor he could sit in judgment over it. He was bound to pass order in accordance with the directions issued by this Court.

8. It is necessary to clarify in this connection the purpose of direction to pass a speaking order. The Court issues such direction and permits a petitioner to file representation because many a time, the grievance raised involves determination of facts. A speaking order as the expression indicates means an order, which must give reasons in support of it to enable the Court to judge its correctness in the facts and circumstances of the case. The order must be passed after application of mind. Where the Court directs an order to be passed in the light of observation made by it, the exercise of jurisdiction is limited. For instance, this Court while passing the order on 9.12.1999 had directed the respondent No. 1 to decide the representation on information and documents filed by the petitioner. The

respondent No. 1 did not advert to the document filed by the petitioner and rejected the representation on irrelevant considerations in complete disregard of the directions Issued by this Court. Mere writing few paragraphs did not make it a speaking order on the representation of the petitioner. The authorities when required to pass a speaking order are obliged to pass an order which must not be a formality but an order which can be upheld in law. The respondent No. 1 rejected the representation on the ground that the petitioner was Ineligible. But this was not correct. Because even if it is assumed that the mark sheet of B.Ed, was not filed, it did not render the petitioner ineligible. His application was defective at the most and that is why his quality point marks were not calculated. The difference between eligibility and defect is that the former could not be cured after expiry of time for filing the application but latter could be removed at any time. When this Court did not agree with the respondent in earlier petition that the petitioner could not be selected due to absence of mark sheet, it was of the opinion that non-filing of mark sheet was defect, only, which could be removed even subsequently. The spirit of the order was that the candidates should not be deprived of the opportunity to undergo S.B.T.C. for some technical omission. The order of the respondent was, therefore, contrary to the order passed by this Court.

9. There is yet another reason for quashing the order of respondent No. 1 He has taken the view that since petitioner did not file his mark sheet of B.Ed. prior to 30.3.1998. he was ineligible and could not file It subsequently. But the mistake committed by him was that he did not appreciate the purpose and effect of the news item. The petitioner had applied within time. He had filed his certificates. He claims to have filed the mark sheet. But the absence of mark sheet for B.Ed. prevented the department from calculating his quality point marks. That is why, even with high percentage his name did not find place in the list. But when the Government itself invited applicants to make representation if the quality point marks was more than the prescribed norm and the petitioner produced the mark sheet, then there was no justification to Ignore it. The application was complete. The petitioner was eligible as he was B.Ed. But he was not selected as his quality point could not be ascertained. Once this deficiency was removed on Governments own asking.he could not be ignored. The failure to attach mark sheet did not make him ineligible. It was a defect which could be rectified at any

time. Since the Government Itself permitted the candidates to make representation, if they have been overlooked for any reason, the respondent No. 1 acted illegally in insisting that the mark sheet could not be filed later, as the petitioner's application due to this defect was Incomplete and he was ineligible.

10. In the result this petition succeeds and is allowed. The order dated 31.3.2000 passed by respondent No. 1 Annexure-4 to the writ petition is quashed. Since the mark sheet of B.Ed. filed by petitioner was not disputed the respondent No. 1 is directed to calculate his quality point marks and grant him admission to Special B.T.C. Training Course. The petitioner has completed his training. He shall be permitted to complete practical training and appear in the examination as directed by this Court on 9.12.1999 paragraph 13 (ii) of the order in Civil Misc. Writ Petition No. 19715 of 1999. Smt. Manju Devi v. Director. Rajya Shaikshik Anusandhan Aur Prashikshan Parishad, Uttar Pradesh and others. The aforesaid directions shall be complied by respondent No. 1 within one month from the date a certified copy of this order is produced before him.

11. Parties shall bear their own costs.

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