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Court : Rajasthan

Decided On : Dec-01-1999

Reported in : AIR2000Raj138; 2000(1)WLC744

Judge : B.J. Shethna, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Petn. No. 403 of 1999

Appellant : Shiv Kumar

Respondent : Director/Chairman, Board of Technical Education, Raj., Jodhpur

Advocate for Def. : P.K. Lohara, Adv.

Advocate for Pet/Ap. : Arjun Purohit, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.J. Shethna, J.

1. The petitioner has prayed in this petition to direct the respondent to restore the enrollment of the petitioner and that he may be allowed to avail one more opportunity / attempt to complete his Diploma course.

2. The petitioner applied for the diploma course in the Civil Engineering conducted by the Board of Technical Education Rajasthan, Jodhpur on passing his Senior Hr. Secondary Examination in the year 1991.

3. According to the petitioner, the said diploma course was conducted by the respondent-Board. Under Rule 5(D) of the Rules and Regulation for Diploma Course in Engineering / Non-Engineering, a candidate can complete his Diploma Course within a maximum period of 9 years. As the petitioner was admitted in the year 1991 in Diploma Course, therefore, he can complete his course within 9 years i.e. by the year 2000. However, his enrolment was wrongly cancelled by the respondent-Board in the year 1998 on the ground that he failed to earn 140 credits and he has earned only 139 credits at the end of 12 attempts under Rules 8 (3) of the Rules for Diploma Programmes in Engineering under Multipoint Entry and credit system which have been introduced from 1994-95 onwards.

4. Learned counsel Shri Purohit for the petitioner vehemently submitted that the enrollment of the petitioner was wrongly cancelled by the respondent-Board as the petitioner has not yet completed 12 attempts and Rule 8(3) of 1994-95 Rules will have no retrospective effect in case of the petitioner who was admitted in the Course under the old Rules prevailing in 1991. He submitted that in 11 attempts, the petitioner has already earned 139 credits and only 1 more credit was required to complete his Diploma Course as he has to earn 140 credits and by cancelling his enrollment, the petitioner has been denied his lawful right to complete his Diploma Course.

5. However, learned counsel Shri Lohra for the respondent-Board vehemently submitted that the petitioner was enrolled in the year 1991 for three years Diploma Course which he could not complete even after expiry of about 8 years. He submitted that in all the petitioner availed more than 12 attempts to complete three years Diploma Course and yet he failed to get requisite 140 credits, therefore, his enrollment was rightly cancelled. He further submitted that under Section 8(3) of

the Rules, the petitioner had to earn full credit for required Diploma Course within 12 attempts in maximum period of 6 academic years from the date of enrollment which expired long back, therefore, his enrollment was cancelled.

6. Before dealing with the rival contentions urged by the learned counsel for the parties, few important facts are required to be stated namely that it is an admitted fact that the petitioner has not earned requisite 140 credits to complete his Diploma Course. No doubt it is true that he was short of one credit as he has earned 139 credits in his 11 attempts, but the fact remains that he could not earned 140 credits. Factually, the petitioner had 11 attempts but technically in all the petitioner had more than 12 attempts.

7. The submission of Mr. Purohit, learned counsel for the petitioner that in one year he has not attempted twice, therefore, it should not have been counted in the attempts. In ordinary circumstances, this submission of Mr. Purohit would have been accepted, but when there is specific regulation that within a particular period, a student has to complete the attempts then even if he availed that opportunity or not will be of no consequence. If he has not availed of an opportunity of two attempts in one year then it has to be counted in attempts, thereby, he had more than 12 attempts. Therefore, there was no question of giving one more chance to the petitioner of one more attempt to appear in the examination.

8. The submission that specific Rules and Regulations came into force in the year 1994 will not be applicable in the case of the petitioner retrospectively, has also no substance. In educational field, whenever new Rules or Regulations are framed, that Rules and Regulations have to be followed as it is and old Rules or Regulations will not govern the field unless and until there is such provision in the new rules which provides that it will not applicable in cases of old students.

9. Learned counsel Mr. Lohra for the respondent-Board has rightly relied upon a Division Bench judgement in Akhil Bhartiya Vidyarthi Parishad, Jaipur v. State of Rajasthan reported in (1998)1 RLR 819. In that case, the new system of Education of 10+2+3 pattern based on National Policy on Education, 1986 was introduced w.e.f. 1989 Session, The same was challenged before this Court on the ground that it prejudicially affected the students who joined Higher Secondary Course

prior to introduction of that scheme. The Division Bench of this Court held that such a decision to introduce new scheme of the education will not prejudicially affect the students who joined Higher Secondary Course prior to introduction of the said scheme. This judgement of the Division Bench squarely covers the point in issue against the petitioner.

10. Regulation 8.3 of 1994 clearly provides that a student should earn full credits required for the diploma programme at the end of 12 attempts (maximum 6 academic years) from the year of enrolment. In that case having failed to complete 12 attempts in six academic years, the petitioner will not be entitled for any relief from this Court.

11. In view of the above discussion. I do not find any substance in this petition and the same is required to be dismissed.

12. Before parting, I must state that it is really a very harsh case where the petitioner is losing by only one credit less than requisite credits but as held by the Supreme Court in its several judgements that in Educational field, the interference of the Court should only be in rare cases where grave injustice is done otherwise not. I am of the considered opinion that this Court cannot act as an appellate authority in educational matters and that too as a benevolent appellate authority and there is no room for any benevolence under Article 226. If the Court departs from law and enters the arena of benevolence the perils and pitfalls are too many to recount. There will be no objective standards of judging. Justice becomes personalised. It would vary from Judge to Judge, and in absence of any procedural irregularity, this Court had no jurisdiction to interfere in such matters.

13. Accordingly, this petition fails and is dismissed.