

Sunil Kumar Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-12-1992

Reported in : 1992(2)WLN47

Judge : J.R. Chopra, J.

Appeal No. : S.B. Civil Writ Petition No. 25 of 1992

Appellant : Sunil Kumar

Respondent : The State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

J.R. Chopra, J.

1. By order dated 5th November, 1990, a learned single Judge of this Court has dismissed the writ petitions in Ashok Kumar Jangid v. State of Raj. and Ors. S.B. Civil Writ Petition No. 397 of 1990 and Shiv Charan Sharma v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 4247 of 1990 alongwith 90 other writ petitions appended thereto. Against that order, special appeals were filed on behalf of 49 petitioners. However, out of these 49 special appeals, 13 special appeals were got dismissed as not pressed because those appellants were granted admission in Rajasthan General Nursing Course (for short 'the RNRC Course') during the

pendency of those special appeals and the remaining 36 special appeals, 18 of which pertain to these very petitioners except petitioner Khemraj and Om Prakash Yadav, were also dismissed by a Division Bench of this Court in Purshottam Dass v. State of Rajasthan D.B. Civil Special Appeal No. 215 of 1990 and 35 other writ petitions, decided on 28th February, 1991.

2. It is alleged that after the aforesaid Writ petitions were dismissed by the learned single Judge vide his order dated 5th November, 1990 in Ashok Kumar Jangid's case (alongwith other 91 connected writ petitions), one Om Prakash Jugtawat filed a writ petition on 3rd December, 1990 on the ground that women candidates having Arts as their subjects and having less percentage of marks than him have been given admission in RNRC Course. In the writ petition filed by Shri Om Prakash Jugtawat, following interim order was passed by a learned single Judge of this Court on 4th December, 1990:

Meanwhile, the petitioner shall be given provisional admission in the General Nursing Course at Barmer or any other place for the year 1990-91 if any candidate other than ST/SC securing less marks in Arts than the petitioner, has been given admission and the petitioner is otherwise eligible.

It is unfortunate that although, the petitioner Om Prakash Jugtawat was not eligible for admission to RNRC Course as he did not have science subjects as his optional subjects and the women candidates formed a separate category, still he was given admission under the orders of this Court and the aforesaid stay order continued. An application under Article 226(3) of the Constitution was filed on 19th September, 1991 without any affidavit. However, the main writ petition came to be decided on 9th December, 1991 and the writ petition was allowed.

3. Be that as it may, in spite of the fact that these petitioners filed their writ petitions earlier, which came to be dismissed by a learned single Judge of this Court vide his order dated 5th November, 1990 and against that judgment, special appeals were filed and they were also dismissed by a Division Bench of this Court vide its Judgment dated 28th February, 1991 and the special leave petitions tiled by these petitioners before their Lordships of the Supreme Court too were either dismissed or were got dismissed as not pressed with an opportunity to file fresh

petitions before, the High Court, they have filed these writ petitions before this Court. Initially, writ petitions were filed by petitioner Purshottam Dass and Sanjay Sharma and thereafter, these writ petitions have been filed. In all these writ petitions, it has been contended that one Om Prakash Jugtawat (petitioner in S.B. Civil Writ Petition No. 5086 of 1990), though he is a student of Arts and having lesser percentage of marks than some of the petitioners, who are also students of Arts, has been granted admission to RNRC Course under the orders, of the Court and he is still continuing and, therefore, these petitionerS, some of whom arc the students of science and some of them are students of Arts but having better percentage of marks than Shri Om Prakash Jugtawat should be granted admission to RNRC Course and the denial of admission ol these petitionerS is violative of Article 14 of the Constitution. Unfortunately, in these writ petitions intrim stay orders were granted by this Court and these petitioners were allowed to continue in RNRC Course under the orders of this Court, for some length of time.

4. How these writ petitions have been argued on merits. It may be stated here that all the petitioners except petitioner Sang Singh Bhati are the students of science. petitionerS Sang Singh Bhati is a student of Arts but he has claimed that he has got better percentage of marks than Shri Om Prakash Jugtawat (petitioner in S.B. Civil Petition No. 5086 of 1990). Two writ petitioners Bherulal and Dharampal have contended that they being students of science have applied for RNRC course at Banner Centre but they were denied admission. They have also filed writ petitions earlier. This contention appears to be wrong. Actually, they did not apply for admission to RNRC Course at Banner Centre and this fact stands recorded in the Division Bench Judgment rendered by this Court in Purshottam Dass v. State of Raj. D.B. Civil Special Appeal No. 215 of 1990, decided on 28th February, 1991. Still, the petitioners Bherualal and Dharamapal have been given admission in RNRC Course under the interim orders of this Court.

5. In the case of petitioner Sunil Kumar (S.B. Civil Writ Petition No. 25, of 1992), one additional affidavit has been filed on behalf of the petitioner, in which it has contended that the petitioner obtained the stay order from this Court on 6th January, 1992 but he. was given re-admission on 25th February, 1992. He has also cleared P.T.S. examinations like Shri Purshottam Dass and Shri Om Prakasn

Jangid and, therefore, his case is distinguishable.

6. Two writ petitions filed by Shri Praveen Kumar (S.B. Civil Writ Petition No. 5053 of 1991) and Shri Jugal Kishore (S.B. Civil Writ Petition No. 73 of 1992) have not been listed for final disposal before me. It has been contended that Shri Praveen Kumar has also not filled up his form earlier for RNRC Course.

7. Mr. S.K. Vyas, the learned Additional Govt. Advocate has bifurcated these writ petitions in three categories. According to him, petitioners, Purshottam Dass, Sanjay Sharma, Harchandram, Dayaram, Decparam, Praveen Kumar, Hariram, Ramaram, Khairajram, Sangsingh Bhati and Sohanlal are the persons, who have passed PTS examinations. Petitioners Sunil Kumar, Om Prakash Yadav, Dharampal, Vishansingh and Nandkishore are the persons who have not passed PTS examinations. Petitioners Khemraj, Jugalkishore, Bhanwarkhan, Govindram, Sureshkumar and Vasudeo are the persons who have not yet been admitted to the RNRC Course in spite of the interim orders passed by this Court. All other candidates, who were admitted to the course have also been turned out of the course on 26th July, 1992. It is alleged that separate contempt petitions have been filed for turning them out of the course.

8. I have heard Mr. M. Mridul, Senior Advocate assisted by Mr. R.S. Saluja, Mr. J.P. Joshi, Mr. B.N. Kalla, Mr. K.R. Choudhary, Mr. Rameshwar Hedau, Mr. P.C. Sharma and Mr. Hemant Shreemali, the learned Counsel appearing for the petitioners and Mr. S.K. Vyas, learned Addl. Govt. Advocate and Mr. D.R. Bohra, learned Deputy Govt. Advocate for the respondents. I have carefully gone through the record of the case.

9. In some of these writ petitions, applications under Article 226(3) of the Constitution have been filed and they also came to be heard alongwith the main writ petitions. I may state here at the very outset that all these petitioners are those persons who have filed their writ petitions earlier and they were dismissed by a learned single Judge of this Court. Their special appeals have also been dismissed by this Court and their special leave petitions tiled before their Lordships of the Supreme Court have also been either dismissed or got dismissed as not pressed. Thus, a verdict has been given by the Court so far as their

admission is concerned. However, they sought their admission in RNRC Course on the pretext that allowing Shri Om Prakash Jugtawat in the RNRC course under the orders of this Court and not allowing them violates the provisions of Article 14 of the Constitution. We cannot conceive of cases worst than these where application of Article 14 of the Constitution has been misused and misapplied with impunity. No interim order of a court can supersede the judgments of the Courts rendered on merits. If any body has been granted admission under the orders of the Court as an interim measure for certain reasons, that order is not a judgment of the court. These are the petitioners whose cases have been decided on merits by the Court. Their special appeals have been dismissed. It has been held in those cases that it was not a case of reservation for women but it was a case of requirement being separately notified because Medical Department needed male as well as female nurses and, therefore, if a separate advertisements as regards certain seats of the women candidates have been advertised then women candidates alone could apply against those vacancies of RNRC Course. No body could crave for the indulgence of the Court to grant him stay order because women candidates having Arts as their subject have been admitted in the Course. Be that as it may, stay order came to be passed in Om Prakash Jugtawat's case (supra) but when the special appeals filed by these petitioners against the judgment of the learned single Judge came to be dismissed on 28th February, 1991, it was for the petitioners as well as respondents to have got that stay order vacated which was granted in favour of Shri Om Prakash Jugtawat. However, that order continued in favour of Shri Om Prakash Jugtawat and he qualified the first year examination of the RNRC Course and, therefore, this Court by its order dated 9th December, 1991 in Om Prakash Jugtawat's case (supra) has held:

In accordance with the orders of this Court, the admission was given to the petitioner in the General Nursing Course at Banner in the year 1990. He has already qualified the first year examination. It would not be proper now to take benefit or to give any other decision since the petitioner has undergone the training for one and a half year. This case will not be a precedent and is being disposed of because of the special facts and circumstances and more particularly, the training which has already been undergone by the petitioner.

With these observations, the writ petition is disposed of. The petitioner will be allowed to complete the course.

Thus, it is clear that since the petitioner has qualified the first year examination of the RNRC course and has undergone the training for one and half year and, therefore, in those special circumstances, this Court allowed him to continue the course. That could not have been cited as an instance for allowing these petitioners even provisionally to continue the course because that would amount to clear cut contempt of the judgment of the Division Bench of this Court in Purshottam Dass's case (supra), which was made on their own special appeals. No interim order of the Court can set at naught the decision given by the Court on merits. There cannot be a better case of misuse, or if I may say, abuse of the process of the Court where in spite of the fact that the writ petitions filed by the petitioners were dismissed and against the judgment, special appeals were filed and they also came to be dismissed on merits and still, these helpless petitioners were advised to go for another round of battle royal all over again for getting admission in the course by pleading that denial of admission to them is violative of Article 14 of the Constitution. In cases, where a decision has been given on merits, there is no question of application of Article 14 of the Constitution. It is well known proposition of law that no interim order of the court can be allowed to supersede the decision rendered on merits by the court. Under these circumstances, in these cases, the application of Article 14 of the Constitution was totally uncalled for and, therefore, I am firmly of the view that the respondents were rightly advised that allowing these petitioners in the RNRC course will amount to the contempt of the Division Bench Judgment of this Court rendered in Purshottam Dass's case (supra) and, therefore, these petitioners should be turned out of the course. The petitioners have been rightly turned out of the course because neither Article 14 of the Constitution is applicable in such cases nor after losing the case even upto Supreme Court, they can crave indulgence of this Court to press into service, the provisions of Article 14 of the Constitution for getting them admitted in the course against the decision rendered by the court on merits.

10. Moreover, the RNRC course has started long back i.e. on 15th July, 1990. It is a three years technical course, in which, training is imparted to the students. Thus,

the time-schedule has got its own importance. A student of the RNRC course is required to make up 75% of the attendance. Nobody can be allowed to appear in such technical courses at his own risk. Most of the petitioners have studied for less than four months. Only a few of them have studied for about 6 months and 10 days to 9 months and 14 days. The course has already covered more than half of its period and, therefore, studying for about 1/4th period of that course is no ground to allow them to continue the course.

11. In this respect, my attention has been drawn to a Division Bench decision of this Court in *Meena Kumari v. State of Raj. and Ors.* 1991 WLR (S) Raj. 344. It was a case of auxiliary Nurse Mid wife training course which is of a duration of 18 months. The petitioner took training for about 8 months and wanted to take re-admission in the course at her own risk and canvassed before the Court that she will make up the course. This Court did not feel inclined to appreciate such a statement and has held that there is a purpose behind imparting training for a particular period in a technical or professional course and one cannot be permitted to attend the course for only a little more than half the period. Thus, this authority applies with full force in the facts and circumstances of this case.

12. In this case, the petitioners have been ill-advised to fight this second battle-royal. Be that as it may, when their cases have been decided on merits by the Division Bench, they are entitled to no relief. I may state here at the cost of repetition that petitioners Bherulal and Dharampal did not apply for admission to RNRC Course at Banner Centre and the petitioner Sang Singh Bhati is the student of Arts. Under these circumstances, I am firmly of the view that the respondents were perfectly justified in turning the petitioners out of course in view of the Division Bench judgment of this Court rendered in *Purshottam Dass's* case (supra). The petitioners could not have been allowed to continue in the course under the garb of an interim order of this Court which too was obtained on wrong facts because they could not have compared themselves with the women candidates and secondly no interim order could have been obtained by them after their cases were dismissed on merits. Even if there was an interim order of the Court, that order cannot be allowed to set at naught or supersede the decisions rendered by the Court on merits.

13. Under these circumstances, I find no force in these writ petitions and, therefore, they are dismissed with no order as to costs.

14. Actually, the petitioners should have been punished by saddling them with heavy costs but keeping in view the fact that they are poor persons and have been ill-advised to fight this unfortunate second round of battle-royal which was most unnecessary and uncalled for, they should not be saddled further with the costs and hence, they are not saddled with the costs for the aforesaid reasons.

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