

Padam Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-04-2011

Judge : Arun Tandon, J.

Acts : NCTE Act, 1994. - Section 17(4)

Appeal No. : WRIT - A No. - 21846 of 2005

Appellant : Padam Singh

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C.; Rajiv Joshi, Advs

Advocate for Pet/Ap. : Abhishek Tripathi; R.M.Saggi, Advs

Judgement :

1. This bunch of writ petitions has been filed practically for the purpose that Degree of Vyayam Ratna possessed by the petitioners as granted by Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi be treated as a valid degree for admission to Special BTC Course, 2004. All the writ petitions are being decided by means of this common judgment. Writ Petition No. 21846 of 2005 has been treated as the leading case and the facts recorded hereunder are with reference thereto.

2. Facts in short giving rise to the present petition as as follows :

3. Petitioner before this Court is stated to have made an application in response to the advertisement published in 2004 for admission to Special BTC Course, 2004. Along with this application the petitioner enclosed a copy of the Vyayam Ratna certificate issued by the Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi (copy whereof has been brought on record as Annexure-5 to the writ petition). This degree according to the petitioner is equivalent to the degree of D.P.Ed. which is a prescribed qualification for being considered for admission to Special BTC Course, 2004. Having regard to the quality point marks obtained by him, a letter was issued by the Principal, DIET, Ismailpur, Bijnor informing the petitioner that he has been admitted to Special BTC Course, 2004 and the petitioner may report in the institute for joining. It is stated that the petitioner joined the course and also participated in the training programme. All of a sudden an order dated 06.03.2005 was issued whereunder the admission of the petitioner to Special BTC Course, 2004 was cancelled after recording that the certificate of Vyayam Ratna granted by Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi is not a recognized qualification for the purposes of admission to Special BTC Course, 2004. The order records that recognition by NCTE was granted to the institution by the name of Sri Laxmi Vyayam Mandir, Vyayam College, Jhansi, the certificates whereof alone can be treated as valid qualifications for admission to Special BTC Course, 2004.

4. Challenging the order, counsel for the petitioner vehemently contended that there is no difference between the two colleges i.e. Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi and Sri Laxmi Vyayam Mandir, Vyayam College, Jhansi and they are one and the same institution. It is stated that Sri Laxmi Vyayam Mandir, Vyayam College, Jhansi is a recognized institution and the certificate of Vyayam Ratna granted by the said college is valid for admission to Special BTC course as per the Government Order dated 18.11.1982. Reference is also made to the letter issued by the Principal, Sri Laxmi Vyayam Mandir, Vyayam College, Jhansi to the effect that the college authorities are issuing certificate in the names of both the colleges and the certificate is genuine.

5. Counter affidavit and supplementary counter affidavit have been filed on behalf of the State. It has been stated that under orders of this court dated 17.05.2006 a

committee of 03 members was constituted for conducting an enquiry as to whether the two institutions are one and the same or not.

6. The Committee has submitted its report along with supporting documents. It has been found that the two institutions are different and the institution by the name of Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi is a bogus institution and further that Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi has no recognition from NCTE, therefore, candidates having a degree of Vyayam Ratna from the said institution are not eligible to be admitted to Special BTC Course, 2004.

7. Rejoinder affidavits have been filed for contending that both the institutions are one and the same and in support whereof various documents have also been brought on record. In the second supplementary affidavit filed on behalf of the petitioner, it has been stated that under the interim order of this Court the petitioner has completed his Special BTC Course, 2004. The Manager of the institution has given a certificate qua the certificate being valid. A fresh mark sheet has also been issued in respect of the D.P.Ed. Course mentioning the name of the institution as Sri Laxmi Vyayam Mandir, Vyayam College, Jhansi (copy whereof has been enclosed as Annexure-SA-2).

8. On behalf of the NCTE, a counter affidavit has been filed categorically stating that the NCTE has granted recognition for the D.P.Ed. Course to the institution with the name of Sri Laxmi Vyayam Mandir, Vyayam College, Jhansi only and the certificates of D.P.Ed. Issued by the said college alone are the valid certificates. Any certificate issued by the Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi is not valid in view of the provisions of Section 17(4) of the NCTE Act, 1994.

9. Counsel for the petitioner has made reference to the judgment of this Court dated 19.02.2007 passed in writ petition no. 35800 of 2004 and dated 24.02.2005 passed in writ petition no. 10188 of 2005 and the order dated 09.03.2006 passed in writ petition no. 14299 of 2006.

10. I have heard learned counsel for the parties and have gone through the records of the present writ petition.

11. At the very outset it was stated that the order of the High Court dated 09.03.2006 and dated 24.02.2005 only require the authorities to enquire into the grievance of the said petitioner strictly in accordance with law. Therefore, no binding precedent has been laid down in the aforesaid judgment.

12. From the records of this petition, two facts are undisputed :

(a) the petitioner while submitting his application for the Special BTC Course, 2004 had specifically enclosed a degree of Vyayam Ratna (which according to the petitioner is equivalent to D.P.Ed. Course), as regular student of Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi.

(b) The said institution namely Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi has no recognition from the NCTE.

13. I am of the considered opinion that the candidature of the persons like the petitioner has to be determined with reference to the mark sheet enclosed along with the application form only. On the face of it, the petitioner was not eligible for being admitted to Special BTC Course, 2004. All subsequent documents which have been relied upon by the petitioner for alleging that both the institutions are one and the same only raise a disputed issue of fact. The 03 member committee report constituted in terms of the interim order of this Court has clearly opined after enquiry that the institution in the name of Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi is a bogus institution. Therefore, the degree granted by such institution cannot be held to be a valid degree for admission to Special BTC Course, 2004. Even in the counter affidavit filed on behalf of the NCTE, it has been stated that the institution from where the petitioner had done his D.P.Ed. Is not a recognized institution and the degree granted by the institution is invalid.

14. The petitioner on receipt of the mark-sheet from the said institution did not raise any grievance qua the name of the institution mentioned therein. It only when his candidature has been rejected that factual disputes are being raised.

15. This Court finds that there is no illegality in the order of the Principal DIET cancelling the admission of the petitioner after it was brought to his notice that the mark sheet enclosed by the petitioner along with his application form was from an un-recognized institution.

16. So far as the judgment passed in writ petition no. 35800 of 2004; Smt. Indresh vs. State of U.P. and others (supra) is concerned, this Court may record that in the said case, no counter affidavit was filed and, therefore, the Court proceeded to hold that un-controvert affidavit filed by the petitioner qua Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi being recognized by the State Government as also by the NCTE had to be accepted. It is on these facts that the judgment was delivered.

17. In the facts of the present case a detailed counter affidavit has been filed by the State as well as by the NCTE. A three member Committee was constituted under orders of this Court. The Committee submitted its report and has found that the institution in the name of Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi is a bogus institution.

18. The Apex Court in the case of Bhavnagar University v. Palitana Sugar Mills (Pvt.) Ltd. & Ors., reported in 2003 (2) SCC 111, has held as follows:

?It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.?

19. The said judgement has been followed in the recent judgement of the Apex Court in the case of Dr. Rajbir Singh Dalal v. Chaudhari Devi Lal University, Sirsa & Anr., reported in AIR 2008 SCW 5817.

20. At this stage counsel for the petitioner contended that other similarly situate candidates have been permitted to complete their Special BTC Course, 2004 and have been appointed thereafter as Assistant Teacher. The Apex Court has also held that there cannot be any negative equality and no mandamus can be issued by a writ Court asking the authorities to perpetuate the illegality. (Ref. Ghulam

Rasool Lone vs. State of Jammu & Kashmir, JT 2009 (13) SC, 422). In view of the aforesaid no relief can be granted to the petitioner.

21. Writ petition is dismissed.

22. Interim order, if any, stands discharged.

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