

Smita Johnbhai Master and Others

Vs

State of Gujarat and Others

Petition for Special Leave to Appeal (Civil) No. 4198 of 1981

(D.A. Desai, A. Varadarajan JJ)

08.05.1981

ORDER

1. Petitioners and several other were admitted to different institutions preparing students for primary teachers' training course certificate examination under five different Orders dated August 29, 1980, September 17, 1980, September 22, 1980, October 3, 1980 and October 9, 1980, issued by the Director of Education, State of Gujarat. Validity of these Orders was challenged on the ground that they were arbitrary, without authority and in flagrant violation of the guidelines issued by the State Government, in several writ petitions filed in the Gujarat High Court. At the hearing of one of these petitions learned counsel appearing for the State of Gujarat informed the Court that the State Government had decided to withdraw and cancel the aforementioned five orders. As a sequel admission granted under the aforementioned Orders were withdrawn and cancelled. Some of the students, including the petitioners in this petition, questioned the action of the State Government in withdrawing and cancelling the aforementioned Orders under which they had secured admission, in writ petitions filed in the High Court of Gujarat. Learned Single Judge of the High Court dismissed these petitions. Letters patent appeals filed against the Orders of the learned Single Judge were also dismissed by a Division Bench of the High Court. Present petitioners thereupon moved this Court praying for special leave to appeal against the decision of the Division Bench.

2. Mr. S H. Sheth, learned counsel appeared for the petitioners, Mr. M.N. Shroff learned counsel appeared for respondents 1 and 2 Mr. Soli J. Sorabjee and Mr. K.H. Kaji learned counsels appeared for some of respondents at the hearing of these petitions.

3. Mr. S.H. Sheth, learned counsel for the petitioners informed the Court that not only the petitioners in this petition but those who were admitted pursuant to the Orders of the Director of Education for giving admission to the institutes preparing students for primary teachers' training course certificate examination have completed one year of training and have appeared at examination. To be precise, the certificate course is of two years duration and there is examination at the end of one academic year followed by final examination at the end of second academic year. The students who undoubtedly secured admission under Orders which were found to be invalid and were subsequently withdrawn were S.S.C. qualified young men and women that they paid the fees, continued to receive training and have appeared at the examination. The question is, should these youngsters be deprived of their one year of their precious life and the training imparted to them rendered nugatory merely because at the end of one year it is now found that the Orders securing admission to them have been withdrawn. Maybe, the Gujarat Government and the Director of Education were not well advised in directing admissions in the manner done under the Orders which have been subsequently withdrawn. Should these unwary students not guilty on their own part of any improper conduct, suffer such harsh treatment lose a precious year of life and be denied the

benefit of a course which they have completed at least for a period of one year ?

4. Undoubtedly a grievance is being made now that those who benefit by the Court's interim Order should not be allowed to take any advantage of it the petition in which interim Order was made is liable to be rejected. Another grievance equally meritorious is that those who secured admission which is found to be unjustified but continued to receive training under the interim Orders of the Court, would enjoy an unfair advantage over those who failed to get admission because of the invalid admissions of the first mentioned persons. Conversely if interim arrangement is not directed what an oppressive outcome it would be if the challenge initially made in the petition to the Court turns out to be effective and valid. These are some unavoidable consequences of the system which howsoever one may disapprove, cannot be wished away. Even if we do not grant any relief to the petitioners whose petition is being dismissed, those who could not secure admission would not yet be better off, because their loss of one year cannot be compensated or restored by any process known to law. Clock cannot be put back howsoever one may ardently desire.

5. Therefore, with a view to mitigating the harshness of law blended by the fairness of equity, we direct that all those who secured admissions under the aforementioned five orders of the Directors of Education and have completed first year course and have also appeared at the examination held at the end of first academic year should be treated as admitted of the limited period of first year. Their results should be declared. However, it is made distinctly clear that on this account they would not be entitled to claim, even if they have passed the examination, admission in the second year course. They will have to seek admission in the second year course in case they are declared successful in the first year examination on merits and at the discretion of the management of the institutions.

6. In view of this direction, Mr. S.H. Sheth, learned counsel for the petitioners, requested other Court that the petition filed by the petitioners in the High Court may be permitted to be withdrawn. We grant permission with the result that appeal becomes infructuous and stands disposed of accordingly.

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