

SUPREME COURT OF INDIA

Maharshi Dayanand University

Vs.

Surjeet Kaur

C.A.No.6807 of 2008

(Dr.B.S.Chauhan and Swatanter Kumar JJ.)

19.07.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. The Maharshi Dayanand University (hereinafter referred to as "the appellant") has questioned the correctness of the order in Revision Petition No.132/06 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter called "National Commission") dated 27.4.2007 whereby the National Commission has allowed the Revision Petition and the order passed by the State Consumer Disputes Redressal Commission (hereinafter referred to as "State Commission") has been set aside simultaneously restoring the order passed by the District Consumer Disputes Redressal Forum, Gurgaon (hereinafter called as "District Forum"). A further direction has been issued to the appellant to issue the B.Ed. Degree to the respondent on the basis of the results of her examinations which were held in December, 1998.

2. The dispute arose when the respondent felt aggrieved by the action of the appellant refusing to confer the degree of B.Ed. on her. The background of the facts giving rise to the case was that the respondent took admission in the academic session of 1994-95 as a regular student to pursue the course of M.A. in Political Science from Government College, Gurgaon.

“The respondent appeared in the Part-II Examination in May, 1995 as a regular candidate and in the same academic session of 1994-95 she also applied for admission in the B.Ed. (correspondence course) without disclosing the fact that she was already pursuing the regular course of M.A. in Political Science. The University at the time of preparation of the results of M.A. in Political Science discovered that the respondent had been pursuing her B.Ed. course in violation of Clause 17(b) of the General Rules of Examination and accordingly the respondent was informed that in view of the aforesaid rules she should exercise her option to choose anyone of the courses.”

3. The respondent voluntarily and consciously opted for pursuing her course of M.A. in Political Science and forewent her B.Ed. Degree course.

4. Subsequently, the University as a general measure of benefit granted an indulgence through Notification dated 16.3.1998 giving a further chance to such Ex. students who had not been able to complete their post-graduation/B.Ed. courses within the span of prescribed period as provided for under the rules. The supplementary examinations in this regard were announced by the University in the month of December, 1998.

5. The respondent applied under the said Notification for appearing in B.Ed. examination and succeeded in appearing in the examinations and also passed the same. The Appellant-University refused to confer the degree of B.Ed. on the respondent. Aggrieved, the respondent approached the District Forum in the year 2000 praying for the relief which has now been ultimately awarded in the impugned order of National Commission. The District Forum passed an order in favour of the respondent vide judgment and order dated 24.9.2004 and directed the appellant to issue the B.Ed. degree and also award Rs.1,000/- as compensation to the respondent. This order was passed by the District Forum despite a specific objection taken by the appellant that the District Forum had no jurisdiction to entertain such a complaint and award any such relief.

6. Aggrieved, the appellant filed an appeal before the State Commission and the same was allowed vide judgment dated 19.10.2005. The judgment of the District Forum was set aside holding that the District Forum should not have entertained the complaint. The respondent aggrieved by the order of the State Commission preferred a revision under Section 21 of the Consumer Protection Act, 1986 (hereinafter referred to `Act 1986') before the National Commission which has been allowed by way of the impugned order. The National Commission took notice of the issue relating to the entertaining of the complaint and the jurisdiction of the District Forum to hear the same. The National Commission relying on its larger Bench judgment in F.A. No.643 of 1994 dated 31.5.2001 held that imparting of education by the educational institutions for consideration falls within the ambit of service as defined under the Act and further relying on the judgment of this Court in the case of Bangalore Water SC 548 held that in view of the ratio of the said decision and the peculiar facts of the case, the respondent was entitled for the relief claimed and accordingly the appellant was directed to issue the B.Ed. degree.

7. Shri Tarun Gupta, Ld. counsel appearing for the appellant has made three pronged submissions. He contends that the complaint could not have been entertained as the refusal of the appellant not to award the B.Ed. degree was well within its jurisdiction and it was not service much less a consumer service as defined under the Act for the District Forum to entertain the complaint. The second submission of Shri Gupta is that the rules as noted hereinabove did not allow a student to pursue two courses simultaneously and therefore, the attempt made by the respondent without disclosing the fact of having already taken up another course i.e. Political Science in post-graduation disentitled her from any relief. As a corollary to the said submission, he submits that non-disclosure of this fact, therefore, did not

entitle her to the award of B.Ed. degree more so, when her examination had already been cancelled and the order cancelling her examination had not been properly challenged. The third submission of Shri Gupta is that the National Commission has taken too sympathetic view for the respondent and while doing so the National Commission has not correctly appreciated the impact of the General Rules of Examination as quoted hereinabove and the Notification dated 16.3.1998 which even otherwise did not allow the respondent to qualify to appear in the B.Ed. examination.

8. The respondent alongwith her father appeared in person and vehemently tried to persuade us to believe that the respondent would be loosing her career and that she should not be declined the benefits of her academic pursuits on any technicality keeping in view the fact that the University itself had allowed the respondent to appear in the examination and the order cancelling her result had been passed in violation of principle of natural justice without giving her any notice or opportunity. The other submissions that were raised are borrowed from the finding recorded by the National Commission which had been reiterated before us.

9. Before we embark upon the assessment of the rival submissions, it would be appropriate to reproduce Clause 17 of the General Rules of Examination as well as the Notification dated 16.3.1998 which are directly involved in the present context.

“17 Unless otherwise provided, a person who :- (a) has already passed an examination of this or any other university shall not be permitted to re-appear in that examination for a corresponding examination.

(b) is a candidate for an examination in full subjects of this University can not simultaneously read for, or appear at another examination of this University or of another University/Board. The bar shall not apply to a candidate appearing in an examination of the University for passing/re-appear papers or for improvement of division/result or for additional subject.”

A perusal of the General Rules of Examination leave no room for doubt that a candidate who is pursuing a regular course for an examination in full subjects of the University cannot be simultaneously permitted to appear in another regular course of the same University or of another University or Board. This prohibition, therefore, did not allow the respondent to even apply for admission in the B.Ed. correspondence course. The appellant was, therefore, absolutely right in withholding this privilege from the respondent. The contention of Ld. counsel for the appellant has, therefore, to be accepted that the Rule being prohibitory in nature, the District Forum or the National Commission could not have issued a direction which violates the aforesaid statutory provision. It is settled legal proposition that neither the Court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision.”

10. The Court has no competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of statutory provisions. In State of Punjab & with a similar situation, this Court observed as under:- "We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations....."

11. Similarly, in Karnataka State Road Transport this Court held as under:- "The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been enjoined by law."

12. Similar view has been reiterated by this Court in Manish

13. It is worth noting that the respondent at the time of filling up of her form for B.Ed. course at the first instance had not made any disclosure about her pursuit of post-graduate student in Political Science.

14. The Notification dated 16.3.1998 read as under:-

"It is notified that the University has granted last mercy chance to the candidates of Under- graduate (Under Pattern 10+2+3) as well as post-graduate examination (s) (Annual system after discontinuation of Semester system) except MBBS/BDS/MD/PG Diplomas Courses, who could not clear their re-appear paper (s) within stipulated chances and have been declared as fail and those who could not pass/complete the degree within the stipulated period e.g. within six years of Under-graduate and four years for post-graduate courses, as per the latest syllabi.

The examination fee will be Rs. 1,000/-."

15. A bare perusal of the same would demonstrably make it clear that the said provision was not meant for candidates like the respondent. As a matter of fact, under the garb of the said Notification, the respondent managed to get her form registered with the appellant and when this discrepancy was discovered, the appellant chose to set it right which in our opinion was perfectly justified. The respondent cannot plead any estoppel either by conduct or against a Statute so as to gain any advantage of the fact that she was allowed to appear in the examination.

16. *Managing Society, Goswami, GSDSC¹*, this Court considered the case under the provisions of the Punjab (Development and Regulation) Act, 1952, wherein a demand had been challenged on the ground of equitable estoppel. This Court held that promissory estoppel does not apply against the Statute. Therefore, the authority had a right to make recovery of outstanding dues in accordance with law. The Court held as under :- "(The Administration) only corrected a patent mistake which could not be permitted to subsist.....A contract in violation of the mandatory provisions of law can only be read and

enforced in terms of the law and in no other way. The question of equitable estoppel does not arise in this case because there can be no estoppel against a statute."

17. There can be no estoppel/promissory estoppel against the Legislature in the exercise of the legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition.

“Promissory estoppel being an equitable doctrine, must yield when the equity so requires. (vide *Dr. H.S. Rikhy Haryana & Ors.*², *Chandra Prakash Kakinada & Ors.*², *(State of U.P. & Sangharsh Samiti & Ors.*³, and *Sneh*)”

18. On the other hand, the conduct of the respondent was such that even though she had no statutory right or any vested right to pursue her B.Ed. course, the mistake on the part of the appellant to allow her to appear in the examination cannot be by any logic treated to be a conduct of the appellant to confer any such right on the respondent. The rules and regulations cannot be allowed to be defeated merely because the appellant erroneously allowed the respondent to appear in the B.Ed. examination. The records reveal that the respondent did not challenge the cancellation of her results in respect of 1995 examination. The said order attained finality.

“Respondent straightaway approached the District Forum in the year 2000 for the conferment of B.Ed. degree in pursuance of the examinations conducted under the Notification dated 16.3.1998. This, in the opinion of the court, was a totally misdirected approach and the District Forum fell into error by granting the relief.”

19. The third and the most important issue that deserves to be answered is the competence of the District Forum and the hierarchy of the Tribunals constituted under the Act 1986 to entertain such a complaint. In our opinion, this issue is no longer res integra and has been extensively discussed by a recent judgment of this Court in the case of Bihar School 483, where it has been held as under :-

“11. The Board is a statutory authority established under the Bihar School Examination Board Act, 1952. The function of the Board is to conduct school examinations. This statutory function involves holding periodical examinations, evaluating the answer scripts, declaring the results and issuing certificates. The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non- commercial function. It is not possible to divide this function as partly statutory and partly administrative.

12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its services" to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of

study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-a-vis other examinees. The process is not therefore availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

13. The object of the Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial activity in its broadest sense (including professional activity or quasi-commercial activity).

But the Act does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the examination, or evaluation of answer- scripts, or furnishing of mark-sheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. We are clearly of the view that the Board is not a 'service provider' and a student who takes an examination is not a 'consumer' and consequently, complaint under the Act will not be maintainable against the Board.” (Emphasis added)

20. The respondent abused the privilege of appearing in the B.Ed. examination though she was not entitled to avail of the benefit of notification dated 16.3.1998.

“The National Commission appears to have been swayed by observations made in the Bangalore Water Supply case (supra). The respondent as a student is neither a consumer nor is the appellant rendering any service. The claim of the respondent to award B.Ed. degree was almost in the nature of a relief praying for a direction to the appellant to act contrary to its own rules. The National Commission, in our opinion, with the utmost respect to the reasoning given therein did not take into consideration the aforesaid aspect of the matter and thus, arrived at a wrong conclusion. The case decided by this Court in Bihar School Examination Board (supra) clearly lays down the law in this regard with which we find ourselves in full agreement with. Accordingly, the entire exercise of entertaining the complaint by the District Forum and the award of relief which has been approved by the National Commission do not conform to law and we, therefore, set aside the same. We wish to make it clear that the National Commission felt that the respondent had been "harassed" and has also gone to the extent of using the word "torture" against an officer of the appellant. The appellant is an autonomous body and the decision of the appellant and the statutory

provisions have to be implemented through its officers. This also includes the implementation of all such measures which have a statutory backing and if they are implemented honestly through a correct interpretation, the same, in our opinion, cannot extend to the degree of torture or harassment. The appellant had to be battle out this litigation upto this Court to establish the very fundamental of the case that the District Forum had no jurisdiction to entertain any such complaint and, in our opinion, they have done so successfully.”

21. The appeal is accordingly allowed. The judgment and order of the District Forum and the National Commission are set aside. No costs.

¹1996) 7 SCC 665

²(2000) 6 SCC 84

³AIR 2004 SC 1796

⁴(2008) 12 SCC 675