

# RAJASTHAN HIGH COURT

Vishnu Dutt Vyas

Vs.

State of Rajasthan

Civil Special Appeal No. 298 of 2000  
(B.J. Shethna and H.R. Panwar, JJ.)

17.01.2001

## JUDGEMENT

### **Shethna, J.**

1. This special appeal is arising out of the judgment and order dated 3-3-2000 passed by the learned Single Judge dismissing the writ petition No. 4933/99 filed by the appellant petitioner.

2. The appellant petitioner passed his Senior Higher Secondary Education in 1991 from Ajmer. He wanted Diploma in Civil Engineering from the Board of Technical Education, Jodhpur. He was admitted in the said course accordingly. At the relevant point of time, the Course Rules and Regulations for Diploma Courses in Engineering/ Non-Engineering for the year 1992-93 and onwards were in force. As per Rule 8, note (a) of the said Rules, a candidate who fails in Theory/Practical examination not more than 4 subjects of third year for 10 subjects scheme be allowed to appear in those subjects even after lapse of seven academic years from the date of his admission, but he has to pass all the subjects within 9 academic years from the date of his admission in the Diploma Course.

3. However, in 1994-95, the Board of Technical Education, Jodhpur issued new Rules for Diploma Programme in Engineering under Multipoint Entry and Credit System from 1994-95 onwards, under which the total number of papers were 42. The appellant cleared 41 papers, but unfortunately failed in one paper of Theory of Structure, therefore, under new rule 8.3 of 1994 Rules his enrolment was cancelled in 1999, which was challenged by him by way of writ petition No. 4933/99, which was dismissed by the learned Single Judge of this Court on 3-3-2000. Hence, this special

appeal.

4. Mr. Anand Purohit, learned counsel for the appellant vehemently submitted that the respondents committed an error in cancelling his enrolment in 1999 in view of new rule 8.3 of the 1994 Rules. He submitted that in his case, old rules of 1992 would apply. He, therefore, submitted that the learned Single Judge committed gross error in dismissing the writ petition on the ground that new Rules would apply in case of the petitioner. As against that, it was submitted by learned counsel Sri Lohra for the respondents that almost identical writ petition filed by Sri Shiv Kumar was dismissed by one of us (B.J. Shethna, J.) on 1-12-1999, which is reported in (2000) 1 W.L.C. 744 (AIR 2000 Rajasthan 138). The said judgment was challenged before the Division Bench of this Court in D.B. Civil Special Appeal No. 190/2000, but the special appeal was also dismissed by the Division Bench on 2-3-2000. Thus, the controversy in the matter is very well settled by the Division Bench of this Court.

5. However, it was submitted by learned counsel Sri Anand Purohit that Full Bench judgment of this Court in case of *Virendra Kapur v. University of Jodhpur*,<sup>1</sup> was not cited before the learned Single Judge or the Division Bench of this Court and without considering the same the learned Single Judge and Division Bench of this Court dismissed the writ petition and special appeal filed by the petitioner Shiv Kumar in that case. He, therefore, submitted that the Division Bench judgment of this Court would not be binding.

6. It may be stated that this very judgment in Virendra Kapur's case (AIR 1964 Rajasthan 161) (supra) was cited by Mr. Purohit before the learned Single Judge of this Court and the learned Single Judge after considering the same carefully that it is not a question of applying the amended rules with retrospective effect nor the amended rules provide for retrospective application. The Rules have come into force with prospective effect but even then, same may be made applicable to those students who have got admissions under the earlier rules. To fortify his view, the learned Single Judge relied upon the judgment of Hon'ble Supreme Court in case of *Punjab University v. Subhash Chandra* reported in<sup>2</sup> and another judgment of *Punjab University, Chandigarh v. Devjani Chakrabarti* reported in<sup>3</sup> wherein, the Hon'ble Supreme Court has categorically held that the amended rules will apply to those students also who got admissions under the Old Rules. In case of *Bishun Narain*

*Mishra v. State of U.P. reported in* <sup>4</sup> the Hon'ble Supreme Court observed that persons who had taken admission earlier under the old rules cannot claim to be governed by the old Rules if they are replaced by new rules. Same view was taken by the division Bench of this Court in case of *Akhil Bhartiya Vidyarthi Parishad, Jaipur v. State of Rajasthan, reported in* <sup>5</sup>

7. We are in complete agreement with the view taken by the learned Single Judge. We must state that in academic matters it is always permissible to change the conditions unilaterally and no one can claim any right or privilege to be governed under the old rules, if they are replaced by new Rules. Even in service cases, it is permissible to change the service conditions by the employer unilaterally as held by the Hon'ble Supreme Court in case of *State of Jammu and Kashmir v. Shiv Ram Sharma reported in* <sup>6</sup> It can be challenged only on the ground that such conditions were arbitrary or unreasonable, otherwise not.

8. Apart from the fact that the Full Bench judgment of this Court in Virendra Kapur's case (AIR 1964 Rajasthan 161) (supra) will have no application in the instant case, with utmost respect we may state that the law laid down by the Full Bench of this Court stands impliedly over-ruled by the later judgments of Hon'ble Supreme Court in case of Subhash Chandra (AIR 1984 SC 1415) and Devjani Chakrabarti's (AIR 1984 SC 1444) cases. The point in question is squarely covered against the appellant by the Division Bench judgment of this Court in D.B. Civil Special Appeal No. 190/2000 decided on 2-3-2000 confirming the judgment of learned Single Judge. This very Rules were interpreted and it is held by the learned Single Judge as well as by the Division Bench that new Rules would apply even to the students who got admission under the old Rules.

9. However, Mr. Anand Purohit, learned counsel for the appellant tried to rely upon the latest judgment of Hon'ble Supreme Court in case of *State of Maharashtra v. Milind reported in* <sup>7</sup> and submitted that as per the interim order passed by the Hon'ble Vacation Judge of this Court on 21-6-2000, the respondents should be directed to declare the result of the appellant. He mainly relied upon para 37 of Milind's case (supra), which we would like to reproduce. :-

"37. Respondent No. 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and maybe he is practicing as doctor. In this view and at this length of time it is

for nobody's benefit to annul his Admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled tribe candidate was deprived of joining medical course by the admission given to respondent No. 1, it may lead depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled tribe covered by Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372/85 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

10. This was seriously objected by the learned counsel Sri Lohra for the respondents. He submitted that the learned single Judge of this Court dismissed the writ petition on 3-3-2000 filed by the appellant petitioner and special appeal was filed against that order before the Division Bench on 5-4-2000. From the order sheet of special appeal, it was pointed out by Mr. Lohra that it was first placed on 14-7-2000 before a Bench consisting of Hon'ble Justice Rajesh Balia and Hon'ble Justice Mohd. Yamin and it was put up on the next date i.e. 18-4-2000 as prayed for. On 18-4-2000, it was once again ordered to be put up on 20-4-2000. On 21-4-2000, it was ordered to be put up on 26-4-2000 as prayed for. On 27-4-2000, it was ordered to be put on 2-5-2000 as prayed for. However, on 4-5-2000, that Bench ordered to issue notice making it returnable within one week. However on 11-5-2000, learned counsel Sri Anand Purohit for the appellant stated before the Bench that he had filed process fee and notices on 6-5-2000, therefore, office was directed to check and proceed. As per the office endorsement, hearing of notice would have taken place on 27-7-2000.

11. Surprisingly, this special appeal was moved by learned counsel Sri Purohit before the Hon'ble Vacation Judge on 21-6-2000 and after hearing Sri Purohit and perusing the judgment of learned Single Judge and Annex. 2 and 4, the Hon'ble Vacation Judge ordered to issue notice to the respondents and also ordered to issue notice on stay petition as well making it returnable on 4-7-2000. Meanwhile, the operation of the judgment of learned Single Judge was stayed and the appellant was provisionally

allowed to fill up the form for the paper to Theory of Structure with a direction to the respondents in that behalf. However, learned Vacation Judge made it clear that for allowing filling up the form will not confer any right on the appellant and his right would be subject to the final decision of the special appeal. From the aforesaid order, it is clear that the appellant failed to obtain any interim order from the regular Division Bench and obtained interim order from the Hon'ble Vacation Judge on 21-6-2000, as if it is a fresh case which was not. Mr. Lohara for the respondents strongly objected about this practice of obtaining interim order in this fashion and submitted that on this ground alone the special appeal was required to be dismissed.

12. It seems that in over enthusiasm, this interim order was obtained from the Hon'ble Vacation Judge, which was not proper particularly when the regular Division Bench of this Court had also ordered to issue notice without passing any interim order and the notice was to be heard on 27-7-2000 after Vacation.

13. Coming to the Milind's case (AIR 2001 SC 393) (supra) cited by learned counsel Sri Anand Purohit for the appellant, it is clear that no law was laid down by the Hon'ble Supreme Court in Milind's case. In fact in that case, respondent No. 1 joined the medical course for the year 1985-86 almost 15 years before passing of the order by the Hon'ble Supreme Court. It was stated before the Hon'ble Supreme Court that he had already completed the course and that he is practicing as doctor. In that view of the matter and that after such a delay of 15 years the Supreme Court found that it was not in the benefit or interest of anybody to annul his admission and that huge amount was spent on each candidate for completion of medical course, accordingly the Hon'ble Supreme Court decided the matter. From para 37 of its order, it is clear that one Scheduled Tribe candidate was deprived of his joining the medical course by the admission given to the respondent No. 1. If any action was taken against him then it might have led the situation of depriving the services of a doctor to the society on whom public money has already been spent. In those special circumstances, the Hon'ble Supreme Court held that the judgment shall not affect the degree obtained by him and his practicing as a doctor. However, the Hon'ble Supreme Court made it very clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribe Order and that he cannot take advantage of Scheduled Tribe Order any further or for any other constitutional purposes. Having regard to the passage of time in the given circumstance, including interim orders passed by the Court in S.L.P. (C) No. 16372/85 and other related matters, the Hon'ble Supreme made it clear that the

admissions and appointments which have become final shall remain unaffected by its judgment. This cannot be cited as a precedent. Even otherwise, the facts of present case are totally different as narrated by us earlier in this judgment, therefore, aforesaid judgment of Supreme Court in Milind's case (AIR 2001 SC 393) would not be applicable.

14. The instant case stands totally on a different footing, under the interim orders of the Court the appellant petitioner could continue the study and appeared in the exam, but while passing the interim order the Hon'ble Vacation Judge made it clear that it will not confer any right on the appellant and the same shall remain subject to final decision of the case.

15. Under the circumstances, there is no question of granting request of Mr. Purohit to direct the respondents to declare the result of the appellant petitioner, particularly when the case of the appellant is squarely covered against him by the Division Bench of this Court as well as number of Supreme Court judgments referred to by the learned single Judge while dismissing his writ petition,

16. In view of the above discussion, this special appeal is dismissed. Stay petition is also dismissed. Interim relief granted earlier stands vacated forwith.  
Order accordingly.

#### Cases Referred.

1. 1964 R.L.W. 328: (AIR 1964 Rajasthan 161)
2. (1984) 3 SCC 603: (AIR 1984 SC 1415)
3. (1984) 3 SCC 612 (AIR 1984 SC 1444)
4. AIR 1965 SC 1567
5. (1988) 1 Raj LR 819
6. (1999) 3 SCC 653: (AIR 1999 SC2012)
7. 2000 AIR SCW 4303: (AIR 2001 SC 393)