

(2014) 07 P&H CK 0684

High Court Of Punjab And Haryana At Chandigarh

Case No: RA No. 9 of 2014 in CWP No. 11605 of 2012

Narinder Nath

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision: July 16, 2014

Acts Referred:

- Indian Nursing Council Act, 1947 - Section 10(2)

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Suvir Sehgal, Advocate for the Appellant; Raghuvir Tejpal, S.S. Brar, Munish Jolly and H.P. Verma, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Rakesh Kumar Jain, J.

The petitioners are employed as Nurses in various hospitals. They completed their Post Basic Nursing Degree Programme Course [in short the "P.B. B.Sc. (N)"] during their service, from respondent No. 5 which is affiliated with respondent No. 2 who has issued the degrees to them. They had filed the writ petition with a grievance that their degree of P.B. B.Sc. Nursing is not being recognized. The writ petition was dismissed by this Court on the ground that the candidate qualifying PB. B.SC. (N) from Indira Gandhi National Open University, New Delhi (in short-"IGNOU") through distance education is not eligible for admission to M.Sc. (N) Programme as the study centres are not recognized by Indian Nursing Council, (in short-"INC"). It was found that INC had given permission to respondent No. 5 for regular courses and not for courses conducted by IGNOU through its Programme Study Centres (PSC).

2. The order dated 06.08.2013 passed in CWP No. 11605 of 2012 was challenged by the petitioners in LPA No. 1712 of 2013 in which the following order dated 18.11.2013 was passed:-

The judgment of the learned Single Judge has been assailed before us in appeal, through as per the submissions made by learned counsel for the appellants before us, he now does not dispute the proposition that no course can be commenced nor admission can be granted without prior permission of Indian Nursing Council. It is also a finding reached that no permission and recognition was granted qua IGNOU course to respondent No. 5 for the Programme Study Centre.

The submission of learned counsel for the appellant is that protection has, however been granted to the individual candidates, who were carrying out study in the course in view of the judgment of the learned Single Judge of Delhi High Court W.P. (C) No. 1644 of 2011 (Jincy Joy and another Vs. Indira Gandhi National Open University and others) and connected matters decided on 27.09.2013. It is his submission that a similar protection ought to have been granted even to the appellants.

Learned counsel, however, cannot dispute that this aspect was not canvassed and consequently does not form a part of the order of learned Single Judge.

Learned counsel for the appellants, thus, seeks leave to withdraw the appeal with liberty to approach the learned Single Judge for a limited relief vis-à-vis the existing students based on the judgment of learned Single Judge of Delhi High Court in W.P. (C) No. 1644 of 2011 (supra).

Liberty granted.

The appeal is dismissed as withdrawn.

3. The petitioners have thus filed the present application for review has been filed on the basis of the judgment of Delhi High Court in W.P. (C) No. 1644 of 2011 (Jincy Joy and another Vs. Indira Gandhi National Open University and others) decided on 27.09.2013.

4. Learned counsel for the petitioners has submitted that during the pendency of the review application, LPA No. 2115 of 2013, Saroj Bala Vs. State of Haryana and others in CWP No. 22056 of 2013 was also decided on 27.11.2013 by the Division Bench of this Court in which following order was passed:-

Admit.

Learned counsels for the respondents accept notice.

At the request of learned counsels for the parties, the appeal is taken up for final disposal.

The appellant qualified B.Sc. Nursing examination in the year 2008 from Indira Gandhi National Open University, New Delhi/respondent No. 4 ("IGNOU"). Respondent No. 2 is a Medical College affiliated to respondent No. 3 University. The appellant sought admission to the respondent No. 2-college on 17.07.2013 in M.Sc.

(Nursing) but was informed that she was ineligible as she had taken coaching from a study centre known as "Safdar Jung College of Nursing, New Delhi". The appellant thus assailed this decision in Civil Writ Petition No. 22056 of 2013 which had been dismissed vide impugned order dated 27.11.2013 by the learned Single Judge.

A perusal of the impugned order shows that the challenge laid by the appellant was on the basis of parity with two other students. The stand of the university was that as per the policy decision of the Indian Nursing Council circulated vide circular dated 03.01.2012 the candidates qualifying P.B. B.Sc. (N) from IGNOU through distance education were not eligible for M.Sc. (N) Programme if the study centres are not recognized by the Indian Nursing Council. Learned Single Judge analyzed three fold submissions made before him as under:-

- i) In view of circular dated 03.01.2012 the appellant could not be granted admission.
- ii) Two students with whom parity had been claimed have not been impleaded as party.
- iii) There was no aspect of retrospectively of the circular dated 03.01.2012 involved as the appellant had sought admission on 17.07.2013. We have heard learned counsels for the parties.

The judgment of the learned Single Judge of Delhi High Court in WP(C) No. 1644 of 2011 and connected matters decided on 27.09.2013 has been relied upon by learned counsel for the appellant wherein it has been held that the Nursing Council having recognized the course unconditionally in the year 2000 of IGNOU, the students who have pursued that course cannot be prejudiced by a subsequent action arising from the instructions/circular dated 03.01.2012.

Learned counsel for the respondents cannot dispute that the aforesaid judgment applies squarely to the facts of the present case. The appellant before us completed the course in the year 2009 when the degree was recognized. The subsequent instructions dated 03.01.2012 would apply to such persons who qualified the degree thereafter but would not disqualify the persons who had qualified when the degree was recognized for seeking admission to M.Sc. (Nursing) course. We are in complete agreement with the view taken by Delhi High Court and the conclusion arrived at in context of the issue in question, reads as thus:-

17. In view of the foregoing, WP (C) No. 3036/2012 is hereby dismissed without any orders as to costs. WP (C) Nos. 1644/2011, 5037/2012, 361/2012, 4146/2012, 7719/2012, 2175/2013, 2774/2011, 5165/2012 and 6642/2012 are disposed of with the following directions:

i. It is hereby declared that the Council had duly recognized, in terms of Section 10(2) of the Indian Nursing Council Act, 1947, the Post basic B.Sc. (Nursing) course of the respondent Indira Gandhi National Open University, in respect of the students who have already passed out or have already taken admission to the aforesaid

course, irrespective of the study centre from which they had passed out or in which they are studying.

ii. The respondent-Council shall grant the necessary permission/NOC to the petitioners in the above-referred writ petitions for admission to the M.Sc. (Nursing) course if the petitioners have already approached or approach it in future seeking requisite permission/NOC, on the strength of Post Basic B.Sc. (Nursing) degree awarded to them by Indira Gandhi National Open University.

iii) The respondent-Raj Kumari Amrit Kaur College of Nursing and Nightingale Institute of Nursing shall not refuse admission to the petitioners in the above-refereed writ petitions, in their respective M.Sc. (Nursing) course on the ground that the Post Basic B.Sc. (Nursing) degree obtained from Indira Gandhi National Open University is not recognized by the Indian Nursing Council.

iv) The respondent-Indira Gandhi National Open University shall not make further admission to its Post Basic B.Sc. (Nursing) course, wherever such course is to be pursued at a study centre which is not already inspected and approved by the Council in terms of Section 10(2) of the Act.

The appeal is accordingly allowed and the impugned order of the learned Single Judge is set-aside with a direction to respondent No. 2 to admit the appellant to its course subject to fulfillment of all other requirements and the needful be done within a week from today.

5. Learned counsel for the petitioners has submitted that it was observed in LPA No. 2115 of 2013, that the order passed by Single Judge of the Delhi High Court in case W.P. (C) No. 1644 of 2011 could not be disputed by the learned counsel for the respondents as it squarely covers facts of the case and it was held that the instructions dated 03.01.2012 would have the prospective effect and would not affect the degrees obtained before the cut of date i.e. 03.01.2012. The said degree would be recognised for seeking admission to M.Sc. Nursing course. Similar argument has been made by the learned counsel for the petitioners in the review application that out of 53 petitioners in the writ petition, petitioners No. 1 to 30 had passed their P.B. B.Sc. (N) in the year 2010-2011, much before the cut of date i.e. 03.01.2012 and are squarely covered by the order passed by the Division Bench in LPA No. 2115 of 2013. Therefore, the degrees obtained by them through Programme Study Centre deserve to be recognised. No objection has been raised in this regard by learned counsel for the respondents i.e. INC, IGNOU and the PGI.

6. Insofar as the remaining petitioners No. 31 to 53 are concerned, learned counsel for the petitioners has further argued that they are also covered by the decision in the case of Jincy Joy (supra). In this regard, he has referred to the observations made by the learned Single Judge of the Delhi High Court which reads as under:-

In any case even if I assume that the University also needs to share the responsibility for the inspection of the remaining study centres, the students who have taken already passed out or have admission to the aforesaid course cannot be made to pay for the negligence/inaction on the part of the Council and/or the University, since while taking admission in the study centre of a statutory University they had no reason to suspect that the course in which they were taking admission was recognized by the Council.

The counsel for the petitioners has further referred to paragraph 17 of the judgment in which while disposing of the writ petition, a direction has also been issued to the effect that it is hereby declared that the Council had duly recognized, in terms of Section 10(2) of the Indian Nursing Council Act, 1947 (hereafter called "The Act"), the Post basic B.Sc. (Nursing) course of the respondent Indira Gandhi National Open University, in respect of the students who have already passed out or have already taken admission to the aforesaid course, irrespective of the study centre from which they had passed out or in which they are studying.

At the same time, it is also declared in the said judgment that the respondent-Indira Gandhi National Open University shall not make further admission to its Post Basic B.Sc. (Nursing) course, wherever such course is to be pursued at a study centre which is not already inspected and approved by the INC in terms of Section 10(2) of the Act.

7. Learned counsel for the petitioners has thus submitted that petitioners No. 31 to 53 also fall in the category of those students who had taken admission without knowing that INC has not recognized respondent No. 5 as PSC of IGNOU and is covered by the aforesaid directions whereby they have been declared to be recognized along with those students who have passed the course.

8. Learned counsel for the respondents could not dispute this aspect as well, rather the order passed in the case of Jincy Joy (supra) remained unchallenged as no appeal or SLP was preferred by the respondents. Even otherwise, learned counsel for the petitioners has tried to argue that all the petitioners have been working as Nurses either in the PGIMER, Chandigarh, Rajindra Hospital, Patiala, Daya Nand Medical College and Hospital and Christian Medical College and Hospital, Ludhiana since long and have acquired sufficient experience for the purpose of taking admission in the M.Sc. course.

9. Be that as it may, the fact remains that in the case Jincy Joy (supra), two PSC i.e. Safdar Jung College of Nursing, New Delhi and Tantia Higher Education Institute, Sri Ganganagar which were not recognized as PSC of IGNOU by INC have been declared to have been recognized for the purpose of admission to M.Sc. (N) Course in respect of those who have not only obtained degrees but were also studying in those centres, and the order in case of Jincy Joy (supra) has been followed by Division Bench of this Court in LPA No. 2115 of 2013, Saroj Bala (supra), though only

to the extent of those students who have obtained their degrees prior to the cut off date i.e. notification dated 03.01.2012. Yet the judgment in case of Jincy Joy (supra) has clearly laid down that those students who have already taken admission in the Programme Study Centres, not recognized by the INC as a Distance Education Centre were also declared to have been recognized. Thus, following the order passed by this Court in case Saroj Bala (supra) and the Delhi High Court in Jincy Joy (supra), order dated 06.08.2013 is hereby recalled and the writ petition is hereby allowed with a direction that petitioners No. 1 to 30 who had already obtained degree of P.B. B.Sc. (N) from PSC recognized by INC imparting Distance Education is recognized and petitioners No. 31 to 53 who had taken admission prior to the passing of the order by the Delhi High Court in case Jincy Joy (supra) would also have their degrees recognized for the purposes of admission to M.Sc. Course. However, it is made clear that in terms of the directions issued by the Delhi High Court in case Jincy Joy (supra), IGNOU shall not make any further admission to its Post Basic B.Sc. (Nursing) course, wherever such course is to be pursued at a study centre which is not already inspected and approved by the INC in terms of Section 10(2) of the Act.

10. With these observations, the present review application is disposed of.