
(2016) 06 MP CK 0044

MADHYA PRADESH HIGH COURT

Case No: Writ Petition No. 5478 of 2016

Ram Kishore Yadav

APPELLANT

Vs

M.P. Board of
Secondary Education

RESPONDENT

Date of Decision: June 28, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 MPLJ 658

Hon'ble Judges: S.K. Gangele and Ashok Kumar Joshi, JJ.

Bench: Division Bench

Advocate: Shri Rajesh Dubey, Learned Counsel, for the Petitioner in W.P. No. 16782/2015; Shri Brindawan Tiwari, Learned Counsel, for the Petitioner in W.P. No. 5478/2016 and 2958/2016; Shri U.S. Jaiswal, Learned Counsel, for the Petitioner in W.P. No. 10188/2016; S

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.K. Gangele, J. - The question for consideration before this Court in this writ petition and connected writ petitions is that whether petitioners are entitled to clear D.El.Ed. course examination in third chance or not. Facts of W.P. No. 5478/2016 have been taken into consideration for decision of the cases.

2. Initially the petitioners were appointed as Gurujis. Government had taken a decision to appoint Gurujis on the post of Samvida Shala Shikshak Grade III. Petitioners appeared in eligibility test and, thereafter, they were appointed as SSS Grade III. One of the condition of service of Teacher in the State is that he has to pass D.El.Ed. examination. The petitioners were given admission in D.El.Ed. course by the State. As per the petitioners, they passed D.El.Ed. first year examination. It is a two years course. However, they could not clear the second year examination even though in second chance. The petitioners

pleaded in the petition that at the relevant time, the respondent No.3/NCTE had not restricted the chances to complete the course of D.El.Ed. Hence, the petitioners are also eligible or entitled to appear in the examination of D.El.Ed. course in third chance. The NCTE/respondent No.3 in its reply pleaded that earlier, as per NCTE regulations of 2009, there was no provision for fixing maximum period for completing D.El.Ed. course. The respondent No.1/Board of Secondary Education in absence of NCTE regulations 2009 had taken independent decision to regulate the chances of examination. As per the circular dated 26.02.2010 issued by the Board, there was no period to clear the course.

3. The Executive Committee of the Board on 17.12.2012 amended its own circular by holding that two years course is required to be cleared in two consecutive chances. In accordance with the NCTE Regulations, 2013, the period of completion of D.El.Ed. course has been fixed as two years. However, the student can clear the course in an extended period of another one year i.e. three years. It is pleaded that the petitioners were not eligible to get third chance because at the time of enrolment of the petitioners, to complete the D.El.Ed. course, the circular of the Board dated 17.12.2012 was enforce.

4. Learned counsel appearing for the Board has submitted that the Board has adopted the return of NCTE/respondent No.3.

5. Learned counsel for the petitioners has submitted that the Board had no power and authority to limit chances of clearing D.El.Ed. examination. Prior to 2014, there was no limit prescribed by the NCTE to complete the course. The petitioners were admitted in D.El.Ed. course prior to 2014, hence, they are eligible to clear the course in third chance. Counsel for the NCTE has submitted that in absence of the regulations framed by the NCTE, the Board which is the affiliating authority, has power to regulate the procedure of examination and the Board had taken a decision to limit the chances of clearing D.El.Ed. examination upto two years. The petitioners are not eligible to clear the examination in third chance.

6. Same arguments have been advanced by the learned counsel for the Board.

7. The NCTE-respondent No. 3 is authorised to control norms, standards and procedure for recognition of institutions and commencing of new programmes in regard to teacher education programme. Regulations have been framed in exercise of powers conferred by sub-section 2 of Section 32 of the National Council for Teacher Education Act, 1993 by the Union of India named as National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009. Regulation 3 prescribes applicability, which reads as under:

"3. Applicability. - These Regulations shall be applicable to all matters relating to teacher education programmes covering norms and standards and procedures for recognition to institutions, commencement of new programmes and addition to sanctioned intake in existing programmes and other matter incidental thereto."

8. Sub-regulation (12) of Regulation 8 prescribes provision of affiliation of the institution recognised by the NCTE for imparting teacher education after recognition by NCTE. It reads as under :

(12) The University of Examining body shall grant affiliation only after issue of the formal recognition order under sub-regulation (11) of Regulation 7 of these Regulations. Further admissions by the institution shall be made only after affiliation by the University or Affiliating body and as per the State policy.

9. The NCTE again framed another set of regulations called as Regulations of 2014. They came into existence vide notification dated 28.11.2014. Regulation 11 is in regard to academic calendar. It reads as under:

"11. Academic Calendar. - (1) It shall be incumbent upon the affiliating body to regulate the process of admission in teacher education institutions by prescribing the schedule or academic calendar in respect of each of the programmes specified in Appendix 1 to 15 under these regulations, at least three months in advance of the commencement of each academic session and to give due publicity by providing the following details, namely :-

(a) date of the publication of notice inviting applications for admissions;

(b) last date of receipt of applications for admissions for each programme;

(c) date of selection test or interview.

(d) date of publication of 1st, 2nd and 3rd list of candidates and last date of closure of admissions."

10. Appendix (ii) of Regulation, 2014 prescribes norms and standards for Diploma in Elementary Teacher Education programme leading to Diploma in Elementary Education (D.El.Ed.).

11. Clause 2.1 prescribes duration of the course, which reads as under:

"The D.El.Ed. programme shall be of a duration of two academic years. However, the students shall be permitted to complete the programme within a maximum period of three years from the date of admission to the programme."

12. In accordance with the aforesaid clause, the duration of D.El.Ed. course is of two academic years. However, the student can complete the course within a maximum period of three years from the date of admission. After coming into force of Regulation of 2014, the student is not eligible to get third chance. He has to complete the programme within a maximum period of three years, which gives two chance to clear the examination.

13. Vide order dated 27.12.2012, the Board had taken a decision that from the academic session, 2012, the students of D.El.Ed. would be given two chances to clear the

examination main and supplementary and if student could not clear the examination in two chances then he had to take admission in the course afresh and he has to complete the course. Earlier, there was no limit to clear the examination of D.El.Ed. course.

14. Admittedly, the petitioners had taken admission in D.El.Ed. course after coming into force the order dated 17.12.2012. After coming into force of the aforesaid order, a student has to clear the examination in two chances main and supplementary.

15. The counsel for the petitioner has contended that the Board had no power and authority to limit the chances because in the year 2012 NCTE did not prescribe period for completion of the course. In our opinion, the arguments advanced by the learned counsel for the petitioners could not be accepted because in accordance with the regulation of 2009 framed by the NCTE, which was applicable at the time of admission of the petitioners, the institution after recognition had to take affiliation from the examining body and there was no provision to control period to complete the course. Certainly, the affiliating body had power and authority to control the same because there is no conflict between the Regulation, 2009 and the order issued by the Board in 2012 limiting the chances of clearing examination. Hence, in our opinion, the petitioners are not eligible to get third chance. Even if the arguments of the petitioners are accepted, then the petitioners would get unlimited chances and this would be contrary to the procedure adopted by the affiliating body/Board for the purpose of conducting the examination. It is a fact that the regulation prescribes that after getting recognition to conduct course, the institution has to get affiliation from the examining body and in that event, the examining body has power and authority to regulate the procedure of examination which includes chances to clear the examination.

16. Learned counsel for the petitioner relied on the judgment of the Apex Court passed in the matter of **State of Maharashtra v. Sant Dhyaneshwar Shikshan Shastra Mahavidyalaya and others reported in (2006) 9 SCC 1.**

The aforesaid judgment is in regard to power of the Government to refuse permission to the institute for starting B.Ed. course after getting approval by the NCTE. In the present case, the question is in regard to fixing the limits to clear the examination. Some unreported orders have also been cited by the learned counsel for the petitioners. But, in those orders, the question of law has not been decided by the Court.

17. On the basis of above discussion, in our opinion, there is no merit in this petition and other petitions.

Consequently, the petitions are dismissed.

18. No order as to costs.