
(1998) 07 BOM CK 0008

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 1580 of 1998

Shrimant Sarode

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision: July 30, 1998

Citation: (1998) 4 ALLMR 643 : (1999) 1 BomCR 782 : (1998) 3 MhLj 278

Hon'ble Judges: N.P. Chapalgaonker, J; B.H. Marlapalle, J

Bench: Division Bench

Advocate: V.D. Solunke, for the Appellant; Mrs. A.S. Rasal and S.N. Yadav, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.H. Marlapalle, J.

Heard Mr. V.D. Solunke, learned Counsel for petitioner, Mrs. A. Rasal, learned A.G.P. for respondents Nos. 1 and 2 and Mr. S.N. Yadav, learned Counsel for respondent No. 3.

2. Rule made returnable forthwith by consent of the parties.

3. The petitioner was admitted in respondent No. 3 college to the 1st Year of D. Pharmacy Course. He appeared for First Year examination held in the month of April, 1997 and he passed in 4 subjects and failed in two subjects. Accordingly, he was given the benefit of Allowed To Keep Term (ATKT). He was admitted to the second year D. Pharmacy for the academic year 1997-98. He appeared for the supplementary examination of First Year D. Pharmacy held in the month of October, 1997 for the remaining two subjects, when he was already an ex-student of the IIInd year D. Pharmacy.

It appears that the petitioner was charged with malpractice in the said supplementary examination and investigation was conducted in the said charges. Meanwhile, petitioner continued to attend his 2nd year D. Pharmacy theory as well

as practical classes.

4. By an order dated 23-3-1998, passed by the respondent No. 2, petitioner was informed that he has been punished for engagement in malpractices in his supplementary examination held in the month of October-November, 1997 and his performance for the said examination was cancelled. In addition, he was debarred from appearing for one more examination which was scheduled to be held in the month of March-April, 1998. He was further informed that his admission to second year D. Pharmacy would stand cancelled. Aggrieved by this order, petitioner has approached this Court.

5. Respondent No. 2 has filed an affidavit and resisted the petition. Reliance has been placed on Ordinance No. 26 in support of the impugned order. The said Ordinance reads as under :

"If before, during or after the examination, it is found/reported that a candidate has been guilty of misbehaviour or misconduct including breach of any of the rules laid down for the proper conduct of re-examination then the Secretary on receipt of such report or when Secretary comes to know and is convinced of such possible misconduct/misbehaviour on the part of the candidate, shall place such cases before the Special Committee for decision. If during the examination a candidate has been found to have copied or attempted to copy or helped to copy or used or attempted to use unfair means at the examination and unless he/she caught with positive evidence of copying material brought from outside or for gross misbehaviour, he/she should not be expelled from the examination and be provisionally permitted to appear for the remaining/full examination by the Officer-in-Charge of the examination at the centre by substituting fresh answer books after obtaining an undertaking in writing from him/her and then make a report in this respect to the Secretary, Board of Technical Examination. The Secretary, shall place such cases before the Special Committee for decision.

If after the examination copying/misbehavior cases are found at the Assessment Centre or at the place of Assessment while assessing the answer books, then the examiner shall report such cases to the Officer-in-Charge of the centre or the Secretary, Board of Technical Examinations as the case may be, with his observations and Officer-in-Charge of the centre shall report such cases along with the report of the Examiner to the Secretary, Board of Technical Examination. The Secretary on receipt of such report shall place such cases before the "Special Committee" for decision.

The Chairman, Board of Technical Examinations, shall have the power to cancel the result of the candidate in the examinations at which he appeared and also debar him from subsequent examination either permanently or for such a specified period as the "Special Committee" appointed by the Board of Technical Examinations may deem fit, in all above cases.

The candidate whose result is thus cancelled and who is further excluded from the examination, for a specified period shall be eligible to reappear as an ex-student after the expiry of the period for which he is otherwise eligible. During the said period of punishment such candidate shall not be eligible for admission to any of the Institute/Examination both for Lower and Higher Semester/Year."

6. Learned A.G.P. has mainly emphasized on the provision in the concluding para of Ordinance 26 and submitted that the respondent No. 2 was justified in cancelling the admission for second year D. Pharmacy course, as the petitioner was found guilty of engaging in malpractices and he was punished.

7. Mr. Solunke, learned Counsel for petitioner submitted that the petitioner has no grievance so far as the first part of the punishment is concerned viz., cancellation of the performance of October-November, 1997 examination and debarring for the next examination to be held in the month of April-May, 1998. However, the second part of the punishment viz. cancelling the second year admission, which was taken in the beginning of the academic year 1997-98, would amount to double punishment, especially when the petitioner was already admitted, as per rules, in the second year, urged the learned Counsel for petitioner.

8. A perusal of the Ordinance No. 26 indicates that the Ordinance provides for enabling powers to the authorities to cancel the performance for an examination and debar the student being not eligible to reappear as an ex-student till the expiry of specific period and during such a period, student shall not be eligible for admission to any of the institution/examination both for lower and higher semester/year. This Ordinance does not envisage the case of a student who was already admitted on the basis of his performance of earlier examination to the second year D. Pharmacy Course and cancellation of admission, on the basis of his engagement in malpractices in an examination held during the academic year when he is student of second year. We are not in agreement with the learned A.G.P. that the Ordinance also covers the cases of students who are already studying in the second year D. Pharmacy and that the respondent authorities are empowered to cancel such admission on the basis of malpractices engaged in by such student during the examination held in such academic year even though the admission to the second/next academic year was granted in the beginning of the academic year, in keeping with the rules of admissions.

9. Submissions made by the learned Counsel for the petitioner that second part of the impugned order viz. cancellation of admission to second year D. Pharmacy course amounts to double punishment deserves to be accepted, in the facts and circumstances, as stated hereinabove, and in view of the provisions of Ordinance No. 26, on which reliance has been placed by respondent authorities in support of the impugned order.

The proviso to Ordinance No. 26, as relied upon by the authorities is not applicable to students who were allowed to keep terms (ATKT) as per rules and were admitted to and were studying in the next academic year.

10. In the result, petition is partly allowed and the impugned order to the extent of cancellation of petitioner's registration for second year D. Pharmacy course is hereby quashed and set aside.

Rule is made absolute in terms of the above direction. No costs.

11. Petition partly allowed.