

(2) The matter raised is covered by the judgment of this Court in *Commissioner of Wealth Tax, Patiala v. Hari Singh*, (1) which was later also followed by the High Court of Kerala in *Commissioner of Wealth Tax v. Mrs. Sara Varghese*, (2).

(3) This reference is consequently hereby answered in affirmative in favour of the assessee and against revenue.

(4) There will, however, be no order as to costs.

R.N.R.

Before : G. C. Mital A.C.J. & H. S. Bedi, J.

THE PUNJAB STATE FACULTY OF AYURVEDIC AND UNANI
SYSTEMS OF MEDICINES, CHANDIGARH,—Appellant.
versus
SURINDER MOUDGIL AND OTHERS,—Respondents.

Letters Patent Appeal No. 754 of 1987.

6th May, 1991.

Ayurvedic and Unani Medicines Act, 1963—S. 17—Petitioners admitted to six year consolidated B.A.M.S. Course under 1973 rules—Rule amended in 1986 imposing restrictions on number of chances to be availed of by candidate for completing the Course—Restriction imposed to four consecutive chances within a period of two years—Petitioners challenging the amended regulation on the ground that it could not be given retrospective operation—Unless legislation specifically so directs, the regulation cannot be retrospective in operation—View given by learned Single Judge upheld—Equity—Candidate joining a certain course on known terms and conditions—It would be highly unjust to change examination rules midstream.

Held, that legislation unless specifically so directed cannot be made retrospective in operation. This principle of law has been laid down in a Full Bench decision of this Court reported as *The Panjab University, Chandigarh v. Subhash Chander and another* 1976 P.L.R. 920. The stand of the respondent, therefore that the amendment made in the examination rules would be retrospective and relate to any student who was studying in the University at the time when the amendment came into force, is untenable.

(Paras 7 & 8)

(1) (1980)123 I.T.R. 558.

(2) (1988)170 I.T.R. 436.

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Held further, that where the person joined the course which is for a consolidated period of six years on certain known terms and conditions and it would be highly unjust to tell them in mid-stream that the rules and regulations which govern their examination are to be changed.

(Para 9)

Letters Patent Appeal under Clause X of the Letters Patent, against the Judgement of Hon'ble Mr. Justice M. R. Agnihotri, passed in C.W.P. No. 1089 of 1987 decided on 27th July, 1987.

Mr. N. B. S. Gujral, Advocate

Mr. R. L. Sharma, Advocate.

Mr. Amarjit Markan, Advocate, for respondents 2 & 3.

JUDGMENT

Harjit Singh Bedi, J.

(1) This judgment will dispose of Letters Patent Appeal Nos. 754 and 754-A of 1987 as these arise out of the common judgment of the learned Single Judge dated 27th July, 1987.

(2) The private respondents herein are the students of the Bachelor of Ayurvedic Medicines and Surgery (in short the 'BAMS') Degree Course, in Shri Dhanwantri Ayurvedic College, Sector 46-C, Chandigarh. They approached this Court by way of writ petitions praying for issuance of a writ of mandamus directing the respondent-State of Punjab, the Punjab State Faculty of Ayurvedic and Unani Systems of Medicines, Chandigarh, and the Principal, Shri Dhanwantri Ayurvedic College, Chandigarh to permit them to appear in the next examination of the course by declaring them eligible and entitled to complete the course, according to the regulations which were in force at the time of their joining the course. According to the writ petitioners (now respondents), the amended regulation imposing a restriction on the number of chances, i.e. four consecutive chances within a period of two years, to be availed of by a candidate for completing the course, is not applicable to them as they had joined the course earlier to its introduction and the said regulation was not retrospective in operation.

The learned Single Judge allowed the writ petition relying on two single Bench decisions of this Court reported as

Sanjay Sharma v. State of Punjab and others, 1986 (2) PLR 74 and CWP No. 4486 (*Atul Sood v. The State of Punjab etc.*) decided on 5th June, 1987. The learned single Judge in *Sanjay Sharma's* case (supra) had observed as under :—

“When the college and the faculty had permitted him to join the first year course it was on the supposition that his candidature would be in order when appearing in the next ensuing or the still next ensuing examination besides of reappear papers. It is thus obvious that withholding the candidature of the petitioner for the examination of the first year course due to be held in January, 1986, was an action arbitrary, unfair and unjust violative of principles of Article 14 of the Constitution, keeping aside the allegation of the petitioner that it was discriminative regarding which no material substance has been placed on the record.”

It may also be noted here that when the letters patent appeal were admitted, no stay was granted to the appellant with the result that the private-respondents have since completed the course and are successfully employed in their vacations. This fact has been put on record of the letters patent appeal,—*vide* Civil Misc. No. 25 LPA of 1991 in LPA No. 754 of 1987.

(3) The stand taken in the written statement was that the petitioner-respondents were governed by the amended rules which had been enforced with effect from 1986. although they had taken admission to the course prior to the enforcement of those rules. The learned single Judge, as already indicated above, allowed the writ petition holding that the respondents could not be governed by the rules which were enforced after they had joined the consolidated six year course of BAMS.

(4) During the course of arguments in the letters patent appeal, Mr. NBS Gujral, Advocate, appearing for the appellant, has raised a new argument. He has submitted that the rules of 1973 were in force prior to the enforcement of 1986 rules and even under these rules, the respondents were not eligible to sit in the examination in question. As the reliance on 1973 rules was not pleaded before the learned single Judge, we are not inclined to go into the interpretation of these rules as the respondents have already completed the course in question.

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(5) The next argument urged by Mr. Gujral is that 1986 rules were entitled to be read as being retrospective in operation. We are unable to agree with this submission as well.

(6) Under Section 17 of the Ayurvedic and Unani Medicines Act, 1963 (hereinafter called the "Act 1963") it has been provided that the Faculty may, with the previous approval of the State Government make bye-laws not consistent with the Act or the rules made thereunder. Sub-section (2) of Section 17 of the Act, provides that all bye-laws shall be published in the official Gazette. It appears that,—*vide* Annexure P-1 dated 27th September, 1983, the appellant moved a proposal for limiting the number of chances available to a candidate to pass the BAMS examination. *Vide* Annexure P-2, the approval of the Government was granted and it was directed that the Punjabi University Calendar as amended from time to time, be adopted for the purpose of BAMS Course, as resolved by the appellant in its meeting held on 10th February, 1982 and conveyed to the State Government,—*vide* annexure P-1. The approval was duly notified on 16th August, 1986,—*vide* annexure P-3 and the Notification clearly stated "that the Governor of Punjab is pleased to allow the Punjab State Faculty of Ayurvedic and Unani Systems of Medicine to adopt the Rules and Regulations laid down in the Punjabi University Calendar, as amended from time to time, for BAMS Course." It will be clear from the above narration of facts as chronologically given that the Punjabi University Rules pertaining to BAMS Course could be enforced only after they had been published, in terms of sub-section (2) of Section 17 of the Act in the Gazette. It will also be clear that sub-section (1) of Section 17 clearly stipulates that the previous approval of the State Government has to be taken before the amendment is made and this approval was admittedly taken,—*vide* Annexure P-2 on 16th September, 1985.

(7) It may further be borne in mind that legislation unless specifically so directed cannot be made retrospective in operation. This principle of law has been laid down in a Full Bench decision of this Court reported as *The Panjab University Chandigarh v. Subhash Chander and another* (1), which is in the following terms :

"This principle to my mind, is a basic one that legislation is normally deemed to be prospective unless by clear intendment or necessary implication it has to be construed

(1) 1976 PLR 920.

as retrospective also. However, this power of clothing legislation with retrospective is an attribute primarily of the plenary powers of the legislature itself power to legislature retrospectively is hydraheaded weapon which must be wielded with care and circumspection and it is, therefore that its exercise is normally left to wisdom of the legislature itself rather than its delegates. To this rule, there is however, one clear exception that the legislature whilst delegating its power to the subordinate authority may in express terms or by necessary intentment clothe the same with the identical power to make retrospective laws."

(8) The stand of the respondent, therefore that the amendment made in the examination rules would be retrospective and relate to any student who was studying in the University at the time when the amendment came into force, is untenable. Sanjay's Sharma's case (supra) also decided the very same question that has been posed before us. We fully concur in the view taken by the learned single Judge in that case and find that it is based on a correct appreciation of the Act and other relevant provisions.

(9) The second aspect that has to be kept in mind is the question of equity. The respondents joined the course which is for a consolidated period of six years on certain known terms and conditions and it would be highly unjust to tell them in mid-stream that the rules and regulations which govern their examination are to be changed. We are fortified in this view by the observations of the Supreme Court reported as *Suresh Pal v. State of Haryana* (2), and also by certain observations of this Court made in Subhash Chander's case (supra) and in Sanjay Sharma's case (supra).

(10) For the reasons recorded above, these letters patent appeals fail and are dismissed with no order as to costs.

R.N.R.
