

Kamal Masih v. Guru Nanak Dev University (S. S. Sodhi, J.)

Chopra's case (supra) as also in several other cases has examined the record up to ten years from the date of retirement, but that, too, has been done on the facts of those individual cases. As already mentioned above, the case of the respondent is again totally different. His work and conduct has been uniformly poor to "Average" throughout his career coupled with 6 reports of doubtful integrity and, as such, to confine scrutiny to ten years alone would not be proper. It would be anomalous to lay down this as an inflexible rule. It would also be a travesty of justice to ignore all adverse entries of doubtful integrity starting from the 11th year backward. No hard and fast rule can, therefore, be formulated.

(19) No other point has been raised. The present Letters Patent Appeal is allowed and the writ petition is dismissed but with no order as to costs.

R.N.R.

Before S. S. Sodhi & G. C. Garg, JJ.

KAMAL MASIH,—Petitioner.

versus

GURU NANAK DEV UNIVERSITY,—Respondent.

Civil Writ Petition No. 6335 of 1991.

24th October, 1991.

Constitution of India, 1950—Art. 226—Cancellation of admission—Student admitted in college on the basis of 10+2 examination conducted by Bihar Pardesh Shiksha Parishad—University allotting him registration No.—After passing B.A. II examination, petitioner again admitted to B.A. III but not allowed to appear in examination on the basis of decision taken by the University not to recognise the Bihar examination—Cancellation of admission on ground of non-recognition is inequitable.—Such decision of non-recognition can work only prospectively—Where there is misrepresentation, concealment of facts, fraud or other wrong doing on the part of candidate, admission once granted cannot be cancelled at a stage where it is inequitable to a candidate—Doctrine of no fault—Candidate cannot be allowed to suffer—Consequently, candidate has a right to declaration of result.

Held, that there is no hint or suggestion of the petitioner having

obtained admission by any concealment or misrepresentation of facts. In the absence thereof, while, no doubt, the question whether the qualification possessed by a candidate is recognized by the University or renders him eligible for admission is one solely for the University to consider. It cannot, however, be permitted, after having granted admission to cancel it on any of these grounds after such passage of time as would put the candidate to irreparable harm.

(Para 5)

Held, that recognition of equivalence of the qualifications possessed by a candidate for admission is a matter to be determined and decided before such admission is granted and not subsequent thereto. Further, if at any later stage, the University decides not to recognize such qualification, interests of justice and principles of fair play, render it incumbent that this decision works prospectively only and it does not operate to the prejudice of those already granted admission on the basis thereof. In other words, except where there is mis-representation, concealment of facts, fraud or other wrong-doing on the part of the candidate, admission once granted, even on the basis of some qualification was not recognized by the University, it cannot, on that account, be cancelled, if at that stage, it would be inequitable to the candidate, like where he would have no fault of his, thereby lose a year. Hence, it has to be held that the respondent-University must indeed have fallen in error in denying permission to the petitioner to appear in B.A. Part III examination and, consequently, the petitioner has right to declaration of result.

(Paras 6, 7, 11)

Writ petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may kindly be pleased to issue:--

- (i) *a writ in the nature of mandamus directing the respondent/University to issue Roll No. Slip to the petitioner for appearing in B.A. (3 years Course) Part III April, 1991;*
- (ii) *to issue a writ in the notice of mandamus directing the respondent to allow the petitioner to appear in examination and declare petitioner's result.*
- (iii) *to issue suitable writ/order or direction, declaring intermediate examination passed from Bihar Pardesh Shiksha Parishad equivalent to 10 plus 2 examination.*
- (iv) *to dispense with the filing of certified copies of Annexures.*
- (v) *to award cost of the writ petition to the petitioner;*

It is further prayed that the petitioner be allowed to appear provisionally in the B.A. (3 years course) Part III April, 1991 commencing

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from 30th April, 1991 subject to the decision of writ petition.

Puneet Jindal, Advocate, for the Petitioner.

H. S. Giani, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns the 10+2 Examination of the Bihar Pardesh Shiksha Parishad and the decision of the Guru Nanak Dev University of January 19, 1989 directing cancellation of admission of all candidates who had obtained admission to Classes/Courses on the basis of this Examination.

(2) To narrate the relevant factual background, after passing the 10+2 Examination of the Bihar Pardesh Shiksha Parishad (hereinafter referred to as 'the Bihar Examination'), in June 1987, the petitioner-Kamal Masih applied for and was granted admission to B.A., Part II in Sant Baba Dalip Singh Memorial Khalsa College, Demeli. This is a State aided College affiliated to the Guru Nanak Dev University, Amritsar. In due course, he was also allotted the University Registration No. 87/SBD/A/3. In April 1988, he thereafter appeared and passed the B.A. Part II Examination.

(3) According to the petitioner, he was again admitted in the same College for B.A. Part-III and attended Classes for the 1988-89 Academic Session, but due to ill-health, he could not sit for this Examination in 1989. It was in January 1991 thereafter that he sent his application to the respondent-University for appearing as a private candidate in the B.A. Part-III Examination. No such permission was, however, forthcoming. The reason, he later discovered was, that the University had decided not to recognize the Bihar Examination.

(4) A reference to the record shows that the Guru Nanak Dev University, on receipt of two letters from the Bihar Government, one of November 22, 1988, annexure R/1 and the other of December 1, 1988, Annexure R/2, considered them at its meeting held on January 19, 1989 and decided that directions be issued to all Colleges to cancel admission to all classes/Courses granted on the basis of Bihar Examination. It was apparently on this account that the

permission sought by the petitioner to appear in the B.A. Part-III Examination had not been granted to him.

(5) In dealing with this matter the point that stands out as of material significance is that there is no hint or suggestion of the petitioner having obtained admission by any concealment or misrepresentation of facts. In the absence thereof, while, no doubt, the question whether the qualification possessed by a candidate is recognized by the University or renders him eligible for admission is one solely for the University to consider. It cannot, however, be permitted, after having granted admission to cancel it on any of these grounds after such passage of time as would put the candidate to irreparable harm.

(6) Surely, recognition of equivalence of the qualifications possessed by a candidate for admission is a matter to be determined and decided before such admission is granted and not subsequent thereto. Further, if at any later stage, the University decides not to recognize such qualification interests of justice and principles of fair play, render it incumbent that this decision works prospectively only and it does not operate to the prejudice of those already granted admission on the basis thereof.

(7) In other words, except where there is mis-representation, concealment of facts, fraud or other wrong-doing on the part of the candidate, admission once granted, even on the basis of some qualification was not recognized by the University, it cannot, on that account, be cancelled, if at that stage, it would be inequitable to the candidate, like where he would have no fault of his, thereby lose a year. This view is also clearly in accord with binding precedents on this court.

(8) In *Bhupinderjeet Singh v. Panjab University, Chandigarh*, the petitioner had obtained admission to B.Sc. Part-II on the basis of the Intermediate Bihar Examination. The result of the petitioner in that annual examination was, however, withheld on the ground that this examination was not recognized by the University. The Court directed the declaration of his result, observing, "If nothing could be attributable to the conduct of the candidate and the fault, if any, lies with the college authorities or with the negligence of the

University staff, the petitioner could not be penalized for the same.”

(9) *Bhupinderjeet Singh's case* (supra) was later followed in *Harnesh Kumar and others vs. Guru Nanak Dev University, Amritsar through its Registrar*, (2) which concerned a candidate granted admission to B.A. Part-II of the Guru Nanak Dev University on the basis of the Bihar Examination. Here too, the result of the petitioner, in the annual examination, was withheld on the ground that this examination was not recognized by the University. It was held that it was too late in the day to permit the University to treat the candidature of the petitioner to be irregular on a ground which was in existence much before he had appeared for the examination and that too after the admission form had been found to be in order.

(10) Next, involving the same Bihar Examination is *Kashmir Kaur and others v. Guru Nanak Dev University and another* (3), the petitioner there was admitted to B.A. Part-I in 1987. She passed this examination in 1988 and her result was duly declared. Later, she was allowed to appear in B.A. Part II in 1989 and in B.A. Part-III in 1990. The University, however, then cancelled the result for B.A. Part-II and Part-III on the ground that this examination had not been recognized by the University as per its decision of 1989. In allowing this writ petition and directing the University to declare the petitioner's result, J. L. Gupta, J. observed :—

“An administrative order which prejudicially affects the rights of any individual or class of persons can only be prospective in its operation. It is only in January 1989 that the University has taken a decision not to recognize the degree or certificate awarded to the Parishad. Whether this decision is valid or invalid is beyond the scope of this petition. However, such a decision can have no application at all to the persons who had been admitted to any of the course of the University prior to January 1989. Action of the University in cancelling their candidature was totally arbitrary and unfair. It has undoubtedly hampered the career of the petitioners and cannot be sustained in law.”

(2) 1990(1) R.S.J. 657.

(3) 1991(2) R.S.J. 77.

(11) Seen in this light and in the over-all context of the larger interests of justice, the respondent-University, must indeed be held to have fallen in error in denying permission to the petitioner to appear in B.A. Part III Examination. The petitioner, by virtue of an interim order passed by this Court was permitted to sit in this Examination. We consequently hereby direct the University to declare the petitioner's result in this Examination.

(12) This writ petition is thus hereby accepted with Rs. 1,000 as costs.

(13) Let a copy of this judgment be sent to the Vice-Chancellor of the Guru Nanak Dev University, Amritsar.

R.N.R.