

Jaininder Mohan and others v. The Council of Homoeopathic System of Medicine, Punjab, Chandigarh and another (S. S. Sodhi, J.)

simply based on the report of the Junior Engineer, who had issued a certificate on the basis of the Measurement Book No. 7248 at page No. 30-T-5 (4) to the effect that he has paved the passage with *pucca bricks* although the measurement book was not produced in evidence, in order to show as to how the boundaries of the *kutchra* public passage were fixed at the time of the said payment.

(7) In these circumstances there is no option but to accept this petition and quash the impugned order of the trial Court as well as of the revisional Court and direct the trial Court to try this case afresh, by following the procedure laid down under Section 137 of the Code. The parties through their counsel are directed to appear before the trial Court on 23rd April, 1991.

P.C.G.

Before S. S. Sodhi & N. C. Jain, JJ.

JAININDER MOHAN AND OTHERS,—Petitioners.

versus

THE COUNCIL OF HOMOEOPATHIC SYSTEM OF MEDICINE,
PUNJAB, CHANDIGARH AND ANOTHER,—Respondents.

Civil Writ Petition No. 481 of 1990.

27th March, 1991.

Punjab Homoeopathic Practitioners Act, 1965—Ss. 21(1)(b), 21(1)(d), 21(3) & 54—The Punjab Homoeopathic Practitioners Regulations 1974—Regl. 8 & 32—Punjab Homoeopathic Practitioners (First Amendment) Regulations, 1979—The Punjab Homoeopathic Practitioners (Second Amendment) Regulations, 1983—Regl. 8—The Central Council of Homoeopathic Regulations, 1983—Regls. 9, 10, 11—Procedure of conduct of Examinations—Punjab Regulations, 1979 making Central Council Regulations applicable—Central Regulations not coming into existence till May 10, 1983—Prior to 1983 and in consequence thereof, Punjab Regulations, 1983 made applicable resulting in issuance of letter dated August 2, 1983 by Punjab Council giving concession to re-appear candidates for admission to next higher class—Meanwhile, Central Regulations, 1983 coming into force on May 11, 1983 whereas letter dated August 2, 1983 withdrawn by Punjab Council by letter dated August 13, 1988, thereby denying concessions to students admitted before August 13, 1986—Prior approval of the State Government—Whether necessary—Effect of such withdrawal—Stated.

Held, that the power conferred by this Regulation 32 is to relax any of the provisions of the Punjab Regulations, but not the Central Regulations. No doubt, it is by virtue of the provisions of Regulation-8 of the Punjab Regulations that the Central Regulations now apply, but a plain reading of the letter of August 2, 1983 would show that it neither refers to the Central Regulations nor purports to modify them in any manner in terms of Regulations-8 or 32, of the Punjab Regulations. Further, the relaxation permissible is of any provision of the Punjab Regulations. Therefore, the letter of August 2, 1983 cannot be treated as having been issued under Regulation-32 of the Punjab Regulations and, as such, the approval of the State Government was not an essential pre-requisite for the withdrawal of the letter of August, 1983. (Paras 15 &16)

Held, that the petitioners, who were admitted prior to August 13, 1986 would be entitled to the concessions as contained in the letter of August 2, 1983, in so far as they may be applicable to them, while the others admitted after August, 13, 1986 would be governed by the provisions of the Central Regulations. (Para 19)

PETITION Under Articles 226 and 227 of the Constitution of India, praying that this Hon'ble Court may be pleased to summon the records of the case, and after a perusal of the same:—

- (a) *issue a writ in the nature of Mandamus, directing the respondents to permit the petitioners to appear in the 2nd year examination, commencing from the 16th January, 1990, alongwith the re-appear papers of 1st year examination ;*
- (b) *issue any other writ, order or direction that this Hon'ble Court may deem fit under the facts and circumstances of the case.*
- (c) *Service of the advance notices on the respondents be dispensed with.*
- (d) *Petitioners be exempted from filing the certified copies of the Annexures.*
- (e) *Cost of the petition be awarded to the petitioners.*

Satya Pal Jain, Advocate, for the Petitioners.

V. K. Jindal, Advocate, for the Respondent No. 1.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here pertains to the Diploma Course in Homoeopathy. The controversy raised being with regard to candidates

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having to re-appear in one or more subjects consequent upon their failing in them in Annual, First, Second or Third D.H.M.S. Examination, as the case may be.

(2) To give the relevant background, the council of Homoeopathic System of Medicine Punjab (hereinafter referred to as the 'Punjab Council') was established by the State Government under the Punjab Homoeopathic Practitioners Act, 1965. By virtue of the provisions of Section 21(1)(b) of this Act, the Punjab Council was enjoined upon to prescribe the course of training and qualifying examination and by sub-section (3) thereof, a further duty was cast upon it, "to secure the maintenance of an adequate standard of proficiency for the practice of Homoeopathic System", while Section 54 conferred power upon it to make Regulations (with the previous sanction of the State Government). Amongst matters amenable to such Regulations being those referred to in sub-section 1 (d) thereof, namely, "the course of study for training and qualifying other examinations".

(8) On July 2, 1974, the Punjab Council, in pursuance of the powers conferred upon it under Section 54 of the Act, framed Regulations known as The Punjab Homoeopathic Practitioners Regulations 1974. It would be relevant to refer to Regulation 8 thereof, which was in the following terms :—

"The Council shall, as far as may be, follow conditions of appointment of examiners and the procedure in regard to the conduct of examination as may be applicable under the rules and regulations of Punjabi University, Patiala."

(4) It will be seen that according to this Regulation, the procedure with regard to conduct of Examinations was to be as per the rules and regulations of the Punjabi University, Patiala. This was, however, later amended on May 24, 1979, by the Punjab Homoeopathic Practitioners (First Amendment) Regulations 1979, whereby, instead of the rules and regulations of the Punjabi University being followed for the conduct of Examinations, it came to be provided there that the Syllabi and the Regulations of the Central Council would apply.

(5) What deserves pointed mention here is that though the Central Council Regulations were made applicable, such Regulations did not in fact come into existence till much later on May 11,

1983. During the period, May 24, 1979 to May 10, 1983, therefore, the Punjab Council adopted and followed draft Regulations which were eventually enacted and notified in the Punjab Government Gazette on November 18, 1983. These being The Punjab Homoeopathic Practitioners (Second Amendment) Regulations 1983. According to these Regulations of 1983, though a student passing in at least two subjects in the Annual Examination and having to re-appear in one or more subjects, was permitted to join the next higher class on a provisional basis, it was, however, provided that if he failed to pass these subjects in the Supplementary Examination, he would stand reverted to the class of which he had taken the Annual Examination. It appears that this led to a demand being raised by students admitted between May 1979 and May 1983 for relaxation being granted in respect of this provision. This was acceded to, resulting in the Punjab Council issuing a letter on August 2, 1983, annexure P/2, the relevant extract of it being :—

“A re-appear candidate may be allowed by the Principal of the College to join the next higher class after his failure in the Annual Examination pending declaration of his result of the supplementary examination, but if he fails to pass in the supplementary examination, his provisional admission to the next higher class shall be cancelled.

But if he is declared re-appear in one subject in the supplementary examination, he may be allowed to continue his studies in the next higher class and appear for the re-appear subjects alongwith the next higher examination at the next annual examination.

Provided, however, that the result of such a candidate for the higher class shall be held in abeyance till he clears his re-appear paper of the lower examination within the admissible chances under the Regulations and in case he fails to clear the re-appear paper of the lower examination even in four admissible chances, his candidature for the lower as well as higher examination shall be cancelled.”

(6) This letter of August 2, 1983, annexure P/2, came up for consideration in (*Mukesh Kaushal and others v. Council of Homoeopathic System of Medicine, Punjab and another*) (1), where the contention put-forth on behalf of Punjab Council that it applied only

(1) C.W.P. 5078 of 1985, decided on 10th January, 1986.

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to students admitted prior to the 1983-84 Sessions and further that as after the issuance of this letter, the Central Regulation had come into effect, they thus prevailed, was repelled with the observation:—

“The record, however, shows that the sequence of events was in fact the other way round, namely; that as per the letter of the Chairman of the Council of Homoeopathic System of Medicine, Punjab, of July 5, 1983; annexure R/2, the Central Regulations were adopted at their meeting held in April 29, 1983 with effect from the 1983-84 academic session, and it was subsequent thereto, that the Council of Homoeopathic System of Medicine, Punjab; by its letter of August 2, 1983, annexure P/1, granted the concession contained therein. It deserves note that it has not been suggested that these concessions were granted by an authority not competent to do so.

A plain reading of the letter, annexure P/1 would show that the concessions there have not been limited to any particular group of students or to any specific period of time.—”

(7) In the meanwhile, on May 11, 1983, the Central Council of Homoeopathic Regulations (in abbreviation to be called ‘the Central Regulations’) came into effect and from that date onward, it is these Regulations that prevail by virtue of Regulation-8 of the Punjab Homoeopathic Regulations (Second Amendment) Regulations 1983, (1974 as amended). This Regulation now provides :—

“The Council shall as far as may be follow conditions of appointment of examiners and the procedure in regard to conduct of examination. (as may be prescribed in education regulation and Syllabi by the Central Council of Homoeopathy from time to time and as is specified in appendix ‘D’ to these Regulation.”

Turning to the Central Regulations. Regulation-9 thereof provides that no candidate shall be admitted to the Second D.H.M.S. Examination unless he fulfils two conditions, namely: (a) he has passed the First D.H.M.S. Examination at the end of one year previously, and; (b) he has regularly attended the prescribed courses of instructions for the examination for a period of not less than one

year from the passing of the First D.H.M.S. Examination. Similarly, regarding the Third D.H.M.S. Examination, Regulation-10 says that no candidate shall be admitted to this Examination unless; (a) he has passed the Second D.H.M.S. Examination at the end of 1½ years previously, and (b), has regularly attended the prescribed courses in the subjects of the Examination for a period of at least 1½ years subsequent to his passing the Second D.H.M.S. Examination.

(8) As regards candidates failing to pass in one or more subjects, the relevant provisions are contained in clauses (iv) to (vii) of Regulation-11, which are reproduced hereunder :—

“(iv) a candidate who appears at the examination but fails to pass in a subject or subjects may be admitted to supplementary examination in the subject or subject of that part of the examination in which he has failed to be held ordinarily after six weeks from the publication of result of the first examination on payment of the prescribed fee alongwith an application in the prescribed form.

(v) If a candidate obtains pass marks in the subject or subjects at the supplementary examination or the subsequent examination, he shall be declared to have passed at the examination as a whole.

(vi) If such a candidate fails to pass in the subject or subjects at the supplementary examination in the subject or subjects concerned, he may appear in that subject or subjects at the next annual examination on production of a certification in addition to the certificate required under the regulations, to the effect that he had attended to the satisfaction of the Principal, a further course of study for a period of next academic year in the subject or subjects in which he had failed, provided that all the parts of the examination shall be completed within four chances including the supplementary one, to be counted from the date when the complete examination becomes due for the first time.

(vii) If a candidate fails to pass in all the subjects within the prescribed four chances, he shall be required to prosecute a further course of study in all the subjects of all

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parts for one year to the satisfaction of the head of the college and appear for examination in all the subjects.”

(9) Coming back to the letter of the Punjab Council of August 2, 1983, annexure P/2, it does indeed appear that the intention really was to restrict the concessions contained therein to students admitted to the academic sessions prior to 1983-84, as after stating so, in its subsequent letter of August 13, 1986 (annexure P/3) it withdrew its letter of August 2, 1983, asserting thereby the primacy of the Central Regulations over the concessions, as per the letter of August 2, 1983.

(10) Denial of concessions contained in the letter of August 2, 1983, to students admitted before the issuance of the letter of August 13, 1986, withdrawing these concessions “with immediate effect” provided the requisite occasion for this Court to rule on this subsequent letter of August 13, 1986. Punchhi, J. in (*Partap Singh Tanwar and others v. Council of Homoeopathic System of Medicine Punjab*) (2), held that “this letter would have effect from the next academic session (though not conclusively holding so).”

(11) The position thus emerged that students admitted prior to the issuance of the letter of August 13, 1986, were held entitled to the benefit of concessions contained in the letter of August 2, 1983 so far as they may be applicable to them, but these concessions did not ensure for the benefit of those admitted thereafter. In this bunch of writ petitions, the petitioners in C.W.P. 409; 480 and 524 of 1990 were all admitted before August 1986 and would thus, in view of *Partap Singh Tanwar's case* (supra) be eligible for the concessions contained in the letter of August 2, 1983. These concessions would not, however, be available to the petitioners in the other writ petitions, namely: C.W.P. 437, 481, 1213 and 9843 of 1990, as they were all admitted after this letter of August 2, 1983, had been withdrawn by the subsequent letter of August 13, 1986.

(12) Faced with this situation, both counsel for the petitioners as also the respondent-Punjab Council, sought to wriggle out of it, of course, on different premises and for contrary reasons.

(2) C.W.P. 1346 of 1987 decided on 26th March, 1987.

(13) According to Mr. Hemant Kumar, counsel for the petitioners, admitted to the course after August, 1986, the letter of August 2, 1983, still holds the field. The contention being that as it had been issued by the Punjab Council with the prior approval of the State Government, in exercise of its power to grant relaxation under Regulation-32 of the Punjab Regulations, it could be withdrawn too only with such approval of the State Government, which had not been obtained for the letter of August 13, 1986. Regulation-32 reads as under:—

“When the Council is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax with the previous approval of State Government any of the provision of these regulations with respect to any class or category of persons.”

(14) The contention raised, though attractive on the face of it cannot, however, stand scrutiny. It is founded upon the contention that the letter of August 2, 1983, was issued under the said Regulation-32 of the Punjab Council.

(15) It will, however, be seen that the power conferred by this Regulation-32 is to relax any of the provisions of the Punjab Regulations, but not the Central Regulations. No doubt, it is by virtue of the provisions of Regulation-8 of the Punjab Regulations that the Central Regulations now apply, but a plain reading of the letter of August 2, 1983 would show that it neither refers to the Central Regulations nor purports to modify them in any manner in terms of Regulation-8 or 32 of the Punjab Regulations.

(16) Further, the relaxation permissible is of any provision of the Punjab regulations. Counsel for the petitioner was unable to point to what provision of what regulation had been relaxed by this letter of August 2, 1983. This being so, it cannot be treated as having been issued under Regulation-32 of the Punjab Regulations. It follows therefore, that approval of the State Government was not an essential pre-requisite for the withdrawal of the letter of August 2, 1983. The students admitted to the course after August, 1986, are thus no longer, eligible to claim the concessions contained in this letter. In the matter of appearing and qualifying in the Examinations, they are now to be governed by the provisions of the Central Regulations.

(17) Mr. V. K. Jindal, counsel for the Punjab Council on his part, sought to contend that in the case of all the petitioners, whether

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admitted before or after August 1986, the condition in Regulations 9 and 10 of the Central Regulations, regarding the attendance of courses in the subjects for the examination for a period of not less than one year or 1½ years, respectively, must be deemed to commence from the date on which all the subjects of the previous examination were passed, meaning thereby that a candidate, who, in the annual examination, is required to re-appear in one or more subjects, even if he clears these papers in the supplementary examination, he would not be eligible to appear for the next higher class annual examination, as his period of study from the date of the supplementary examination to the annual examination would be less than one year or 1½ years as the case may be. Stress in this behalf, being upon the absence of any specific regulation in the Central Regulations to the effect that upon passing the re-appear papers in the supplementary examination, the result would relate back to the date of the annual examination. This is indeed a contention that cannot be sustained. There is no doubt no specific provision in the Central Regulations, which in so many words says so, but at the same time, there is no such bar provided there either. A reasonable and harmonious construction of Clauses (iv) to (vii) of Regulation-11 of the Central Regulations clearly impels the reading into them of such a provision. Anamolous results would in fact arise if they were not to be so construed, as it would mean that if a candidate has to re-appear in one or more subjects, he would, on this account alone, lose a year, as even if he were to pass in these subjects in the supplementary examination, the period left for study for the next higher class examination would be less than a year and he would thus inevitably have to study for the next year's course from the next academic session. Not only this, it would also mean that he would have to sit idle from the date of the passing of the supplementary examination till the commencement of the next Session. Such an intention cannot be imputed to the framers of the Regulations.

(18) There is judicial precedent too in the passing of the supplementary examination relating back to the annual examination. In a somewhat similar situation, where the same Central Regulations came up for consideration, D. V. Sehgal, J. in C.W.P. 7811 of 1987 (*Sanjeev Kumar Nayyar v. Council of Homoeopathic System of Medicines*), held, that on the passing of the re-appear subjects in the supplementary examination, the result would relate back to the date of the annual examination. The same view, though with regard to

other Regulations, was expressed by this Court in *Harinder Kaur Chandok v. The Punjab School Education Board* (3), and by the Division Bench in *The Punjab School Education Board v. Harinder Kaur* (4).

(19) It follows, therefore, that petitioners, who were admitted prior to August 13, 1986 would be entitled to the concessions as contained in the letter of August 2, 1983, in so far as they may be applicable to them, while the others would be governed by the provisions of the Central Regulations.

(20) The legal position having been clarified, we direct the respondents to examine the case of each petitioner in the light thereof and to then pass appropriate orders in respect of them all.

(21) This bunch of writ petitions is disposed of in these terms. In the circumstances, however, there will be no order as to costs.

R.N.R.

Before Jai Singh Sekhon, J.

RAVI PARKASH AND ANOTHER.—Petitioners.

versus

STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 374-M of 1990.

14th April, 1991.

Criminal Procedure Code, 1973 (II of 1974)—S. 482—Insecticides Act (46 of 1968)—Ss. 3(k) (i), 17, 18, 23, 29 & 30—Insecticides Rules, 1971—Rl. 27(5)—Sample of insecticide taken from a dealer—Sample not in conformity with I.S.I. specifications—Liability of a dealer—Dealer not liable if he comes under the ambit of S. 30(3)—Chairman-cum-Managing Director of manufacturing Company has overall control—No averment that he took all precautions to manufacture insecticides in accordance with I.S.I. specifications.—Such official—Whether liable.

Held, that a person not being the importer or a manufacturer of an insecticide or an agent for the distribution thereof, shall not be

(3) A.I.R. 1988 P & H 244.

(4) 1990(2) R.S.J. 217.