

Before M. M. Punchhi, J.

PARTAP SINGH TANWAR and others,—Petitioner

versus

THE COUNCIL OF HOMOEOPATHIC SYSTEM OF MEDICINES,
PUNJAB and another,—Respondents.

Civil Writ Petition No. 1346 of 1987.

March 26, 1987.

Homoeopathy Central Council Act (LIX of 1973)—Sections 20 & 33—Homoeopathy (Diploma Course) Regulations, 1983—Regulations 9 and 10-A re-appear candidate allowed to join next higher class—Letter allowing such concession—Such letter violative of Regulations—Concession once granted—Withdrawal of such concession in the midst of session—Validity of such withdrawal.

Held, that the concession once given and held to be operative without any curtailment of time, cannot now be allowed to be taken away in the midst of the session. The rigour of the withdrawal letter cannot be allowed to work to the detriment of the interests of the petitioners and has to be tempered to mean that it would have effect from the next academic session. So the string of arbitrariness from the letter needs to be removed by the Court suitably as the petitioners had a right to the maintenance of the interpretation of the concessional letter to their benefit till the conclusion of the final course available to them.

(Para 3)

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; may be pleased to :

- (a) issue a writ in the nature of Mandamus directing the respondents to permit the petitioners to appear in their final year examination along with their supplementary paper 2nd year examination;*
- (b) issue a writ in the nature of prohibition restraining the respondents from implementing the decision contained in the circular at Annexure P-3 to the case of the petitioners, and further a writ in the nature of Certiorari quashing the same;*
- (c) issue any other writ or direction that this Hon'ble Court may deem fit;*

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- (d) Service of advance notices on the respondents be dispensed with;
- (e) Petitioners be exempted from filing the certified copies of Annexures.
- (f) Cost of the petition be awarded to the petitioners.

FURTHER praying that during the pendency of the writ petition, the respondents be directed to permit the petitioners to appear, provisionally in their final year examination at their own risk and responsibility, along with the supplementary paper of 2nd year examination, subject to the decision of the writ petition.

CIVIL MISC. NO. 997 OF 1987:

Application under section 151 C.P.C. praying that this Hon'ble Court may kindly be pleased to restrain the respondents from holding the annual examinations, before July, 1987, or pass any other order, or direction that this Hon'ble Court may deem fit under the facts and circumstances of the case.

Satya Pal Jain, Advocate with Punit Jindal, Advocate, for the petitioners.

Inderjit Malhotra, Advocate, for respondent No. 1.

P. C. Goyal, Advocate, for respondent No. 2.

JUDGMENT

M. M. Punchhi, J. (oral)

(1) The four petitioners are again in this Court having had success in establishing a principle, reference to which would be made hereafter, in Civil Writ Petition No. 5078 of 1985 decided by S. S. Sodhi, J. on January 10, 1986. It has been stated at the Bar that Letters Patent Appeal against that decision was dismissed *in limine*. The grievance of the petitioners is that by an executive fiat the principle is not being adhered to and rather in specific terms the decision of this Court, afore-referred to, has been attempted to be rendered nugatory. Now, these are the facts :

(2) The petitioners joined a 3½ years Course run by the Council of Homoeopathic System of Medicines, Punjab, in the Academic Session 1983-84, which commenced in July, 1983. The break-up of the Course is that it is durated one year in the first Session, again one year in the pre-final and one and a half year known as final

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Course, to conclude the Course. The petitioners were required to appear in the First Year Course annual examination in December, 1984. It appears that the examinations were belated for reasons, with which we are presently not concerned. The petitioners neither passed the examination nor failed in it altogether. There were a few papers to re-appear. They were permitted by the Principal of the Homoeopathic Medical College, Chandigarh, the Institution in which they were studying, to join classes in the second year (pre-final year). In April/May, 1985, the petitioners made an attempt to clear re-appear papers of the first year. Except for one paper relating to each petitioner, the rest of the papers were cleared by them. When the petitioners attempted to seek admission to examination for the pre-final year (second year) in November, 1985, the Council obstructed their candidature on the ground that it would violate Regulations 9 and 10 of the Homoeopathy (Diploma Course) Regulations, 1983, framed by the Central Council of Homoeopathy with the previous sanction of the Central Government in exercise of the powers under sections 20 and 33 of the Homoeopathy Central Council Act, 1973. The petitioners and ten others, who were similarly situated, took aid of a letter dated August 2, 1983, Annexure P-1 to the present petition, as it was in the earlier petition, issued by the Council, in which concessions had been granted by it to candidates who had to re-appear in a subject or two of the previous year annual examination. That letter, when relevantly extracted, reads as follows:—

“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 the one subject in the supplementary examination he may be allowed to continue his study in the next higher class and appear for the re-appear subject along with the next higher examination at the next annual examination:

Provided, however, that the result of such a candidate for higher class shall be held in abeyance till he clears the 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.”

The petitioners and the aforementioned 10 others, filed Civil Writ Petition No. 5078 of 1985 in this Court and the efficacy of the above letter was tested. It was observed as follows:—

“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 on 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. They must thus be construed to ensure for the benefit of all students including the petitioners. Counsel for the respondents was indeed constrained to concede that from the language of the letter, annexure P-1, it could not be read to deny the concessions contained therein to the petitioners too. This being so, there can be no escape from the conclusion that in terms thereof, the petitioners were indeed entitled to appear in their re-appear paper of the First Year examination simultaneously with the Second Year Examination, in the examination which commenced on November 11, 1985.”

Under the directions of this Court, the Council was made to declare the results of the petitioners and those ten others. It transpires that the petitioners cleared their re-appear paper of the first year, did not fail in the pre-final year examination, but obtained re-appear in a few papers each. In supplementary examination held in September, 1986, they cleared their re-appear papers except for one paper each. Now, when the petitioners again seek candidature in the final examination due to be held in April, 1987, as also candidature for examination in one re-appear paper of the pre-final year, the Council again

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has adopted an obstructionist attitude on the strength of the letter of the Chairman issued on August 13, 1986, Annexure P-3, ostensibly on the ground that the concessions so interpreted by this Court in CWP No. 5078 of 1985 were running across the mandatory language of the Regulations 9 and 10 of the Regulations of the Central Council of Homoeopathy and, therefore, reiteratingly by means of Annexure P-3, letter dated August 2, 1983 (Annexure P-1 to the present petition) stands withdrawn. Directions have been issued to the Principal of the Homoeopathic Medical College, Chandigarh, respondent No. 2 that he is required to strictly follow and observe the provisions of the aforesaid Regulations in all matters and any departure in this regard would be seriously viewed. And now since the Principal stands obstructed from forwarding the admission forms of the petitioners to the final year course as also one re-appear paper of the pre-final course, the petitioners have approached this Court under Articles 226/227 of the Constitution of India praying for a suitable writ, so as to clear the hurdles placed before them.

(3) The defence of the respondents' counsel is self-evident from Annexure P-3, letter dated August 13, 1986. It would be appropriate to extract it, as is relevant for our purpose :

“The matter in question had been considered by the Board of Studies and the Council in their last meeting held recently. It is pointed out that the concession allowed,—*vide* above reference was/is not applicable and available to the students admitted to the D.H.M.S. Course of Study from the academic session 1983-84 onwards and the same is not in accordance with the provisions as contained in Regulations No. 9 and 10 of the aforesaid regulations. Since the College did not strictly observe/followed and implemented the provisions of the aforesaid in the recent past the petitioners were allowed the benefit/concession in view of judgment/decision/orders dated 10th January, 1986 passed by Mr. Justice S. S. Sodhi in CWP Nos. 5078, 408, 5382, 5489 of 1983 filed by the petitioners claiming the above concession. The petitioners had, therefore, been allowed the concession in this regard in view of the High Court order/directions dated 10th January, 1986.

3. It may be further also pointed out that the concession granted,—*vide* above orders does not bring in any change

in the Regulations applicable in this regard. Under the circumstances explained above it has now been decided to clarify that the concession allowed,—*vide* letter No. 93-CHSM-Pb-83/1048-50, dated 2nd August, 1983, is not available/applicable to the students admitted to the D.H.M.S. course of study under the new regulation cited above. Hence the communication under reference, as stated above, dated 2nd August, 1982 stands modified and withdrawn with immediate effect so far as the candidates/students admitted under the Homoeopathy (Diploma Course) D.H.M.S. Regulations, 1983 are concerned.”

It is plain from the language of the abovesaid letter that it operates with immediate effect, that is to say from August 13, 1986, onwards. And what does that letter do except to assert and re-affirm is that the Regulations are superior to the letter dated August 2, 1983, which the letter under reference withdraws from operation. The very same argument was raised before this Court earlier to contend that the concessional letter dated August 2, 1983, would do violence to the language of Regulations 9 and 10. This Court took the view that despite the applicability of those regulations, the Council had (after consulting the State Government) given the concession. The concession once given and held to be operative without any curtailment of time cannot now be allowed to be taken away in the midst of the session. The rigour of the language of Annexure P-3 claiming that it modifies and withdraws with immediate effect letter dated August 2, 1983, cannot be allowed to work to the detriment of the interests of the petitioner and has to be tempered to mean that it would have effect from the next academic session (though not conclusively holding so). I am also of the view that the petitioners should not be thrown over-board at this stage or left in the lurch. At this juncture it would be extremely unfair. So the string of arbitrariness from the letter need be removed by this Court suitably as they had a right to the maintenance of the interpretation of the concessional letter to their benefit till the conclusion of the final course available to them. On such interpretation of the letter Annexure P-3, the writ petition inevitably succeeds. The respondents shall pave way for their candidature to the final examination to be held in April, 1987 as also their re-appear examination for one paper in the pre-final. They are so directed.

(4) Before parting with the judgment, I need to deal with Civil Misc. No. 997 of 1987 in which a prayer has been made restraining

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the respondents from holding annual examination in April, 1987, on the ground that 1½ years has not yet elapsed from January, 1986 when the result of the pre-final year examination was declared. Reliance has been placed on a Division Bench decision of this Court in *Satish Kumar and others v. The Council of Homoeopathic System of Medicine, Punjab and another* (1). In view of this, the learned counsel for the respondents concedes that the Regulations regarding the time gap will be observed in fixing the date of the examination. On this statement of the learned counsel, the Civil Misc. No. 997 of 1987 also stands disposed of.

(5) In the circumstances of the case, there shall be no order as to costs.

S.C.K.

Before M. M. Punchhi, J.

OM PARKASH and others,—*Petitioners*

versus

JOINT DIRECTOR OF RURAL DEVELOPMENT AND PANCHAYAT, PUNJAB and another,—*Respondents*.

Civil Writ Petition No. 4417 of 1985.

April 2, 1987.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 11, 21-A—Code of Civil Procedure (V of 1908)—Order 41, Rules 23 and 23-A—Proceedings initiated under section 11 before the Assistant Collector—Procedure to be adopted by Assistant Collector—Such procedure—Whether governed by the Code—Appeal before the Commissioner—Procedure to be adopted by the appellate authority—Power of remand—Such power—Whether controlled by the Code.

Held, merely because the statement of claim is required to be duly signed and verified in the manner provided in the Code of Civil Procedure, 1908, does not covert the statement to a plaint or the Collector to a Civil Court. If this be the position, the very object of taking away the Civil Court's jurisdiction would stand

(1) C.W.P. No. 2109 of 1986 decided on May 30, 1986.