

Court No. - 40

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Case :- SPECIAL APPEAL DEFECTIVE No. - 39 of 2021

Appellant :- Sai College Of Education And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Anand Tiwari, Amitabh Singh

Counsel for Respondent :- C.S.C., Rohit Pandey

Hon'ble Munishwar Nath Bhandari, J.

Hon'ble Rohit Ranjan Agarwal, J.

Order on Exemption Application

The application seeking exemption from filing certified copies of the order of the High Court is allowed.

The defect stands cured.

Let a regular number be given to this appeal.

Order on Memo of Appeal

By this appeal, a challenge is made to the judgment dated 08.12.2020 whereby the writ petition preferred by the appellants/petitioners was dismissed.

The controversy involved in the present writ petition is in regard to admission of twenty five students in B.Ed. course. The facts on record show that twenty five candidates belonging to the Schedule Castes and Scheduled Tribes were recommended for admission through the centralized counseling. None of the candidates, so recommended, was given admission rather appellants/petitioners' institution admitted other twenty five students. When the respondents did not accept the admission of twenty five students by the appellants/petitioners' institution at its own, the writ petition was preferred at that stage.

Learned counsel for the appellants/petitioners submits that without an opportunity of hearing to them, writ petition has

been decided largely considering the argument made by the non-appellants/respondents. Thus, the impugned judgment passed by the learned Single Judge deserves to be set aside on the aforesaid ground itself.

It is, however, stated that after the recommendation of the name of twenty five scheduled castes and scheduled tribes candidates by the centralized counseling, when non was inclined to take admission, the appellants/petitioners' institution filled the vacant seats as per the Rules. It permits direct admission in a situation when the candidates fails to take admission and accordingly, there was no illegality in the action of the institution to give direct admission to other set of twenty five candidates/students.

To substantiate the argument, a reference to the affidavit of few candidates out of twenty five has been given. It is to show that they were not inclined to take admission and accordingly prayed for refund of Rs. 5,000/- paid online. The affidavit submitted by few candidates/students shows that they were not inclined to take admission and in those circumstances, the appellants/petitioners' institution had rightly filled the vacant seats by direct mode.

In the circumstances aforesaid, the learned Single Judge should have accepted the writ petition but ignoring the Rules and largely considering the argument of the non-appellants, the writ petition was dismissed. The prayer is accordingly to set aside the judgment of the learned Single Judge with the grant of prayer made in the writ petition.

We have considered the submission made by the counsel for the appellants/petitioners and perused the record.

The brief facts pertaining to the case have been given, thus, need not to be reiterated. It is not in dispute that name of twenty five scheduled castes and scheduled tribes candidates/students were recommended in the centralized counseling for admission in B.Ed. course. It is also a fact that none of those candidates/students were given admission rather appellants/petitioners' institution filled the vacant seats directly.

To justify their action, a plea has been taken that the candidates named for admission in the centralized counseling were not inclined to take admission and for that a copy of the affidavit of few candidates has been enclosed.

We have perused those affidavits and find it to be in cyclostyled manner. It can happen only when the affidavit has been prepared by someone interested in creating it. In this case the appellants/petitioners' institution itself was interested to create it otherwise an individual would give affidavit in his own language and cannot be word to word same to affidavit of others.

Apart from the facts aforesaid, we find reference of an application of the candidates/students in the affidavit for refusal to take admission. The date of application to refuse admission has been given in each of the affidavits but copy thereof has not been filed which otherwise would have been the best evidence to show that none of the candidates/students was inclined to take admission. The affidavits of the candidates/students to refuse admission have been submitted to justify the action but alleged application/letter has not been submitted. The affidavits were obtained by appellants/petitioners' institution containing the same language which cannot happen if it is to be given by different candidates on different dates. The affidavits having the same language were created at the instance of the

appellants/petitioners' institution and seems to have been given to get refund of the amount paid online.

The conduct of the appellants/petitioners is writ large. It is not unknown that education in the State has been taken as a business or an industry. It is to sell the degrees. It is required to be stopped. The fact further remains that out of twenty five candidates/students recommended for admission, it cannot be that none would take admission. It would be an extraordinary situation when none of the candidates recommended by the centralized counseling for admission would refuse to take admission whereas everybody is in dire need to pursue B.Ed. course for getting appointment on the post of Teacher.

It is looking to the fact that B.Ed. is now the basic qualification for appointment apart from other qualifications prescribed by the N.C.T.E. under the Rules of 2014 on becoming education as Fundamental Right. It was pursuant to Right to Education Act of 2009.

Considering to facts in totality, we do not find any illegality in the judgment of the learned Single Judge as it is not an ex-parte order rather discussed the issue raised by the appellants/petitioners on their appearance in the writ petition. Para 12 of the impugned judgment shows appearance of the appellants/petitioners.

The appeal challenging the impugned judgment dated 08.12.2020 fails and stands **dismissed**.

This Court was inclined to send the matter to the National Council for Teacher Education (N.C.T.E.) for appropriate action which includes de-recognition of the institution looking to their conduct, but for the reason that N.C.T.E. is not a party to this

appeal as well as to the petition, the Court is refrained to take *suo-moto* cognizance, but warn the institution not to indulge in the practice of nature referred herein.

The non-appellant University is however given liberty to proceed against the appellants/petitioners' institution if they indulge in the similar practice in future also and have communicated with the N.C.T.E. for appropriate action.

Order Date :- 19.1.2021

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