

Court No. - 19

Case :- MISC. SINGLE No. - 17178 of 2019

Petitioner :- C/M, Dr. M.C. Saxena College Of Education,Thru.Chairman &Anr

Respondent :- State Of U.P. Thru. Prin. Secy. Higher Education & Ors.

Counsel for Petitioner :- Sharad Pathak

Counsel for Respondent :- C.S.C.,Kuldeepak Nag (K.D.Nag),Savitra Vardhan Singh

Hon'ble Vivek Chaudhary,J.

1. Petitioners have filed the present writ petition for the following relief:

"Issue a writ, order or direction in the nature of mandamus commanding the opposite party no.2/4 to issue permanent association to the petitioner college for running B.Ed. Course strictly complying with the judgment and order dated 02.07.2013 passed in Writ Petition No.4125 (M/S) of 2013 so the petitioners may participate in ongoing process of counseling for admission in B.Ed. Course for educational session 2019-20."

2. Learned counsel for petitioners submits that petitioner institution was started in the year 2009 and the University had granted a temporary association, from year to year, for running B.Ed. course. In the year 2013, petitioner was denied to admit students, and a writ petition was filed by the petitioner institution bearing Writ Petition No.4125 (M/S) of 2013, which was decided by judgment and order dated 02.07.2013. In the said writ petition, the Court, after considering the matter at length, found that the association of the institution cannot be of temporary nature, as the State Universities Act under Section 38 of the Act only provides for an association and does not empower University to give any temporary association. Relevant paragraphs of the said judgment reads:-

"As far as association of an Institution with the University is concerned, a Division Bench of this Court in Writ Petition No. 3039(MB) of 2010 observed as under:-

"Section 38 of the State Universities Act does not prescribe any time bound association unlike the amended section of 37(2) wherein sub-

clause 10 has been introduced for grant of temporary affiliation and in view of the division bench judgment of this court passed in Writ Petition No. 5881(MB) of 2002 (Committee of Management vs. Chancellor) either the permanent affiliation was to be granted or the application should have been rejected but no temporary affiliation could have been granted. The division bench at that time was considering the unamended statute which is analogous to provisions of Section 38 of the Act. However, after amendment a specific provision has been made for granting temporary affiliation under Section 37(2) whereas no such corresponding amendment has been made in Section 38 of the Act."

It may be noted that a comparative reading of Section- 37 (which deals with the Affiliated Colleges) and Section 38 (which deals with the Associated Colleges) as it stood on or prior to 18.11.2002, both the Sections were identical and did not provide any time bound affiliation under Section 37 of the State Universities Act or any time bound association under Section 38 of the Act. Later on, Section 37 of the Act was amended vide U.P. Act No. 1 of 2004 and a proviso to sub-section (2) of Section 37 was inserted stipulating that the affiliation could be granted by the Affiliating University for specified time. Thus, a comparative reading of amended Section 37 and Section 38 of the Universities Act, as it exists today, makes it clear that for affiliation from the Affiliating University under Section 37, there is a provision for grant of temporary affiliation for a period prescribed therein whereas for association with the Lucknow University as 'Associated College', which is governed by Section 38 of the Act, there is no concept of any temporary association or for association for a specified period of time. Not only this, Section 37 of the Act makes it obligatory to obtain prior sanction of the State Government whereas Section 38 of the Act does not stipulate any such condition.

Having considered the submissions advanced by the parties, I also

find force in the contention of the petitioner that the judgment rendered by the Apex Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya versus State of U.P. [(2013) 2 SCC 617] is not applicable at all in the facts and circumstances of the petitioner's case as it is related to the affiliation for the first time with an affiliating University or the Institution. Since the petitioners were granted association with the University without any stipulation, the petitioners' institution is fully eligible to admit the students, as is evident from clause 13.10 of the Statutes of University of Lucknow. There is no dispute in the fact that petitioners' Institution was granted affiliation (sic. association) for admission in B.Ed. Course for three consecutive and successive education sessions i.e. 2010-11, 2011-12 and 2012-13. Furthermore, the stand of the respondents that the Management Committee of the Institution was not approved is also not tenable in view of the fact that the Vice-Chancellor has already approved the Committee of Management with retrospective effect, w.e.f. 17.11.2009, for a period of five years. It may be added that while granting affiliation (sic. association) for academic session 2011-12 and 2012-13 vide letters dated 13.7.2011 and 26.6.2012, there was no stipulation of any kind upon the Institution.

In view of the above detailed discussion, the Court directs the opposite parties to display the name of the petitioners' Institution i.e. Dr M.C. Saxena College of Education, Lucknow, in the ongoing process of counselling for B.Ed. Course for the education session 2013-14 and allot students, as admissible, to the petitioners' institution, after completion of necessary formalities."

3. Thus, this Court found that the association for B.Ed. course to the petitioner institution was without any stipulation and institution was fully eligible to admit students. Despite the said condition, the University did not withdraw the condition of the temporary association from the petitioner institution. Thereafter, petitioner filed a Contempt Petition No.2804 (C) of 2014 which is pending till

date. Despite the aforesaid order dated 02.07.2013, the University, finding certain deficiencies in the institution and treating the institution to be temporarily associated, refused to send its name for registration and for counselling.

4. It was put to learned counsel for the University to place before this Court the provisions by which University can grant a temporary association.

5. Learned counsel for the University could not place any such provisions before the Court. Time was granted to the respondent University by order dated 03.07.2019 to take decision on the issue as to whether temporary association could be given to the petitioner or the same should be treated to be a permanent association. Despite the aforesaid order, the University has not instructed the counsel on the said issue till date. Even otherwise the entire controversy was concluded by judgment and order dated 02.07.2013 passed in earlier Writ Petition No.4125 (M/S) of 2013 which was never challenged by the university.

6. Thus, I find that the petitioner institution is an associated institution of the University and shall remain associated with the University till University withdraws the association as per the procedure provided under Section 38(7) of the State Universities Act.

7. Admittedly, in the present case, no procedure has been adopted with regard to disassociation of the petitioner institution. Hence, petitioner institution is declared to be an associated institution of the respondent University. The said status shall continue till University passes appropriate orders under Section 38(7) of the State Universities Act.

8. With the aforesaid, present writ petition is ***allowed***.

9. Consequences to follow.

Order Date :- 8.7.2019

Arti/-

(Vivek Chaudhary,J.)