PUNJAB UNIVERSITY CHANDIGARH

v.

DEVJANI CHAKRABARTI & OTHERS

May 17, 1984

[A.P SEN, A. VARADARAJAN AND V. BALAKRISHNA ERADI, JJ.]

Punjab University Act, Section 20 (5) and section 31—Power of the Syndicate, to make rules relating to the pattern of education—No rule can be said to be retrospective merely because they subsequently applied to students who had earlier started their educational careers.

With the introduction of the system known as "10 plus 2 plus 3" in the educational institutions in the country, the Asscciation of the Indian Universities decided the equivalence of this 10+2+3 system with the old 11+3 years degree course system still prevalent is some States and it suggested that in all States where the pattern of education is such as to require 14 years for the first degree i.e. 11+3 years the new plus 2 stage of the Central Board of Secondary Education be treated as equivalent to a pass in the first year of the three years degree course or for admission to the first year of the two years degree Course. The appellant Punjab University, decided on 10.2.1977 that the 12th standard examination conducted by the Boards/Universities under the new 10+2+3 system be recognised as equivalent to the Pre-Medical/Pre-Engineering/B.A. Part I/ B.Sc.Part I/B. Com. Part I examination according to the combination of the subjects. Subsequently, on 4.6.1978 the Punjab University decided to treat the 11th standard of the new 10+2+3 system as equivalent to the Pre-University examination of the University. These recognitions of the equivalence of these two examinations continued till the beginning of the year 1980. But on 18.4.1980 the Punjab University decided that the first year student of the plus 2 course in the 10+2+3 system of the Central Board's schools who does not take a public examination at the end of the first year should not be considered as equivalent to the student who has passed the pre-University examination of the Punjab University for joining the Pre-Medical/Pre-Engineering/B.A. Part I/B. Sc. Part I/B Com. Part I of the University. On 7.5.1980, the Punjab University decided that the 12th Standard Examination in the new 10+2+3 system conducted by any recognised Board/Council/University shall be treated as equivalent to the pre-University Examination of the University.

The respondents in CA 1977/80, namely 1 to 37 who had passed the 12th Standard Examination in the 10+2+3 system of the Central Board of Education and respondents 38 to 92 who had been promoted from the 11th Standard to the 12th Standard in that system challenged the two decisions

A of the Punjab University dated 18.4.1980, and 7.5.1980 by filing W.P. 1917 of 1980 contending that in view of the earlier decisions of the University namely, Annexures P. 2 and P. 3 dated 10.12.1977 and 4.6.1978 respectively they had joined the classes in the plus 2 course with the object of joining the colleges affiliated to the University in the next class of equivalence as also Engineering and Medical Colleges and that the University cannot, therefore, change those decisions by the subsequent decisions, B (Annexures R. 2 and R. 3) to their detriment. They invoked the doctrine of promissory estoppel in regard to that ground of attack on those two decisions. The second ground of attack by the petitioners in W.P. 1917 of 1980 was that the decisions Annexures R. 2 & R. 3 are retrospective in operation and they have taken away their vested right and that the University has no power, either under the Punjab University Act or under any statute, regulation or rule to make any regulation, rule or ordinance C adversely affecting their vested rights retrospectively.

The learned Judges of the Division Bench rejected the contention of the petitioners before them that the Syndicate has no power which the Senate has under s.31 of the Act and held that the Syndicate has similar powers under s.20 (5) of the Act. They rejected the further contention D that there is any bar of promissory estoppel against the University in regard to the matter and, however, held that petitioners 1 to 37 had joined the 10+2 course in the Central School lying within the territorial jurisdiction of the Punjab University in 1978 and had passed the 12th Standard Examination and had planned their education in a particular manner to join the colleges affiliated to the Punjab University in the second year of the 3 year degree course and other courses after passing the 12th standard exa- E mination in the plus 2 system. They held that Annexure R.3 will deprive petitioners 1 to 37 and Annexure R.2 will deprive petitioners 38 to 92 of right to seek admission in Engineering and Medical Colleges after passing the 12th Standard in the 10+2 system and Annexures R.2 and and R.3 take away that right and are retrospective in nature. In coming to this conclution the learned Judges of the Division Bench relied very strongly upon the decision of the Full Bench of the Punjab & Haryana High Court F in *Punjab University vs. Subhash Chander*, 1976 P.L.R. 920. In view of their decision in W.P. 1917 of 1980, another Bench allowed another W.P. 2349 of 1980 filed by the respondents in C.A. 2667/83. Hence the appeals by the University.

Allowing the appeals, the Court.

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HELD : 1. The decisions dated 10.12.1977, 4.6.1978, 18.4.1980 and 7.5.1980 respectively are intra vires the powers of the Syndicate to make rules etc. under section 20(5) of the Punjub University Act in the same manner as the Senate can do under s. 31 of that Act. [819F]

2. In view of the decision of the Supreme Court dated 17.5.1984 H rendered in *Subhash Chander v. Punjab University* (Civil Appeal No. 2828/1977 arising out of 1976 P.L.R. 920) and reversing the said decision of the Punjab High Court relying on which the two Judgments now under

appeal, were passed, in the present case also the two impugned decisions are *prima facie* prospective in operation and they did not become retrospective merely because they subsequently applied to students who had already started their educational careers. However, this decision will not effect the right which might have been granted to the petitioners in the writ petitions on the basis of the Judgments of the High Court which have been reversed in these appeals. [820F; 821E-F] A B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1381 of 1980

Appeal by Special leave from the Judgment and Order dated the 7th July, 1980 of the Punjab and Haryana High Court in Civil Writ Petition No. 1917 of 1980.

And C

Civil Appeal No. 2667 of 1983.

Appeal by Special leave from the Judgment and Order dated the 8th July, 1980 of the Punjab and Haryana High Court in Civil Writ No. 2349 of 1980.

Jawahar Lal Gupta, *Janendralal* and *B.R. Agarwal* for the Appellant. D

Randhir Jain for the Respondents.

The Judgment of the Court was delivered by

VARADARAJAN, J. These appeals by special leave are by the Punjab University and directed against two Division Bench judgments of the Punjab and Haryana High Court in writ Petitions 1917 of 1980 and 2349 of 1980, allowing those Writ Petitions without any order as to costs. W.P. 2349 of 1980 was allowed at the motion stage on 18.7.1980 as being covered by the decision in W.P. 1917 of 1980 which was disposed of on 7.7.1980. Kulwant Singh Tiwana, J. is a party to both the judgments and he sat with Harbans Lal, J. for hearing W.P. 1917 of 1980 and with M.M. Punchi, J. for hearing W.P. 2349 of 1980. In these circumstances, it is necessary to state only the facts relating to W.P. 1917 of 1980 alone briefly. E F

The system known as "10 plus 2 plus 3 system" was introduced in the educational institutions in the country some years ago. The Association of Indian Universities decided the equivalence of this 10+2+3 system with the old 11+3 years degree course system which was prevalent in some States and it suggested that in all States where the pattern of education is such as to require 14 years for the first degree, i.e. 11+3 years, the new plus 2 stage of the Central Board of Secondary Education be treated as equivalent to a pass in the first year of the three-years degree course or for admission to the first year of the two-years degree course. This suggestion was G H

conveyed by the Association of the Indian Universities to the Chairman of the Central Board of Secondary Education by a letter dated 18.4.1978. The appellant, Punjab University, decided on 10.2.1977 that the 12th standard examination conducted by the Boards/Universities under the new 10+2+3 system be recognised as equivalent to the Pre-Medical/Pre-Engineering/B.A. Part I/B.Sc. Part I/B. Com Part I examination according to the combination of the subjects. Subsequently, on 4.6.1978 the Punjab University decided to treat the 11th standard of the new 10+2+3 system as equivalent to the pre-University examination of the University. Copies of those decisions dated 10.12.1977 and 4.6.1978 were Annexures P. 2 and P. 3 respectively in W.P. 1917 of 1980. These recognitions of the equivalence of those two examinations continued till the beginning of the year 1980. But on 18.4.1980 the Punjab University decided that the first year student of the plus 2 course in the 10+2+3 system of the Central Board's schools who does not take a public examination at the end of the first year should not be considered as equivalent to the student who has passed the pre-University examination of the Punjab University for joining the Pre-Medical/Pre-Engineering/B.A Part I/B. Sc. Part I/B. Com. Part I of the University. On 7.5.1980, the Punjab University decided that the 12th Standard Examination in the new 10+2+3 system conducted by any recognized Board/Council University shall be treated as equivalent to the pre-University Examination of the University. These decisions dated 18.4.1980 and 7.5.1980 are Annexures R-2 and R-3 respectively in W.P. 1917 of 1980.

Petitioners 1 to 37 in W.P. 1917 of 1980 had passed the 12th standard examination in the 10+2+3 system of the Central Board of Education and petitioners 38 to 92 in the Writ Petition had been promoted from the 11th standard to the 12th standard in that system. These 92 petitioners filed W.P. 1917 of 1980 challenging the Punjab University's decisions (Annexures R-2 and R-3) dated 18.4.1980 and 7.5.1980 contending that in view of the earlier decisions of the University, namely, Annexures P. 2 and P. 3 dated 10.12.1977 and 4.6.1978 respectively they had joined the classes in the plus 2 course with object of joining the colleges affiliated to the University in the next class of equivalence as also Engineering and Medical Colleses and that the University cannot, therefore, change those decisions by the subsequent decisions, Annexures R-2 and R-3 to their deteriment. They invoked the doctrine of promissory estoppel in regard to that ground of attack on those two decisions. The second ground of attack by the petitioners

in. W.P. 1917 of 1980 was that the decisions Annexures R-2 and R-3 are retrospective in operation and they have taken away their vested right and that the University has no power, either under the Punjab University Act or under any statute, regulation or rule to make any regulation, rule or ordinance adversely affecting their vested rights retrospectively. A

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The defence of the appellent-University was that the decisions, Annexures R-2 and R-3 were taken in the place of the earlier decisions, Annexures P.2 and P.3 in the interest of eduction on the ground that the 11th standard examination in the new 10+2+3 system was not a public examination and the standard of education in the schools where that system was in vague was low and even the marking system in the examination was lenient. The University further contended that even the syllabi in the equivalent examination in the schools and colleges were not the same. The University stated that the Committee of Experts which was constituted by the Vice-Chancellor of the University when the students in the engineering colleges started an agitation, went into the question and submitted a report suggesting the change in regard to equivalence in view of the difference in the syllabi and the deficiency in the teaching imparted in some subjects in the schools. The University, therefore contended that the new decisions Annexures R.2 and R.3 were taken *bona fide* and are only prospective in operetion and that the doctrine of promissory estoppel pleaded by the petitioners in the Writ Petitions does not apply to the University. C D E

The decisions Annexures P.2, P.3, R.2 and R.3 are of the Syndicate which has power to make rules etc. under s. 20 (5) of the Punjab University Act in the same manner as the Senate has similar power under s. 31 of that Act. The learned Judges of the Division Bench rejected the contention of the petitioners before them that the Syndicate has no power which the Senate has under s. 31 of the Act and held that the Syndicate has similar powers under s. 20 (5) of the Act They rejected the further contention that there is any bar of promissory estoppel against the University in regard to the matter and, however, held that petitioners 1 to 37 had joined the 10+2 course in the Central Schools lying within the territorial jurisdiction of the Punjab University in 1978 and passed the 12th Standard Examination and had planned their education in a particular manner to join the colleges affiliated to the Punjab University in the second year of the 3-year degree course and other courses after passing the 12th standard examination in the plus 2 F G H

A system. They found that similar is the case of petitioners 38 to 92 in W.P. 1917 of 1980 who had been promoted from the 11th to the 12th standard in the plus 2 system. They held that Annexure R.3 will deprive petitioners 1 to 37 and Annexure R.2 will deprive petitioners 38 to 92 of the right to seek admission in Engineering and Medical Colleges after passing the 12th Standard in the 10+2 B system, and Annexures R.2 and R.3 take away that right and are retrospective in nature. In coming to this conclusion the learned Judges of the Division Bench relied very strongly upon the decision of a Full Bench of the Punjab and Haryana High Court in *Punjab University* vs. *Subhash Chander*.(1) The learned Judges accordingly C allowed W.P. 1917 of 1980 on the sole ground, namely, that Annexures R.2 and R.3 are bad as being retrospective in operation, without any order as to costs and held that Annexures R.3 and R.2 will not stand in the way of petitioners 1 to 37 and 38 to 92 respectively before them from seeking admission to higher classes or in Engineering and Medical colleges on the basis of the old decisions, D Annexures P.2 and P.3. The other Division Bench which heard W.P. 2349 of 1980 allowed that petition without any order as to costs as being covered by the decision in W.P. 1917 of 1981.

We are of the opinion that these appeals have to be allowed. The learned Judges of the High Court allowed the Writ Petitions E only on the ground that the new decisions Annexures R.2 and R.3 are retrospective in operation and that they cannot affect the writ petitioners before them from seeking admission to higher classes or in Engineering or Medical Colleges on the basis of the earlier decisions Annexures P.2 and P.3, relying mainly upon the decision of the Full Bench in *Punjab University* v. *Subhash Chaner* (supra). F We have, in our separate judgment delivered today in C.A. 2828 of 1977, which arose out of that Full Bench decision, reversed that decision and held that there is nothing retrospective in the order challenged in that case. In that case one Subhash Chander was admitted to the integrated M.B.B.S. course in the Daya Nand Medical College, Ludhiana in the year 1965. At the time of his G admission, under Regulation 25 read with r.7.1, a student who fails in one subject/paper was entitled to grace marks at 1 per cent of the total aggregate marks of all the subjects for which he appeared. But in 1970 the rule was amended to the effect that the grace marks will be 1 per cent of the total aggregate marks for any particular subject of the examination in which he has failed. Subhash Chander H appeared for the final M.B.B.S. examination in 1974 and secured

(1) 1976 P.L.R. 920.

106 out of 200 marks in the practical examination and 95 out 200 marks in the theory examination in Midwifery, which was one of the four subjects for which he appeared at that time. He had passed the examinations in the other three subjects for which the total aggregate was 1200 marks. Under the old rule he would have been entitled to 16 grace marks at 1 per cent of the total aggregate of all the four subjects, namely, 1600 marks. But he was allowed only 4 grace marks under the new rule being 1 per cent of the aggregate for the subject in which he had failed, namely, Midwifery. The High Court accepted his contention that amendment of the rule made in 1970 was retrospective in operation though it was made applicable to Subhash Chander only in 1974 merely because he had joined the integrated course in 1965 when the rule regarding the award of grace marks was more liberal. In allowing the appeal against the judgment of the Full Bench we have held that (there was no question of the rule having any retrospective operative as it was framed in 1970 and it did not say that it was operative from any earlier date and it was applied to Subhash Chander only in 1974. It could not be stated to be retrospective in operation merely because it was applied to Subhash Chander who had joined the course in 1965 before the amendment was made in 1970.

In the present case also the new decisions are *prima facie* prospective in operation and they did not become retrospective merely because they subsequently applied to students who had already started their educational careers. We, therefore, allow these appeals but without any order as to costs and set aside the judgments of the High Court and dismiss the Writ Petitions. However, this decision will not effect the right which might have been granted to the petitioners in the writ petitions on the basis of the judgments of the High Court which have been reversed in these appeals.

S.R. *Appeals allowed.*