

(1978) 07 AHC CK 0022
In the Allahabad High Court
Case No : Writ Petition No. 2167 of 1976

Ajai Kumar

APPELLANT

Vs

The Madhyamik Shiksha Parishad

RESPONDENT

Date of Decision : 10-07-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1979 All 13

Hon'ble Judges : U.C. Srivastava, J;M. Murtaza Husain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Murtaza Husain, J.—This is a student's petition under Article 226 of the Constitution of India for issuing a writ of certiorari quashing the orders dated 31-12-75 and 11-5-76 passed by the opposite party, namely, the Madhyamik Shiksha Parishad or the Board of High School and Intermediate Education U. P. at Allahabad, The petitioner has further prayed for issuing any other appropriate writ, order or direction against the opposite party for declaring the petitioner's result of Intermediate Final Examination, 1975 which examination he is said to have passed, in Second Division.

2. The undisputed facts of the case, giving rise to this petition, are that the opposite party is a statutory body created under the U. P. Intermediate Education Act, 1921. Its function is to conduct High School and Intermediate Examination in the State. Ajai Kumar Srivastava, petitioner had appeared at the Intermediate Final Examination of the year 1974-75, His subjects were of Mathematics Group. The petitioner's roll number in that examination was 157667 and his examination centre was Niblet Islamia Inter College, Bara Banki. The result of that examination was published in the special issue of the Pioneer at Lucknow on 6-7-76 wherein the petitioner was shown as having passed in Second Division. Immediately thereafter the opposite party directed the Principal of the petitioner's College to withhold his marks sheet. A charge-sheet was issued to

the petitioner informing him that he was suspected of having used unfair means while solving question No. 6 (Ga) of physics 1st Paper as the result of that question arrived at by the petitioner was correct, but one step was missing from the solution whereby the petitioner had arrived at that result. The petitioner submitted a reply wherein he pleaded that one step of the solution was missed by him due to inadvertence and shortage of time which was at his disposal and it was not the result of copying or adopting any unfair means. A Screening Committee was appointed by the opposite party to look into the matter. It came to the conclusion that unfair means were adopted by the petitioner in solving the aforesaid question of physics 1st paper. That finding of the screening committee was accepted by the sub-committee of the Board which was constituted for dealing with the cases of candidates suspected of adopting unfair means at the examination. The petitioner's result was consequently cancelled by the opposite party on 31-12-1976. The petitioner submitted a representation before the Chairman of the opposite party which was rejected on 11-6-1976. The petitioner has now come to this court with the present petition.

3. The main grievance of the petitioner is that the decision of the opposite party cancelling petitioner's result, with a finding that unfair means were used by the petitioner while answering question No. 16 (Ga) of physics 1st paper, was not based upon any evidence whatsoever. It has also been alleged by him that a decision was earlier taken by the opposite party to release the results of candidates who had omitted to mention one or two steps in solving questions of Intermediate physics 1st paper of 1975. As a result of that decision many other candidates, who had committed such mistakes, were already exonerated by the Board, but discrimination was shown by it in the case of the petitioner. These allegations of the petitioner have been denied by the opposite party. In the counter-affidavit it is maintained that the finding of the screening committee regarding use of unfair means by the petitioner while solving question No. 6 (Ga) of physics 1st paper was correct and the concerned Sub-Committee of the opposite party had rightly cancelled the petitioner's result,

4. It cannot be denied that this Court had jurisdiction under Article 226 of the Constitution to issue prerogative writs, including a writ of certiorari, to persons and authorities within its jurisdiction for the redress of any injury of a substantial nature by reason of the contravention of any of the provisions of the Constitution, or any enactment or ordinance etc., or by reason of any illegality in any proceedings by or before any authority under any provision referred to in the Article where such illegality has resulted in substantial failure of justice. It has been laid down in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, , The Board of High School and Intermediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others, ,Prabhat Kumar v. Board of High School & Intermediate Education U. P. 1971 All LJ 1391 Mushtaq Hussain and Another Vs. The Secretary, Board of High School and Intermediate Education, U.P., Allahabad and

Others, and Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad, that the Examination Committee of the Board of High School and Intermediate Education, U. P. namely, the opposite party of the present petition, while dealing with cases of examinees using unfair means in examination hall, acts quasi-judicially and prerogative writ in the nature of certiorari can be issued by the High Court against the said Board where the circumstances of a particular case so justify.

5. While examining the scope of a writ of certiorari and the limits of jurisdiction of the High Court to interfere with the orders of an inferior court or Tribunal their Lordships of the Supreme Court have observed in Sawarn Singh and Another Vs. State of Punjab and Others, :--

"It is well settled that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The court exercising special jurisdiction under Article 226 is not entitled to act as an appellate, court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings."

In The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, and Triambak Pati Tripathi Vs. The Board of High School and Intermediate Education, U.P., Allahabad, it has been further observed that (at p. 7):-

"In dealing with the validity of the orders passed by the authorities the High Court does not sit in appeal over the decision of the authority concerned. Its jurisdiction is limited and it is true, that if the order in question is not supported by any evidence at all, the High Court may quash it, but the conclusion that the order in question is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify that conclusion."

To judge the merits of the petitioner's claim we have to see whether or not the decision of the opposite party cancelling the result of the petitioner's examination is supported by any direct and circumstantial evidence,

6. The uncontroverted allegations of para. 14 of the petitioner's affidavit are that his seat was in Room No. 2 of Niblet Islamia Inter College, Bara Banki which room is adjacent to the principal's room. The petitioner's seat was so placed in that room that there was no chance of copying and none of the examinees seated in any row near about the petitioner's seat was charged of copying in physics 1st paper examination. The opposite party has admitted in the counter-affidavit that the petitioner was not caught red-handed using unfair means nor any such unauthorised material was recovered from his possession which could indicate that he had used any unfair means. It is also not alleged by the opposite party that there was mass copying at the centre in the examination of physics

1st paper whereby the result of the entire centre was cancelled. No direct evidence of using unfair means by the petitioner was tendered before the Screening Committee.

7. The examiner, who had examined petitioner's copy, gave him 2 marks out of the maximum 21/2 marks which question No. 6 Ga of physics 1st paper carried. He did not suspect use of any unfair means by the petitioner in answering that question otherwise he ought to have reported the matter to the authorities then and there" and declaration of petitioner's result ought to have been withheld by the opposite party. After the declaration of petitioner's result and its publication in the Pioneer, convincing evidence of the alleged use of unfair means by the petitioner was required before the opposite party took the drastic decision of cancelling petitioner's declared result, which decision was bound to stigmatize the prospects of petitioner's career for all times to come.

8. The entire finding of the sub-committee concerned regarding use of unfair means by the petitioner is based upon the solitary circumstance that he had omitted one step in the solution while answering question No. 6 Ga of physics 1st paper. That omission could take place by inadvertence as has been suggested by the petitioner. It cannot be said to be a circumstance of conclusive nature compatible only with the theory of use of unfair means by the petitioner, particularly when the petitioner was not caught while using unfair means nor any objectionable material was recovered from his possession, nor there was anything on record to show that the petitioner had copied out the answer of question No. 6 Ga from a similar answer given by any other candidate which answer had, somehow or the other, become available to the petitioner.

9. In our opinion, there was absolutely no material before the concerned committee of the opposite party to come to the conclusion that unfair means were really adopted by the petitioner while answering the aforesaid question. The opposite party has thus taken the impugned decision causing substantial injury to the petitioner without having any direct or circumstantial evidence before it in support of that decision. The orders passed by the opposite party on 31-12-75 and 11-5-76 withholding the petitioner's Intermediate Final result and cancelling the same are, therefore, illegal and unjust and should be quashed even if the case of discrimination set up by the petitioner is not taken into consideration.

10. We consequently allow this petition and issue a writ of certiorari quashing the two disputed orders dated 31-12-75 and 11-5-76 and direct the opposite party to declare that the petitioner has passed Intermediate Final Examination (Mathematics Group) of the year 1974-75 in Second Division. The petitioner shall get costs of this petition from the opposite party.