
(2001) 03 MP CK 0064
In the Madhya Pradesh High Court
Case No : Writ Petition No. 755 of 2001

Ajay Singh

APPELLANT

Vs

Madhyamik Shiksha Mandal and others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 3 MPLJ 35

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Greeshm Jain, for the Appellant; Jaya Laxmi Iyer For Respondent No. 1 and S.A. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner who in his teens has been compelled to knock at the doors of justice by invoking extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for issue of writ of certiorari for quashment of order dated 6-1-2001 contained in Annexure P-6 and to further issue a writ of mandamus commanding the respondents to permit him to appear in the Higher Secondary School Certificate Examination, 2001 as a regular student.

The facts as have been unfolded in the petition are that the petitioner appeared in the High School Certificate Examination in the year 1998 conducted by the Board of Secondary Education (hereinafter referred to as "the Board") as a regular student of Government Higher Secondary School Ganesh Ganj Ranjhi, Jabalpur and passed the same in second division. Thereafter, he took admission in St. Mary's Higher Secondary School, Vehicle Factory Jabalpur, Estate, Jabalpur and studied as a regular student in the academic session 1998-1999 and passed XIth Standard Examination from the said school. A copy of the report card in that regard has been brought on record as Annexure P-2. As averred in the writ

petition due to poverty and ill health he could not continue his studies for the academic session 1999-2000, and thereafter, took admission in Laxmi Narayan Yadav Higher Secondary School, respondent No. 3 herein, in the academic session 2000-2001 and attended the classes. While prosecuting his studies he submitted an application form for appearing in the Higher Secondary School Certificate Examination conducted by the Board as a regular student from the respondent No. 3 school. While the matter stood thus, in the month of January, 2001 he came to learn that the candidates of Higher Secondary Examination who had discontinued in the education in the previous academic sessions would be debarred from appearing in the Higher Secondary Examination, 2001 as a regular student. Coming to know about such a fact situation he submitted a representation to the Board through proper channel. The copy of said representation dated 23-1-2001 has been brought on record as Annexure-P-4. On 24-1-2001 the father of the petitioner was informed by the school vide letter dated 24-1-2001, Annexure-P-5, that the application of the petitioner for appearing in the Higher Secondary Examination, 2001 has been rejected by the Board. Thereafter, the petitioner received a memorandum on 2-2-2001 issued by respondent No. 2 informing the petitioner that his application for appearing in Higher Secondary Examination has been rejected for the reason of discontinuance of education in the year 1999-2000. It is relevant to state here that the order passed by the Board rejecting the candidature of the petitioner to the school by letter dated 6-1-2001 has been brought on record as Annexure P-6, though in paragraph 5.6 of the writ petition there has been erroneous description of the same. It is averred in the writ petition that the petitioner has been allotted a Roll Number for undertaking the final examination in the year 2001 but unfortunately his candidature has been cancelled without any basis and without affording an opportunity of being heard. With the aforesaid averments prayer has been made as has been indicated hereinabove.

A counter affidavit has been filed by the Board contending, inter alia, that the Board had issued executive instructions from time to time to ensure smooth functioning of the examinations and to see that the statutory rules are followed in letter and spirit. It is put forth that since increasing number of complaints were received by the Board in relation to the fact that number of irregularities were being committed by the schools in order to enhance the ranks of the regular students, the Board took a decision that there should be no gap between XIth and XIIth Classes or IXth and Xth Classes as the Board conducts the said examinations. It has also been urged that the students as well as the principal have taken recourse to filing of affidavits to avoid this kind of occurrence. The Board issued executive instructions on 26-4-2001 fixing the eligibility criteria for students appearing in Class 10th and 12th and also as private and correspondence students. It has been highlighted that on a scrutiny of instructions it would be crystal clear that the petitioner was ineligible to appear as regular student but this fact was not taken into consideration when the principal of the respondent No. 3 school gave the admission to the petitioner as a

regular student in Class XIIth and also allowed him to fill up the examination form. It has also been putforth that respondent No. 3 failed in her duty by not advising the petitioner correctly. It has also been putforth that number of students have been admitted through misinformation, lethargy, misrepresentation, connivance of the principals of various schools and they have been debarred to appear in the examination. It is the stand of the Board that the fault lies squarely with the principal of the concerned school who had not read, understood, evaluated the instructions from time to time and if that would have been done such a situation would not have come into existence. It has also been urged in the return that the practical examinations of Classes Xth and XIIth have already been conducted.

A counter affidavit has been filed by the respondent No. 3 highlighting that the petitioner had submitted Class XIth mark-sheet, Annexure P-2, and transfer certificate issued by St. Mary's Higher Secondary School, VFJ, Estate, Jabalpur where he had studied. It is also putforth that he has also filed an affidavit dated 27-7-2000 categorically asserting that due to poor economic condition he, could not take admission in the school in question in the academic session 1999-2000. On the basis of the documents produced by the petitioner he was given admission as regular student in the academic session 2000-2001. The aforesaid documents have been brought on record as Annexures-R-3/1 and R-3/2. It has also been putforth that no executive instruction of the Board have been received by respondent No. 3 to the effect that no admission can be granted to the candidate who had not studied for one year. It came to the knowledge of the respondent No. 3 only when letter dated 6-1-2001 was received stating that the application form of the petitioner for appearing in the Higher Secondary Examination has been rejected. It has also been pleaded that due to unawareness of instructions which might have been issued by the Board at the time of admission the petitioner was admitted as a regular student. It is also putforth that the petitioner was also not aware of such instructions. It is averred in the return that at the time of admission of the petitioner he was a maths/science student, and thereafter, he applied for change to faculty on 17-8-2000 to the Divisional Officer, Board of Secondary Education who granted permission. It is also setforth in the return that executive instructions dated 26-4-2000 and the amended circular dated 27-1-2001 are not applicable to the case of the petitioner. A bare perusal of the above instructions would show that the candidates who were regular students in 1999-2000 and failed are eligible for appearing as regular students in 2000-2001. Further the students who have failed for two years will not be able to appear as regular students but can appear as private candidates. A distinction has been drawn that the petitioner has passed XIth class examination in the year 1998-1999 and had a gap of one year i.e. in the year 1999-2000, and hence, the instructions issued by the Board are not applicable to the petitioner. The circular in question issued by the Board has been brought on record as Annexure R-3/5 and the clarification made by the Board dated 27-1-2001 has been brought on record as Annexure -R-3/6.

As the counsel for the petitioner was absent I have taken assistance of Mr. Greeshm Jain, learned counsel who was present in Court. I have heard Miss Jaya Laxmi Iyer, learned counsel for the Board and Mr. Shushrut Arvind Dharmadhikari, learned counsel for respondent No. 3. It is submitted by Mr. Jain that the petitioner being young was not aware of any circular issued by the Board and he was not apprised about such circular, that had been received by the School, which prohibits such an admission. It is also urged by him that the petitioner should not be allowed to suffer for no fault of his. It is his further submission that the fault, if any, squarely lies with the school administration. It has also been canvassed by him that the School in question is not a private school or a school which is running in an interior place of State of Madhya Pradesh but a school run by Municipal Corporation at Jabalpur.

Resisting the aforesaid submissions it is contended by Miss J.L. Iyer, learned counsel for the Board, that the ignorance of circular by the Board is no virtue and the petitioner cannot be in a profitous position for lack of knowledge. It is also highlighted by her that in order to correct the unnecessary entries in the school the Board has issued circular dated 26-4-2000 and it was incumbent on the part of the Principal of the school to scrutinize the circular and understand the same in proper perspective and follow its command in letter and spirit and as same has not been done the petitioner may sue the school for damages but cannot blame the Board and jeopardize the smooth administration and functioning of the Board. It is also proponed by her that the person taking admission in illegal manner cannot approach the Court of law seeking reliefs and Court should be loath to entertain such applications. She has placed reliance on the decision rendered in the case of Central Board of Secondary Education Vs. Nikhil Gulati and Another, .

Mr. Shushrut Arvind Dharmadhikari, learned counsel for the respondent No. 3, while clearly admitting on the basis of the return filed by the said respondent that the petitioner is not at fault has also vehemently canvassed that the Board's Circular, Annexure-R-3/5, is not clear and categorical as has been indicated by the Board and when clarifications were sought for by various schools a clarification was sent by the Board on 27-1-2001. Learned counsel has drawn the attention of this Court to Clause "Sa" of Annexure R-3/5 and has proponed that the language employed in the said clause does not cover the case of the petitioner. However, the learned counsel has admitted that if the clarificatory note is taken into consideration the case of the petitioner may be covered but that does not hold much water because much prior to that the petitioner was given admission in the month of July, 2000.

The submissions raised by the learned counsel for the parties require careful, cautious and anxious consideration. At the outset it is apposite to refer to Clause "Sa" of the relevant circular which reads as under:--

On a perusal of the aforesaid clause it is apparent that the students who had failed in the Examination, 2000 would be entitled to be admitted in the course

meant for academic session 2000-2001 but the students who have failed for two years or more than that would not be entitled to be treated as regular students and they would be permitted to appear as private candidate or in the correspondence course. On a proper scrutiny of the aforesaid clause it is not clear that whether the students who had not appeared in the examination for one year and a gap of one year has occurred are not entitled to be admitted as regular students. It is to be borne in mind that the aforesaid circular was sent to school on 26-4-2000. I am not adverting to the clarification inasmuch as the same was sent on 6-1-2001. It is not disputed at the Bar that the admissions ordinarily takes place in the month of July. The stand of the respondent No. 3 is that she could not infer any obstacle or impediment for admitting the Petitioner as a regular student on the ground that he had not undertaken the examination for a period of one year. Such a stand of the respondent No. 3 cannot lightly be brushed aside due to the fact that the command of the Board was not clear and unequivocal. Submission of Miss Iyer is that respondent No. 3 should have understood the circular in right perspective to the effect that what was not permitted by the Board should have been deemed to have been prohibited. The aforesaid submission of the learned counsel for the Board, in fact, may be of some assistance while clearing the maze but to expect a Principal of School to understand the same in that light would be equivalent to "great expectations" and harbouring a hope that an academician should have the ability to read something into the provision which is not categorically provided for. If that would have been so, a clarification by the Board was not warranted. In view of this I do not find any fault with the respondent No. 3 in giving admission to the petitioner.

The factual matrix of the present case can also be looked into from another spectrum. The petitioner was quite young when he took admission in the school. He did file an affidavit clarifying his stand and there is no allegation by the Board or the school that the petitioner took recourse to any kind of suppression, fraud or misrepresentation. The respondent No. 3 in her counter affidavit has clearly admitted that the fault did not lie with the petitioner. Assuming for a while that the stand of the Board is correct and the Principal failed to understand the circular in proper perspective and appreciate its true import and gave admission to the petitioner then the question that would fall for determination, should he be allowed to suffer the agony of loss of one year. The respondent No. 3 was duty bound to understand the circular and if any mistake occurred due to her improper understanding the petitioner who is expected to be guided by the said respondent cannot be punished. It is to be borne in mind that the respondent No. 3 stands on the pedestal of a "Guru" and it is the sacrosanct obligation of a "Guru" to eradicate "Agyan" of a disciple and enlighten him. She has to pave the path where a bright horizon is open to an obedient disciple who in turn shows impeccable reverence for the teacher. I have dealt into this aspect not because I find fault with the respondent No. 3 but to consider the case of the petitioner from a different angle accepting the stand of the Board. This is not a case where it can be said that respondent No. 3 has not acted with sanguine sense of

responsibility, genuineness of objectivity and unquestionable effort of accountability. On the contrary, she has revealed her stand and asseverated that the petitioner is not at fault. At this juncture I feel obligated to refer to the decision relied on by Miss Iyer rendered in the case of Nikhil Gulati (supra). In the aforesaid decision the Apex Court has observed as under:--

Occasional aberrations such as these, whereby ineligible students are permitted, under Court orders, to undertake Board and/or University examinations, have caught attention of this Court many a time. To add to it further, the Courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. and yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it puts the "Rule of Law" to a mockery, and promotes rather the "Rule of Man."

This is not a case where an ineligible student is going to be permitted to appear in the examination conducted by the Board. This is not also a case where a student who belongs to unrecognised educational institution has visited this Court for grant of permission to sit in the examination. The present case, as has been indicated hereinabove, has its own peculiarity. The Board's circular contained in Annexure R-3/5 was not unequivocal and had enough room to create a sense of confusion in the mind of the likes of the respondent No. 3.

It is pointed out by Miss Iyer that before admitting the petitioner the respondent No. 3 could have sought for clarification. This attack on respondent No. 3 by the learned counsel for the Board, in my humble opinion, is not only incorrect but also unfounded. The Board has a number of legal advisers to advise and also expertise in the matter of giving admission, conducting of examination, correction of papers and publication of results. It was expected of the Board to issue direction covering all areas and not to leave a lacuna creating scope for the heads of the educational institutions to fall into error.

In view of the aforesaid premises I am of the considered opinion that the action taken by the Board against the petitioner in refusing to permit him to sit in the examination is not justified and the "Rule of Law" commands that he should be allowed to sit in the ensuing examination. It has also been brought to the notice of this Court that the petitioner being a student in the faculty of commerce, there are no practical examinations and therefore, the Board would not be facing difficulty to allow the petitioner to sit in the examination. It is expected that the Board shall rise to the occasion and would do the needful at the earliest. Accordingly, it is directed that the respondent No. 3 shall deposit all the requisite fees and forms within a period of three days from today.

At this juncture I feel obligated to observe that if in future the Board issues

circulars and there is some doubt the Principal or Head of the Institution shall immediately seek clarification from the Board before any action is taken with regard to admission or filling up of forms or the matter ancillary to that.

An apprehension was expressed by Miss Iyer that likes of the petitioner who have been admitted in various schools may approach this Court and seek such commands which Board may not be able to fulfil as the examination is going to commence on 15-3-2001. Apprehension on the part of Miss Iyer may have some justification but the said issue need not be adverted to at this juncture because that would be purely academic in praesenti. It needs no special emphasis to state that if a case of this nature arises in near future it will be open to the Board to putforth all its difficulties of accommodating such students. Such pleas shall be considered keeping in view the obtaining factual matrix at that juncture for the simple reason the cases are not decided in anticipation of future facts and incidents.

Accordingly, the writ petition is allowed without any order as to costs.