

(1994) 04 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43447 of 1993

Alok Garg and Others

APPELLANT

Vs

Board of High School and Intermediate Education and Others

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Citation : (1994) 2 AWC 1142

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : R.N. Bhalla, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Narain, J.—The Petitioner seek writ of certiorari quashing the letter dated 8th December, 1993 (Annexure-15 to the writ petition). Petitioners Nos. 1 to 6 appeared in Intermediate examination for the year 1993 and Petitioner No. 7 appeared in High School examination of the year 1993 conducted by the Board of High School and Intermediate Education, U.P., Respondent No. 1.

2. After having appeared in the examination, Petitioners were issued mark-sheets and in the mark sheets they were shown as having passed in their examinations. On 8th December, 1993 a notice was published in the newspaper "Amar Ujala" indicating that the results of the Petitioners amongst others stand cancelled. A copy of the said news has been annexed as Annexure-15 to the writ petition. It indicates that in view of the latter dated 21st November, 1993 issued on behalf of Respondent No. 1 the examination Committee has cancelled the result.

3. A counter affidavit has been filed on behalf of Respondents. In the counter affidavit it has been disclosed that the Petitioners Nos. 1 to 6 were shown as regular students of Shiv Prasad Rashtriya Inter College, Achnera, District Agra and Petitioner No. 7 was shown as a regular student of High School of the said college. They had submitted examination forms indicating that they were regular

students of the said college. Their examination forms were, accepted and they were issued admit cards and were given Roll Numbers on the basis of which they appeared in the examination conducted by Respondent No. 1. Subsequently, the Manager of Shiv Prasad Rashtriya Inter College, Achnera, Agra made a complaint to Respondent No. 1 stating that about 176 students were wrongly permitted by the Principal of the college to appear in the examination as regular candidates. The Petitioner and some other students were admitted in October 1992 but their examination fee was deposited on 20th August, 1992 in the bank. They were thus not regular students of the college and they could not appear in the examination as regular candidate.

5. The Petitioners have filed a rejoinder affidavit. They have stated that Sri Bhudev Prasad Sharma was the Acting Principal of the institution. Petitioners Nos. 1 to 6 were failed in Intermediate examination of 1992 and Petitioner No. 7 was failed in High School examination of 1992. They were already regular students of the college. They had already attended all the classes in the year 1991-92 and had appeared in 1992 Intermediate and High School examinations but as they had failed in the examination, they requested the Principal of the college to admit them again as regular students after they had received the mark-sheets.

6. The Principal of the college passed an order on 18th August, 1992 to permit such students of the college who were regular students but were failed in the examination. On the instruction of the Principal the Petitioners were admitted as regular students of the college on 18th August, 1992. On the same day they deposited admission fee and also the examination fee. The examination fee was deposited in the bank on 20th August, 1992. The Petitioners have filed photostat copy of the order of the Principal dated 18th August, 1992 as Annexure to the writ petition and a letter of the Class teacher as Annexure-3 to the writ petition indicating that the Petitioners were admitted on 18th August, 1992 and not in October 1992.

7. The Petitioners were issued mark-sheets in pursuance of order of the Court and they were shown to have secured pass marks. It is a question of fact as to whether Petitioners were admitted in the college in October 1992 or on 18th August, 1992, it is not disputed that Petitioners were taken as regular students of the college to have been submitted by the Manager. Petitioners were not afforded opportunity of hearing before any enquiry was conducted against them. It is not necessary to decide this controversy as to whether Petitioners were actually admitted on 18th August, 1992 or in October 1992.

8. If an enquiry is conducted by an authority against a candidate he is entitled to get an opportunity of hearing from such authority. In *The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others*, it was held that where the Board of High School and Intermediate Education had cancelled the examination of a candidate who had been allowed to appear at the examination and had actually answered all the question papers, on

the ground that he had been admitted to the examination inspite of shortage of attendance at lectures, without giving any show cause notice to the candidate, the action of the Board was vitiated by violation of rules of natural justice.

9. The Petitioners had submitted examination forms and it was the Principal who was responsible to forward the examination forms to the Board. The Petitioners had already deposited examination fee and forms in time. After the Petitioners having been permitted to appear in the examination their results cannot be withheld merely on the ground that the Petitioners should not have been admitted as regular students in the college on October 1992.

10. In case the examination forms could have been accepted as regular students it is not denied that the Petitioners could have appeared as private candidates in the examination. There is no distinction in awarding marks when a candidate appears either as private or regular candidate.

11. There is no allegation that the Petitioners had committed fraud or concealed any material fact. If a candidate is not guilty of any misconduct or committed any fraud or concealed any material fact from the Board, he cannot be penalised by withholding result of his examination. It is for the Board to take any action Against the Principal or the authority concerned for supplying any wrong information.

12. In the result the writ petition is allowed and Respondents are directed to declare the results of the Petitioners within two weeks from the date of production of certified copy of this order.