

(2008) 08 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12923 of 2006

Anand Kumar Chouksey

APPELLANT

Vs

M.P. Board of Middle Education and others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 4 MPLJ 617

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : S.B. Agnihotri, for the Appellant; Harmeet Singh for Respondent No. 1 and Vinod Mehta, Government Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

Petition involves the power of Board of Secondary Education under which it withheld the result/mark list of a student appearing in the High School Examination conducted by the Board.

Petitioner was a student of Class 9 of Government Middle and Higher Secondary School Dhanpuri Tahsil and District Jabalpur (respondent No. 2) in the academic session 2003-04. After passing the examination of 9th standard, he was admitted in class 10th standard of the same school in the academic sessions 2004-05. He appeared in the High School Examination held in the year 2005 as a regular student. Case of mass copying was reported and consequently, the entire examination of the centre was cancelled. In the academic year 2005-06, the petitioner developed double vision problem in his eyes with the result that he could not prosecute his studies and failed to get admission in, Class 10th in the said academic session. Consequently, he did not appear in the High School Examination of year 2005-06.

Thereafter, the petitioner submitted application for his admission in class 10th standard in the same school as a regular student but the same was denied by respondent No. 2, although the petitioner had produced the relevant medical papers. This denial forced him to approach this Court under Article 226 of the Constitution of India for seeking issuance of appropriate writ, order or direction commanding the respondents to admit him in class 10th standard as a regular student in the academic year 2006-07 in respondent No. 2-School.

Board of Secondary Education M.P. Bhopal submitted its return contending thereby that the petitioner appeared in the High School Examination conducted by the Board in the academic session 2004-05 but his result was cancelled because the entire centre was found to be involved in mass copying. It is, thus submitted that the petitioner failed in the examination of High School in the academic session 2004-05 because examination of the entire centre was cancelled due to mass copying. Failure students are not admitted as regular students, if there is gap of a year. Petitioner did not appear in the academic session 2005-06 and admission to him in the year 2006-07 as a regular student is not permissible under the rules and regulation. Accordingly, a prayer for dismissal of writ petition has been made.

Respondents No. 2 and 3 submitted their short return that the petitioner is not eligible for being admitted as a regular student in the academic session 2006-07 and the same has been rightly denied.

It is pertinent to mention here that this Court on 20th of September, 2006 passed an interim order that respondent No. 2 shall give admission to the petitioner as a special case, which shall be subject to the further/final order in this petition.

Pursuant to the aforesaid order, respondent No. 2 admitted the petitioner and Board of Secondary Education permitted him to appear in the High School Examination of the academic session 2006-07. It is not out of place to mention here that although there was no direction by this Court to admit the petitioner in the school as a regular student, the school i.e. respondent No. 2 admitted him as a regular student and recovered the fees from him of a regular student for the entire academic session 2006-07. Further, the Board of Secondary Education despite there being no direction of the Court accepted at its own the examination form of the petitioner as a regular student and further allowed him to appear in the examination as a regular student after realizing the examination fee from him of a regular student.

Result of High School Examination was declared in routine manner, however, the petitioner's result was not declared by respondent No. 1. He made an application for issuance of duplicate mark sheet which was issued vide Annexure P/9. However, his result was not officially declared and original mark list was not issued. His result and original mark sheet were withheld, therefore, the petitioner submitted I.A. No. 698/07 for seeking direction to declare the result of the

petitioner and issue the original mark sheet. Thereafter, the Board of Secondary Education submitted additional return stating thereby that the petitioner was permitted to appear on the strength of interim order and High School Examination has been passed by him. Copy of mark sheet is annexed to the additional return as Annexure R/1. It has been contended that on account of pendency of the writ petition, result and mark sheet were withheld.

Respondents have justified the action on their part in not admitting the petitioner as a regular student in class-10th in the academic session 2006-07 on the strength of clause-2 of directions issued by the Board of Secondary Education for academic session 2006-07 which is reproduced below for convenience:

Perusal of the aforesaid clause makes it clear that a student who failed in the High School or Higher Secondary Examination conducted in the year 2006 would be eligible for seeking admission as a regular student in the same class in the academic session 2006-07. A student who failed in the previous year (in the examination of the year prior to the year 2006) was not to be admitted as a regular student in the year 2006-07.

It is to be examined in the light of the aforesaid clause that whether the petitioner could be treated as a student having failed in the High School (10th standard) examination of the year 2006 or before, so as to make himself ineligible for admission as a regular student in the year 2006.

It is an admitted position that the petitioner was not declared as having failed in the examination of the year 2005. It is true that he was admitted as a regular student of 10th standard in the academic session 2004-05 and he did appear in the High School examination held in the 2005. It is expressly admitted in the return submitted by the Board that the examination of the entire centre wherefrom the petitioner appeared in the examination of High School was cancelled because of allegation of mass copying. Learned counsel for the Board was unable to point out any provision in the rules and regulations whereunder a student appearing from such centre would be treated as having failed in the examination. The specific stand of the Board is that the examination of the entire centre was cancelled. Thus, the result of the examination centre wherefrom the petitioner appeared in the High School Examination was not declared at all on account of cancellation of the examination of the entire centre. This being so, the petitioner cannot be treated as having failed in the examination of the year 2005. Thereafter, the petitioner on account of problem of double vision on his eyes could not seek admission in the next academic session 2005-06 and failed to prosecute his studies. He did not appear in the examination of High School of the year 2005-06 and was not a failure student of the said academic session.

Contention of the learned counsel for the Board is that the last line of clause would be construed so as to mean that the students who passed in the High School Examination before 2006 would alone be admitted as regular students in the year 2006-07. This contention is highly misconceived as the same would

make violence to the language of clause 2. The first sentence of clause 2 made a student eligible for seeking admission as a regular student in the High School Examination of the year 2006-07 if he failed in High School Examination conducted in the year 2006. Latter portion of clause 2 debars a failure student from seeking admission as regular student if he has failed in the examination prior to the year 2006. By no stretch of imagination the latter portion debars a student from seeking regular admission, if he has not failed at all in the High School Examination. Petitioner was not declared as having failed in the examination of the year 2005 and could not be treated as failure student of the year prior to the year 2006. It is observed that if the result of the examination conducted at a particular centre is not declared at all, the students appearing from that centre cannot be treated as having failed in the examination in the absence of any specific provision in the rules and regulations of the Board of Secondary Education. In the present case, learned counsel for the Board has been unable to point out any provision in the rules and regulations of the Board whereby such students may be treated as having failed in the examination. This being so, the contention of the Board about ineligibility of the petitioner for being admitted as a regular student is not acceptable.

Apart from the aforesaid, it may be seen that this Court had merely directed to admit the petitioner in the school of respondent No. 2 as a special case. He was never directed to be admitted as regular student by this Court. Respondent/ School at its own admitted the petitioner as a regular student in 10th standard and recovered the fees for the entire academic session as a regular student. The Board of the Secondary Education accepted examination form of the petitioner as a regular student and recovered the fees payable by regular student from the petitioner. He was further allowed to appear in the High School Examination as a regular student. Thus, the school as well as the Board having treated the petitioner at their own as a regular student cannot be permitted to deny the status of regular student to the petitioner, moreso, for the reason that petitioner did not earn any disqualification even under clause 2 (supra) for being admitted as a regular student.

In view of the aforesaid discussion, this Court has no hesitation in holding that the petitioner is entitled to the status of regular student in 10th standard during the academic session 2006-07 and his result of High School Examination is liable to be declared with the status of regular student.

Resultantly, the writ petition deserves to be allowed and is hereby allowed. Respondents are directed to treat the petitioner as a regular student for the academic session 2006-07. Respondent No. 1 (Board of Secondary Education) is further directed to declare officially the result of petitioner and to issue original mark sheet within a period of one week from today in the aforesaid manner.

Parties to bear their own cost.