

(1989) 12 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 8504 of 1989

Anant Kumar

APPELLANT

Vs

The Vice-Chancellor, Magadh University, Bodh Gaya and
Others

RESPONDENT

Date of Decision : 11-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1990 Patna 205 : (1990) 2 PLJR 534

Hon'ble Judges : Uday Sinha, J;S. Hoda, J

Bench : Division Bench

Advocate : Sanjay and Sunil Kumar Gupta, for the Appellant; Rafat Alam, J.C. to A.G., for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—We have heard learned counsel for the parties at length. We are not satisfied that any case has been made out for quashing annexures 4 and 6 to this application. The application is, therefore, being disposed of finally at the admission stage itself.

2. The petitioner appeared at the Master of Arts examination in Economics in 1985 from A.N. College, Patna. He was declared failed. He had obtained 12 marks in the 6th paper and the total was only 246 when the minimum marks for obtaining 2nd Class is 360 (there is no third Class). He was thus declared to have failed, in 1986, the petitioner again sat at the Master of Arts examination in economics. He appeared in 1st, 4th and 6th papers. Admit card was issued to him and he took the examination. It is not in controversy that he paid the necessary fees and he was issued an admit card. After the results were published, the petitioner's name did not appear along with the list of compartmental candidates. When he obtained the marks sheet, he was shown to have failed. The marks sheet in respect of 86 examination held in December,

1987, was issued on 16-1-1989. The petitioner approached this Court by the present application with the averments that the marks sheet was wrong and that he had not appeared in the subjects noted in the marks sheet. Hence, the present application under Arts. 226 and 227 of the Constitution of India, for quashing annexures 4 and 6 and for a declaration that he has passed the Master of Arts Examination.

3. Annexure 5 to this application shows that the petitioner wrote to the Head of the department, Economics, Anugrah Narain College, Patna, wherein he had stated that he had appeared in the 1st, 4th and 6th papers in accordance with the T.R. Regulations. Alphabets T and R stand for Transitory Regulation. He prayed to the Head of department for clarifying that the petitioner had appeared only in 1st, 4th and 6th papers through T. R. in Economics and not in the 5th paper as mentioned in the cross list. It appears that in July, 1989, the petitioner sent lawyer's notice to the University for not declaring him to have passed the Master of Arts examination. In answer thereto the Deputy Registrar, of Magadh University, replied to J.P. Gupta, the petitioner's lawyer that the petitioner, in terms of University regulation, was not eligible to appear in M. A. examination, 1986, under provisions for reappearance in examination to improve class. The relevant sentence in annexure 6 reads as follows :--

"I am to say that Anant Kumar Roll Pat No. 4616 was declared failed at M.A. Exam. 1985. Hence he was not eligible to appear in M.A. Exam. 86 under provision for Reappearance in Examination to improve Class."

The petitioner has, therefore, prayed for quashing annexure 6 as well.

4. Learned counsel for the petitioner conceded that he was not entitled to the benefit of Transitory Regulation and could not have sat at the examination in 1986, compartmentally. The submission on behalf of the petitioner, however, is that the University having issued admit card, it was estopped from challenging the candidature of the petitioner and that the University was bound to extend to him the benefit of the Transitory Regulation. The petitioner relied upon the following decisions of the Supreme Court and of this Court in support of his submission *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, , *Arkendu Sinha and Others Vs. Bihar School Examination Board and Another*, , *Amresh Kumar Vs. Principal, Bhagalpur Medical College, Bhagalpur and Another*, and 1989 BBCJ (HC)27: (1989 Lab IC 822) , *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, .

5. This was a case where the appellant joined LLB Part I Class in 1971. According to University's Statute a student of the Faculty of Law was given the option to clear certain subjects in which he may have failed at one of the examinations before completing three years course. The students were to appear in six papers each year. In April, 1972, the appellant appeared in the annual examination of Part 1 but failed in three subjects. Subsequently, he was promoted to Part II which he joined in the year 1972. Under the University's Statute, the appellant

was to appear in Part II examination in April 1973. On April 26, 1973 the appellant applied for roll number to the University in order to reappear in the subjects in which he had failed and to clear them but he was refused permission. The annual examination for Part II was to be held in May, 1973. The appellant prayed the University for granting provisional permission to appear, subject to his getting permission from his employer to attend the law faculty. In between it appears that the appellant had been prosecuted for offence under Ss. 376, 366 and 363 of the Penal Code and was suspended during the period when the case was going on against him. He was, however, acquitted and was reinstated by his employer on Aug., 22, 1972. Thus in May, 1973, as also in April, 1973, when he applied for his roll number to clear the subjects, the stigma of criminal case had been completely removed. On May 18, 1973, the appellant wrote a letter to the University authorities giving an undertaking that if he was not able to get requisite permission from his employer to join the law classes, he would abide by any order that the University may pass. On the basis of this undertaking he was allowed to appear at the Part II Examination on May 19, 1973. On June 20, 1973, the appellant wrote to the University authorities that the condition on which he was to get the permission was not at all necessary and that his results may now be announced. On June 26, 1973, the respondent informed the appellant that since his percentage of lectures attended was short in Part I his candidature stood cancelled. After lot of correspondence the University authorities refused to admit the petitioner to LLB Part III Classes. The whole decision turned upon the import of Clause (2) of Order 10 of Kurukshetra University which provided that a certificate in the following terms (so far as is relevant) shall be furnished by the Principal of the College or Head of department namely:-

"(b) that he has attended a regular course of study for the prescribed number of academic years.

Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course of lectures before the end of his term."

It would be appreciated from paragraph 6 of that decision that the certificate in regard to attendance of certain percentage of lectures could be withdrawn but that had to be done before the examination. The Supreme Court did not lay down that even if a candidate had not attended the requisite percentage of lectures, the University could not deny admission to superior classes. It only laid down that the want of attendance in certain percentage of lectures had to be withdrawn before the examination. In those circumstances, the Supreme Court upheld the appellant's contention in the following words:--

"The last part of this Statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly,

then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear."

In paragraph 7, the Supreme Court observed that there was ample time and opportunity for the University authorities to have found out the defect. It further observed :--

"In these circumstances therefore, once the appellant was allowed to appear at the Examination in May, 1973, the respondent had no jurisdiction to cancel his candidature for that examination."

The Supreme Court decision thus proceeded upon the facts of that case. I am unable to read that decision as laying down any bald proposition that whatever may be the infraction of law, if a person has been allowed to appear at the examination, his candidature cannot be cancelled. If a person has only passed Matriculation and by some process manages to obtain admit card for the M.A. examination six years after passing Matric without passing I. A. or B.A. can it be said that his candidature for M.A. examination cannot be cancelled because admit card has been issued to him? In my view, that cannot be the correct position in law. If there is a complete bar to a candidate taking the examination, that bar cannot be removed by the conduct of the University or any of its Officers. A distinction must be drawn between infractions of the Statutes in the matter of procedure and infractions in regard to substantive right of candidates admitted to an examination where the law envisages a complete bar. The want of circumspection on the part of the University authorities cannot clothe a candidate with any right. Para. I of the Transitory Regulation reads as follows :-

"A candidate, who has passed the Master or Honours examination in the faculty of Humanities, Social Science, Science, commerce, Acharya or Shastri Prastishthan (excluding professional examination), may, if he so desires, be allowed to reappear in one or more of the theory papers, not exceeding three papers in all, of the said examination with a view to improving his previous performance, once only at the immediately succeeding examination held by the University subsequent to the one at which he last appeared and passed."

It will be seen from the above that the benefit of the Transitory Regulation is available only to one who has passed the Master of Honours examination. That is not available to a person who has failed. The purpose of permitting a candidate to reappear at the examination is to improve his Class on his previous performance. That is not available to a person who has not passed the previous examination. The petitioner had not passed in the previous examination. There was no question of improving his previous performance. He could not, therefore, be extended the benefit of Transitory Regulation. The petitioner had referred to the Transitory Regulation in his application to the Head of the department (annexure 5). He thus very well knew that he could not appear in three papers

and yet he applied and managed to obtain an admit card and appeared in 1st, 4th and 6th papers. The situation in the instant case is entirely different from that of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, . That case, therefore, can be of no help to the petitioner. Suresh Kumar Singh v. State of Bihar, 1983 BBCJ (HC) 348.

6. This case was decided upon its own peculiar facts. This was a case where the petitioner had done all that he could and yet his result was cancelled on the ground that he had not been registered by the examination Board. At paragraph 7 Choudhary J. observed that the provision regarding registration of candidates was merely directory_. That being so, and the petitioner having done all (hat he could do his result could not be cancelled. His Lordship rightly relied upon the Kurukshetra University case (supra) Subhash Pandey v. The Vice-Chancellor, Magadh University 1981 BBCJ (HC) 101 : (AIR 1981 NOC 99).

7. This case related to the Medical faculty of Magadh University. The petitioners in this case claimed that they were entitled to the benefit of award of grace marks in terms of Transitory Regulation, The decision decided in favour of the petitioners on the footing that once the result had been declared in favour of the petitioners, the University had no jurisdiction to revise it. At paragraph 8 in the last line M.P. Verma J. observed that Bihar Education Board did not permit revision of the result in such circumstances. In paragraph 11 his Lordship observed as follows:--

"From the aforesaid extracts it is clear that University would not revise the results in the manner which may adversely affect a candidate".

The further reason for the decision was that cancellation of the result of the petitioners would mean real hardship as they had got themselves registered as medical practitioners after being declared successful. Paragraph 10 of that judgment also show that their Lordships were of the view that the petitioners were entitled to award of grace marks in terms of Transitory Regulation. That was the ratio of the decision. That decision cannot be extended to say that whatever the nature of infirmity or contravention of law a candidate cannot be declared to have failed if he was permitted to take the examination. That was a case where the candidate had been declared successful. That is not the situation here. In this case the petitioner has been declared failed on the ground that he was not entitled to the benefit of the Transitory Regulation.

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8. This case was decided upon its own special facts. This was a case where the petitioner had been admitted to the MBBS course, in Dec. 1975. In 1977, he passed Part I MBBS course. In 1979, the petitioner was in the final year of MBBS bearing roll number 36, At this stage, the petitioner's admission to the 1st year MBBS course was cancelled. The petitioner had studied for four years after being admitted to the MBBS course. It was, therefore, not fair for the authorities to cancel his admission. The petitioner had spent his time and energy in studying

for four years. An estoppel sprang up in favour of the petitioner. In those circumstances, their Lordships rightly, relying upon the decision of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, allowed the petitioner's application. That is not the situation here. The petitioner had not been admitted to a course nor had been gone through it. He had only applied for examination and had obtained an admit card. The case before us is not a case for cancellation of admission. This case also, therefore, can be no help to the petitioner. *Subhash Mishra v. State of Bihar* 1989 BBCJ (HC) 27: 1989 Lab IC 822.

9. This was a case where the petitioner's candidature was cancelled by the Bihar Public Service Commission on the ground that the petitioner was more than 30 years of age on 1-1-1985. His application, therefore, for being considered for the post of Assistant Public Prosecutor could not be considered. This decision proceeded upon the footing that the Commission had erroneously adjudged him as more than 30 years of age on 1-1-1985. The petitioner's Matriculation certificate showed his date of birth as 1-8-1955. Their Lordships B. N. Singh and S. B. Sanyal JJ. held that the petitioner's date of birth being 1-8-1955, he had not completed 30 years of age on 1-8-1985.

10. We have some reservation about the correctness of the decision in so far as it lays down that on 1-8-1985 the said petitioner was 30 years of age. He was 30 years of age till the mid night between 31st July and 1st August, 1985. After the mid night, the petitioner stepped into his 31st year. True it is that when a High Court Judge in India retires, the word used is "until he attains the age of 62 years." That means that until the date previous to his date of birth, he is in 62 year and on his date of birth he steps into the age of 63rd year. The reference to "birth anniversary" or "anniversary" in paragraph 5 of the judgment is entirely irrelevant. The birth anniversary has nothing to do with the age of a person. On the anniversary date a person steps into a new age. When a child is born he steps into his second year on his next birth anniversary, he ceases to be one years" of age on his first birth day.

11. The decision in *Subhash Mishra v. The State of Bihar* (1989 Lab IC 822) (Supra) calls for reconsideration on some other occasion. I have recorded my views only to highlight the fallacy in the view taken by Sanyal J. We have refrained from referring the matter for consideration by a larger Bench as the decision proceeds upon certain assumptions into which it is not necessary to delve in this case.

12. Be that as it may, the decision in the case of *Subhash Mishra v. The State of Bihar* (Supra) proceeded on the assumption that the petitioner was not over age on the relevant date and, therefore, he was entitled to compete at the combined examination and, therefore, the Public Service Commission could not cancel his candidature.

13. It is true that in paragraph 8, their Lordships relied upon the decision of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, but that was only to make

the decision invulnerable. The real ratio was that the petitioner was not disqualified from competing. I am, therefore, unable to read it as an authority for the proposition that whatever the infirmity, if the authorities have not scrutinised the application properly, a candidature cannot be cancelled. It would depend upon the nature of the infirmity.

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14. In this case the candidature of two of the petitioners who had appeared at the High Secondary examination, had been cancelled as it had been found that they had not been found to be regular students of the school. Rule 14 of the Bihar School Examination Board Regulations, 1964, provides that every sent up candidate shall send with his application for admission, the prescribed fee for the Higher Secondary examination along with the certificate of the head of the institution that he is a bona fide student of his school and that he has attended the regular course of studies in his school for one session preceding the commencement of the examination by the Board. Rule 17 provides that on receipt of the application, the prescribed fee and the certificate of the head of the institution, the Secretary must satisfy himself that all requirements for permission to appear at the examination had been fulfilled and thereafter the Secretary of the Board has to issue admit cards in the prescribed forms in favour of the candidates. In this case on examination investigation it was found that the certificate by the petitioners of having attended regular course of studies for one sessions immediately preceding the date of the commencement of the examination by the Board was false. It was thus obvious that a fraud had been practised upon the Board by the petitioners in collusion with the school authorities. It is well known that fraud vitiates all acts of parties and yet B. P. Jha J. allowed the application on the footing that once admit card had been issued, the examination can be cancelled only for use of unfair means. When lacs of applications are pouring into the school examination Board from thousands and thousands of schools is it reasonable to expect the Secretary of the examination Board to investigate into the correctness of every certificate transmitted to the Board by the Headmasters of thousands and thousands of schools within a period of weeks. In that situation the mere issuance of admit card cannot save a candidate from the adverse effect following perpetration of fraud on the Board. Can any one be allowed to get away with his fraud. In our view not. I am unable to hold that this decision was correctly rendered.

15. Learned counsel for the petitioner also cited the decision in 1984 BBCJ (SC) 25 and 1987 BBCJ (SC) 115 in support of his submission. The citations seem to be wrong and it is not possible to find out on what case the petitioner relies.

16. There can be no doubt that the petitioner was not entitled to appear at the M.A. examination in terms of the Transitory Regulations as he had not passed the M.A. examination earlier. His examination was, therefore, rightly cancelled. In our view, there is no merit in this application. It is dismissed accordingly. There shall, however, be no order as to costs.

S. Hoda, J.

17. I agree.