
(2004) 12 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 5313 of 2004

Ashok Kumaresh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-12-2004

Acts Referred:

Citation : (2005) 1 PLJR 386

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Vishnu Kr. Sharma, for the Appellant; P.K. Shahi, Shashi Anugrah Narayan and S.C. Jha, Soni Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard. The petitioner, who appeared in the intermediate examination conducted by the Bihar Intermediate Education Council, Patna, in February-March, 1997, has filed this writ application for direction to the Bihar Intermediate Education Council and its functionaries to grant him one grace mark in Mathematics as he secured only 59 marks which is one mark less than the pass mark. The said prayer he has made in the light of the Regulation 7 of the Bihar intermediate Education Council which, inter alia, provides that a candidate failing in one subject or two subjects only by not more than 4/8 per cent marks shall be given the marks he/she is short off and result shall be declared accordingly, As the petitioner, secured 59 marks in mathematics he should have been allowed one grace mark in that subject in terms of Regulation 7 and thereafter his intermediate result should have been declared indicating that he has also passed in" Mathematics. Authorities instead of granting him one grace mark in Mathematics declared his intermediate result taking into account the additional subject Statistics in which he had secured 106 marks.

2. Learned counsel for the petitioner contends that instead of declaring the result of the petitioner on the basis of additional subject, namely, Statistics, petitioner should have been given one grace mark in Mathematics and his result should

have been declared on that basis.

3. Before I notice the stand of the Education Council it is meet and proper that I should indicate the subjects which the petitioner had taken for his intermediate studies in S.S. Sinha College, Aurangabad, during the sessions 1995-1997. He had offered Rashtrabhasha Hindi and English language and literature as compulsory subjects Physics, Chemistry and Mathematics were his optional subjects. Statistics was his additional subject and professional social work was his vocational subject. In the said examination petitioner passed in all subjects including the additional subject but he failed in one of three optional subjects Mathematics by one mark. Bihar Intermediate Education Council having noticed the fact that the petitioner had passed in all the subjects except in one optional subject Mathematics declared his result in terms of Regulation 6(b) by interchanging his optional subject Mathematics with additional subject Statistics. In recognition of the said declaration petitioner was granted marks statement and provisional certificate dated 30.5.1997, annexure-2 series. Perusal of the marks statement and provisional certificate dated 30.5.1997 of the petitioner indicate that he passed Intermediate Science Examination in 2nd division with Physics, Chemistry and Statistics as optional subject and Mathematics as additional subject. On that basis he was admitted in the B.Sc. course (Chemistry Honours) and continued his studies and he ultimately passed B.Sc. (Chemistry Hons.) in the year 2002. Having passed the B.Sc. (Chemistry Hons.) examination petitioner appeared in the Bihar Combined Entrance Competitive Examination 2003 conducted by the Bihar Combined Entrance Competitive Examination Board for being considered for admission in engineering course. While applying for admission in the engineering course he furnished the marks statement and the provisional certificate dated 30.5.1997 and on that basis he was allowed to appear in the Combined Competitive Examination and when he was declared successful in the examination he was called for counseling. During the counseling when the marks statement and the provisional certificate dated 30.5.1997 was examined in detail it was noticed that the petitioner had not passed in Mathematics and, as such, is not qualified for being considered for admission in the combined entrance test. Then petitioner approached the Bihar Intermediate Education Council for granting him one grace mark, so that, he is able to avail the offer for admission in the engineering course pursuant to the Bihar Combined Entrance Competitive Examination, 2003. Bihar Intermediate Education Council did not consider it appropriate to grant him one grace mark and then the petitioner filed this writ application for a direction to the Council to grant him one grace mark in Mathematics, so that, he may become eligible for admission in the engineering course, pursuant to a Combined Entrance Competitive Examination held in the year 2003.

4. In support of this application the petitioner has relied on the Regulations of the Bihar Intermediate Education Council which, inter alia, enjoins upon the Council to grant 8 per cent grace mark to a candidate who has appeared in all subjects offered by him but has failed in one subject. He states that he having

appeared in all subjects including additional subject was entitled to grant of one grace mark in Mathematics.

5. Learned Advocate General appearing for the Bihar Intermediate Education Council, on the other hand, has invited my attention to Regulation 6(b) of the Council and on that basis states and submits that any candidate appearing in the Intermediate Science Examination who has failed in one optional subject but has offered an additional subject then his result is required to be declared on the basis of the additional subject and, accordingly, Council has declared the result of the petitioner on the basis of his additional subject Statistics, as such, petitioner is not entitled to grant of any grace mark, as in terms of the Regulation itself only one benefit is admissible to any candidate appearing in the examination. According to learned Advocate General grant of one grace mark in Mathematics shall tantamount to granting him another benefit in terms of the Regulation which is not permissible.

6. Shri P.K. Shahi appearing on behalf of the Bihar Combined Entrance Competitive Examination Board submitted that the petitioner became an applicant for the combined entrance competitive examination 2003 on the basis of marks statement and provisional certificate dated 30.5.1997, annexure-2 series and there from it appears that he failed in Mathematics by one mark he cannot be admitted in the engineering course.

7. Having heard the learned counsel for the parties, I am of the view that by declaring the result of the petitioner under Regulation 6(b) the Intermediate Council has exchanged his optional subject Mathematics with additional subject Statistics and has not granted him any grace mark in any of the subjects. Had the Council granted the petitioner one grace mark in Mathematics instead of exchanging his optional subject Mathematics with additional subject Statistics same result would have been achieved and petitioner would have become successful in Intermediate Science Examination in second division with Physics, Chemistry and Mathematics as his optional subjects and thereby the controversy that petitioner has failed in Mathematics by one mark would not have been raised at the stage of counseling for admission in the engineering course in 2003. Regulation 6(b) should only be applied in those cases in which candidate has failed in one/two subjects and the shortage from pass mark in the subject or subjects concerned is beyond the limit prescribed under regulation 7. Accordingly, I direct the intermediate Council to grant the petitioner one grace mark in Mathematics and to issue his modified Intermediate Science marks statement and certificate as early as possible but, in any case, within one month from the date of receipt/production of a copy of this order. This application is, accordingly, allowed. No cost.