
(1999) 10 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3154 of 1997

Avdhesh Khokhar

APPELLANT

Vs

Principal, Dayanand Public School and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Raj 72 : (2000) 1 RLW 87 : (2000) 1 WLC 493

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : C.P. Trivedi, for the Appellant; Vijay Mehta, for the Respondent

Final Decision : Allowed

Judgement

B.J. Shethna, J.—The petitioner, who is a student, has filed this petition in July, 1997 and prayed that the respondents be directed to declare his result of Senior Secondary Examination held in November, 1995 and issue him correct, true and relevant marks-sheet of the said Examination.

2. Reply-affidavit has been filed in this case on behalf of the respondents Nos. 2 and 3, wherein several contentions have been raised, One of the foremost contentions raised by the learned counsel Mr. Mehta, for the respondents Nos. 2 and 3, at the time of hearing of this petition, was that the petitioner-student deposited the fees late, i.e., 28-11-95, after the Examination commenced on 20-11-95. Thus, the submission was that from the very threshold, the petitioner-student was not entitled or eligible to appear in the Examination, therefore, there is no question of declaring his result. It was also submitted by the learned counsel Mr. Mehta for respondents Nos. 2 and 3 that two important conditions required under the Rules are not fulfilled by the petitioner in this case; (1) that the name of the petitioner was not included in the list of the candidates supplied by N.O.S., and (2) the petitioner was never given permission to appear in the Examination. Mr. Mehta submitted that the petitioner appeared in the Examination at the Respondent No. 1's school, which is the Centre for

Examination, merely on the strength of his enrolment, which was not sufficient. He, therefore, submitted that the petition should be dismissed.

3. Before appreciating the aforesaid contentions raised by the learned counsel Mr. Mehta, for Respondents Nos. 2 and 3, it must be stated that on 12-8-99, statement of Mr. Mehta was recorded that he will produce the result of the petitioner before this Court on 13th September, 1999. However, the same could not be produced, because of some misunderstanding on the part of the respondent No. 2, therefore, on 14th September, 1999, the Respondents Nos. 2 and 3 were directed to produce the result of the petitioner-student on 5th October, 1999, i.e., today. Accordingly, learned counsel Mr. Mehta has produced the result of the petitioner-student in a cover which was opened in presence of both the learned counsel for the parties Mr. Trivedi for the petitioner and Mr. Mehta for respondents Nos. 2 and 3. It is dated 1-9-99. Strictly speaking, it is not a result, but a sort of certificate issued by the Deputy Director (Examination), National Open School, which reads as under :--

NOS/ABC/N95

01-09-1999

To Whom it May Concern.

This is to certify that Shri Awadhesh Khokhar bearing Roll No. 170543147 is a student of National Open School and appeared in the National Open School Examinations conducted in November, 1995 for five subjects. The details of subjects appeared and marks obtained may be seen as under :

Subject

Marks out of (100)

302 English

47 P

319 Commerce

68 P

323 Type Writing (English)

67 P

301 Hindi

38 P

320 Accountancy

33 P

253

Result : Pass

Sd/-

Deputy Director (Examination)

4. The sum and substance of it is that the petitioner-student has passed the Examination.

5. In view of the above, now, I deal with the contentions raised by the learned counsel Mr. Mehta, for Respondents No. 2 and 3. Rightly or wrongly, the petitioner was permitted to appear in the Examination which commenced on 29th November, 1995. The fact which is not in dispute is that he was given enrolment number. Even if the requirement of payment of Examination fees before starting of the Examination was not complied with initially by the petitioner, it was complied with within one week, i.e. 28-11-1995 after the commencement of the Examination. It is also not in dispute that the fee was accepted. Thus, even if the petitioner-student initially was not eligible or ineligible to appear in the Examination, that ineligibility was condoned by the respondents Nos. 2 and 3, by permitting him to appear in that Examination.

6. Under the circumstances, the Rules or Guidelines quoted at page 27 of the reply that name of the petitioner was not included in the List of Candidates, loses all its significance. Similarly, failure on the part of the petitioner-student to have the permission to appear in the Examination, also loses its significance.

7. One more submission was raised by the learned counsel Mr. Mehta for respondents No. 2 and 3 that this petition suffers from the vice of gross delay and laches, because he appeared in the Examination on 20th November, 1995 and the petition came to be filed in July, 1997. It is true that there is delay of about 2 years, but the same is satisfactorily explained in this case. The petitioner-student was under the wrong bona fide impression that he had the better and efficacious remedy before the Consumer Forum, therefore, when the respondents failed to respond to the petitioner's request then he approached the Consumer Forum well in time, but, unfortunately, the Consumer Forum rejected his application, only on the ground of jurisdiction, in the month of February, 1997. In that view of the matter, if the petitioner has filed this petition in July, i.e. within five months, thereof, then it cannot be said to be a delay, muchless gross delay.

8. It is unfortunate that though time and again, the Hon'ble Supreme Court as well as this Court pronounced that the State Government and its Authorities and the institutions, like University and the public institution should not raise the point regarding delay, but, once again, in this petition, that point has been raised. When the career of a student is at stake, it was expected at least from the respondents Nos. 2 and 3 not to raise such objections regarding delay. It is well settled law that when substantial justice is pitted out against technicalities, substantial justice must prevail.

9. Having regard to the peculiar facts and circumstances of the case and the fact

that the petitioner has now been declared passed as per the certificate dated 1-9-99, there is no other alternative for this Court except to direct the respondents Nos. 2 and 3 to officially declare the result of the petitioner forthwith and supply the marks-sheet of the Examination in question forthwith.

10. The petition is allowed accordingly with no order as to costs. The office is directed to take out photostat copies of the certificate dated 1-9-99 and a copy of the same may be supplied to Mr. Trivedi, learned counsel for the petitioner, and one copy of the same be kept on the record of this case, therefore, the original certificate be handed over to Mr. Mehta, learned counsel for the respondents No. 2 and 3 in a seal cover.