
(2018) 01 PAT CK 0103

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10027, 11008 Of 2017

Bhagwan Singh And Ors

APPELLANT

Vs

Bihar School Examination Board Through And Ors

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Bihar School Examination Board Regulations, 1964 — Regulation 8

Constitution Of India, 1950 — Article 142, 226

Bihar School Examination Board Rules, 1996 — Rule 7, 8

Citation : (2018) 2 PLJR 831??

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Y.V. Giri, Rajesh Kumar, Satyabir Bharti, Siya Ram Sahi, Ranjan Kumar Singh, Satyabir Bharti

Final Decision : Dismissed

Judgement

In both these writ applications, identical relief has been sought, language of which is verbatim the same and reads thus:-

"That, this is an application for issuance of an appropriate writ in the nature of mandamus commanding the respondents to publish the result of C.P.Ed./D.P.Ed. courses respectively for which supplementary examination has already been conducted by the Bihar School Examination Board in the year 2015 and further a direction to grant all other consequential benefits in terms thereof for which petitioners are entitled for."

2. The petitioners of these two writ applications, filed under Article 226 of the Constitution of India, claim to have pursued their Certificate in Physical Education (C.P.Ed.)/Diploma in Physical Education (D. P. Ed. in two different institutions. The petitioners of CWJC No. 10027 of 2017 (hereinafter referred to as 'the first case') claim that they completed their courses before 1995 as students of Kedar Pandey Health and Physical Training College, Sadhanapuri, Patna. The petitioners of CWJC No. 11008 of 2017 (hereinafter referred to as 'the second case') assert

that they had been student of Tirhut Physical Education College, Jhapahan, Muzaffarpur, who, too, had pursued the same courses in the year 1995. Though, the relief, which has been sought for publication of result of the examination held by the Bihar School Examination Board (hereinafter referred to as 'the Board') in the year 2015, is identical, on perusal of the materials on record and consideration of the arguments advanced on behalf of the parties, I have noticed certain distinguishable features between the two cases. It is, therefore, essential to narrate the factual aspects in respect of each of the cases separately.

FACTS OF CWJC NO. 10027 OF 2017 (THE FIRST CASE)

3. The case of the petitioners is that the College was granted recognition for the sessions 1986-87 to 1993-1994. The annual examination for the said courses were held by the Board and the result was published in the year 1998. In 2006, the College approached this Court seeking relief to accept fees and forms of such students, who had either failed or were left out from appearing for the said examination. The writ application was dismissed by this Court. An appeal was preferred by the institution, giving rise to L.P.A. No. 311 of 2011 (Kedar Pandey Health and Physical Training College, Sadhnapuri, Patna and Another v. The State of Bihar and Others). A Division Bench of this Court dismissed the said Letters Patent Appeal, by order, dated 06.07.2011, in the following terms:-

"Admittedly, the examination of the students of the appellant had been held by the Board for the students of the last Session 1993- 94. Thereafter there is no material to show that any list of candidate belonging to this institution was ever forwarded by the State Government to the Board for taking further examination. In this background the doubt expressed by the writ court about the very existence of this institution cannot be said to be without any basis. So far there is no law that the Board has to keep arranging examination for failed students or for those who do not appear in spite of opportunity. Statutory duty of the Board had already been discharged insofar the students of the present institution are concerned. So far equity for the concerned students is concerned, the matter would have been different had they moved this Court soon after 1995 examination for holding another examination or supplementary examination, but so far no student of petitioner institution appears to have moved this Court even after lapse of so many years, hence, it would not be possible to grant any relief even on account of equity after such inordinate delay."

4. It is noticeable that students of another Physical Teachers Training College, namely, Dr. Jakir Hussain Physical Teachers Training College, Pojhi, Parsa (Saran), had also approached this Court, by filing CWJC No. 21326 of 2011 ((Yogendra Rai and Others v. The State of Bihar and Others) and another analogous case, seeking direction to the Board for holding examination for the said two courses. A Division Bench of this Court dismissed the writ applications in following words:-

"Moreover, it is evident that the petitioners have approached this Court more

than 15 years after they allegedly underwent course in physical education with a view to securing Government employment. The petitioners who are now around 45 years of age or even more, cannot be inducted afresh as teachers in physical education in the Government schools.

In our opinion, the petitioners are being opportunistic. These writ petitions are filed with an intention to explore the possibility of getting into the Government employment at this advanced age. The judgments of the Hon'ble Supreme Court relied upon by Mr. Choudhary will not apply to the facts of the present case. In a similar case, in the matter of Kedar Pandey & Anr. v. State of Bihar & Ors. (L.P.A. No. 311 of 2011 decided on 6th July 2011), a Bench of this Court has refused to grant relief on the similar grounds."

5. It appears that some students of this institution had approached this Court by filing separate writ application, being CWJC No. 20843 of 2011 (Brajesh Kumar and Others v. The State of Bihar and Others), which was disposed of by an order, dated 28.08.2012, in following terms:-

"Upon hearing learned counsel for the parties, the writ petition is disposed of with a direction that petitioners shall be given a chance to appear in the examination, if it is otherwise permissible in the next Semester examination scheduled to be held soon by the Bihar School Examination Board."

6. It is manifest from the order, dated 28.08.2012, that the Division Bench decision of this Court, dated 06.07.2011, passed in LPA No. 311 of 2011 was not brought to the notice of this Court. As would be evident from the discussions hereinbelow, the petitioners have given much emphasis on the said order, dated 28.08.2012, to make out their case that they were allowed to appear for the examination in view of the above direction.

FACTS OF CWJC NO. 11008 OF 2017 (THE SECOND CASE)

7. In respect of this College also, it is being claimed that it was granted permission to enroll 100 students in C.P.Ed. and 100 students in D.P.Ed. courses for the sessions 1993-94 to 1995-96. It appears that two students of the said College had approached this Court seeking direction to the respondents to hold examination of the said courses, registered as CWJC No. 8091 of 2006, which was dismissed by a Single Bench decision of this Court, dated 12.09.2006. A Letters Patent Appeal, preferred against the said judgment and order, dated 12.09.2006, giving rise to LPA No. 697 of 2006, also came to be dismissed. The petitioners of the said College filed Special Leave Petition before the Supreme Court, numbered as SLP (C) No. 3145 of 2007, which, subsequently, gave rise to Civil Appeal No. 4190 of 2007 (Sunil Kumar Parimal and Another v. The State of Bihar and Others). The Supreme Court allowed the appeal and set aside this Court's decision, dated 24.01.2007, in LPA No. 697 of 2006 and issued following direction:-

"22. We, in the interest of justice to the appellants, direct respondent Nos. 1 to 6

to permit the appellants to appear in the examination for the courses of C.P.Ed. and D.P.Ed. for the sessions 1994-95 and 1995-96 to be conducted by the respondent-Board on the next available opportunity in the near future and thereafter the result of the appellants shall be declared without loss of further time.

24. We make it clear that the observations made by us are only prima facie and tentative observations for the disposal of this appeal and the same would not be construed as an expression of opinion on the merits of any future proceedings of any nature, if any, between the parties in this appeal."

8. In the light of the Supreme Court's direction, in the case of Sunil Kumar Parimal (*supra*), the Board conducted the examination for the aforesaid institutions in question in the year 2008 itself.

9. The petitioners, in the present case, claim that they are left over students of the said Tirhut Physical Education College.

10. It appears that the State Government of Bihar was requested to take a policy decision in respect of such students, who, for one reason or the other, could not take the examination or were declared 'fail'. The State Government took a categorical decision that it would not request the Board to conduct examinations of the students of such institutions which had not been granted recognition by the National Council for Teacher Education. This is to be kept in mind that neither of the two institutions obtained recognition from the National Council for Teacher Education after coming into force of the National Council for Teacher Education Act.

FACTS LEADING TO THE EXAMINATION, IN QUESTION

11. What transpired at the level of the authorities of the Board is not known. It, however, transpires from the uncontroverted facts that the Board came out with an Office Order, dated 28.02.2015, which has been brought on record by way of Annexure-P/1 of the first case for constituting a Committee to enquire into the candidature of ex-students who had failed in physical education training examinations. For the purpose of said enquiry, a Three-Men Enquiry Committee was constituted. The report of the Three-Men Enquiry Committee in respect of the Kedar Pandey Health and Physical Training College has been brought on record by way of annexure in the first case, from which it appears that the Board found 445 students of different sessions, right from 1986-87 to 1993-94, who had either declared failed or could not appear in the examination and were found to be eligible for appearing in the supplementary examination. The figures given in the said annexures are shocking to the Court's conscience. If the session 1986-87 is to be taken, 100 students were admitted and in the examination held in the year 1995, only 26 students appeared, out of whom 17 were declared 'fail'. Apparently, 74 candidates had not appeared in the said examination. Thus, out of 100 students of the session 1986-87, 91 either failed or did not appear for the examination. Out of 91, 74 came forward to fill up the examination form. For

the session 1987-88, figure of students who had passed out of 100 has been shown to be only 05, out of 21 who had appeared. Almost similar is the case with the D.P.Ed. course, where for the session 1986-87, 17 out of 100 appeared and only 10 could be declared successful. 83 did not appear. 90 candidates for the said session, thus, were either declared 'fail' or had not appeared in the examination.

12. Similar report, submitted in the second case, suggests that in C.P.Ed. Course, out of 200 students, who had been allowed admission for the sessions 1994-95 and 1995-96, 74 had either failed or not appeared for the annual examinations, held by the Board, out of whom, 72 filled up their forms for the examination proposed to be held by the Board in the year 2015. In the case of D.P.Ed. Course, out of 200 students, 97 did not appear for the annual examination for the said two sessions, out of whom 58 filled up their forms for the examination to be held by the Board in the year 2015.

13. This is noteworthy that the order of the Supreme Court, in the case of Sunil Kumar Parimal (supra), is an order under Article 142 of the Constitution of India, as is manifest from paragraph 21 thereof. It is evident from paragraph 22 of the said decision that the Supreme Court had directed the respondents to permit only the appellants to appear in the examination. After having directed the respondents to permit the appellants of that case only to appear in the examination for the courses of C.P.Ed. and D.P.Ed. for the sessions 1994-95 and 1995-96 to be conducted by the respondent-Board on the next available opportunity in the near future, the Supreme Court categorically observed, in paragraph 24, that observations made in the said order were only prima facie and tentative for disposal of the appeal and the same would not be construed as an expression of opinion on the merits of any future proceedings of any nature, if any, between the parties in that appeal. Paragraph 24 of the said decision has been quoted in the preceding paragraph of this judgment in view of the submissions advanced on behalf of the petitioners of CWJC No. 11008 of 2017 to the effect that the students of Tirhut Physical Education College, Jhapahan, Muzaffarpur were allowed to appear for the examination by the said judgment and, therefore, the Board had rightly held the examination in the year 2015.

14. This is to be kept in mind that the petitioners of the second case had, at no point of time, till adjudication by the Supreme Court, in the case of Sunil Kumar Parimal (supra), had approached the High Court, seeking direction for conducting the said examination. As has already been noticed, the Kedar Pandey Health and Physical Training College had approached this Court, by filing writ application, which was dismissed. Reliance, in that case, was placed on the Supreme Court's decision, in the case of Sunil Kumar Parimal (supra). This Court took note of the fact that the claim of the students for holding examination for the sessions 1994-95 and 1995-96 was entertained because no examination was ever held and, therefore, in the light of the statutory duty of the Board to conduct various examinations flowing from Rules 7 of the Bihar School Examination Board Rules,

1996, the Supreme Court had directed the Board to allow the appellants of that case to appear for the examination. The Court dismissed the Letters Patent Appeal, as has already been noted above.

15. Seven years after the Supreme Court's decision, in the case of Sunil Kumar Parimal (supra), a Division Bench of this Court had yet another occasion to deal with the question of allowing students of physical training college of the sessions 1986- 87 to 1993-94, in the case of Yogendra Rai (supra). The petitioners of those cases claimed to be the students of Dr. Jakir Hussain Physical Teachers Training College. The petitioners of those cases, claimed before the Division Bench, that the said college was, at the relevant point of time, recognized by the State of Bihar and, therefore, those students had a right to appear at the examination conducted by the Board. They asserted that since 1995, the Board had not conducted the examination for Diploma and Certificate courses in Physical Education and, therefore, the Board was obliged to conduct examination for the petitioners. The Board, in that case, had made a categorical statement that since 1995, the Board had conducted examinations in 1999, 2002 and 2004, but, at no point of time, the writ petitioners of those cases, ever approached the Board of this Court to assert their right to appear at the examination. The Court took notice of the language of the notification, in the case of Yogendra Rai (supra), dated 23.11.1994, wherein the recognition was granted for the academic sessions 1986-87 to 1993-94, only with a view to facilitate the students to take examination conducted by the Board. Having noticed the said notification of recognition, the Division Bench, in the case of Yogendra Rai (supra) observed that the said recognition was granted temporarily for a limited purpose and 'once the said purpose was served, the recognition paled into insignificance', the Court observed. The language of recognition granted in favour of Dr. Jakir Hussain Physical Teachers Training College is identical, as is apparent from the annexures from one of the documents, which is part of Annexure-P/11 to the reply filed on behalf of the petitioners in the first case to the counter affidavit. This is also to be noted that the Division Bench had considered the Supreme Court's decision, in the case of Sunil Kumar Parimal (supra), while refusing the reliefs sought to allow the students of Dr. Jakir Hussain Physical Teachers Training College, to appear for the examination.

16. To sum up the plea of the petitioners, in both the cases, is that they had taken admission in the two physical training colleges, during the sessions 1986-87 to 1993-94, during which period the said colleges were recognized by the State of Bihar. As is evident from the notification of recognition, the same was granted after the sessions were over only for the purpose of holding the examinations of C.P.Ed. and D.P.Ed. courses. There is nothing on record to show nor there is any specific pleadings with respect to individual petitioners that they ever approached the Board or any other authority or this Court for holding of the said examination. Kedar Pandey Health and Physical Training College had approached this Court, seeking certain directions to the Board to conduct examination for the students of the College, which was denied up to the Letters

Patent Appeal stage. Similar claim, raised by the students of another similarly circumstanced college, i.e. Dr. Jakir Hussain Physical Teachers Training College, was dismissed by the Court, in the case of Yogendra Rai (supra). Some persons claiming to be the students of Kedar Pandey Health and Physical Training College approached this Court, by filing CWJC No. 20843 of 2011 (Brajesh Kumar and Others v. The State of Bihar and Others), wherein this Court had passed the order, dated 28.08.2012, quoted above. It is their claim that the Board decided to hold examination in the year 2015, in the light of the order of this Court, in the case of Brajesh Kumar (supra). This Court, in the case of Brajesh Kumar (supra), had simply disposed of the writ application with a direction that the petitioners shall be given a chance to appear in the examination if it was, otherwise, permissible. It is evident from the said order, dated 28.08.2012, in case of Brajesh Kumar (supra), that it did not notice the earlier Division Bench decision, in the case of Kedar Pandey Health and Physical Training College (supra), rendered on 06.07.2011. The said decision was rendered after having considered the case of Sunil Kumar Parimal (supra).

17. There is another disturbing aspect of the matter. The entire brief of CWJC No. 20843 of 2011 (Brajesh Kumar and Others v. The State of Bihar and Others) has been brought on record by way of Annexure-P/11 to the petitioners' reply to the counter affidavit filed on behalf of the Board. It appears from Annexure-3 to the said CWJC No. 20843 of 2011, that they relied on certain provisions for holding annual and supplementary examinations, which could not be supported at the time of argument.

18. I am of the considered view that once this Court, for the reasons recorded, in the cases of Kedar Pandey Health and Physical Training College (supra) and Yogendra Rai (supra), had rejected the claim of the students in similar circumstance for holding the said examinations for them, there was no occasion for the Board to have proceeded to hold examination in the year 2011. This is also noteworthy that the Special Leave Petition, preferred against the Division Bench decision of this Court, in the case of Yogendra Rai (supra), was dismissed by an order, dated 13.10.2014, passed in C.L.P. (C) Nos. 26460-26461 of 2013. The Supreme Court specifically held in the said order, dated 13.10.2014, in the case of Yogendra Rai (supra), that decision of the High Court should not leave any further doubt in the minds of the petitioners that they had no further right to appear for the examination. The Court is at dismay to note that despite the observations made by the Supreme Court, as noted above, the Board proceeded to do the exercise of holding examination of same class of persons.

19. Mr. Y. V. Giri, learned Senior Counsel, appearing on behalf of the petitioners, in the first case, has submitted that once the Board decided to hold annual examination, it has a duty to hold supplementary examination for the failed and left out candidates. At one point of time, he had placed reliance on Regulation 8 of Chapter IV of Bihar School Examination Board Regulation, 1964, without realizing that Rule 8 of Chapter IV of the said Regulation was omitted with effect

from 20.07.2011 by way of amendment. The said Regulation 8 provided that a candidate may be admitted to the supplementary examination if (a) he was enrolled for annual secondary examination, but failed to appear thereat, or (b) he appeared only in some papers at the Annual Examination but could not take the full examination, or (c) he failed at the Annual Examination, (d) he is sent up by the school to appear at the Supplementary examination. There appears to be a conscious decision of the competent authority to do away with the said provision for holding supplementary examination.

CASE OF THE BOARD

20. Dealing with the first case, it is the stand of the Board that the Board had misconstrued the order of this Court, dated 28.08.2012, passed in the case of Brajesh Kumar (supra) and thereby decided to hold examination for these students in 2015. Reliance has been placed in the counter affidavit on the two decisions of the Division Bench of this Court, in the cases of Kedar Pandey Health and Physical Training College (supra) and Yogendra Rai (supra). There is specific plea taken in the counter affidavit that the petitioners, in connivance with the erstwhile management of the Board, took a calculated risk in appearing for the said examination with a chance to succeed if everything went positive. Once the Board detected the irregularity in holding the examination, a decision was taken not to publish the results.

21. In the second case, it is the stand of the Board that in the light of the Supreme Court's decision, in the case of Sunil Kumar Parimal (supra), the Board had conducted the examination for the said institution in the year 2007 itself, result of which was published in the year 2008. Apart from the plea, which has been taken in the first case, it has been asserted that there was no requirement for the Board to have held another examination for the left over students in 2015 by the Board.

22. It has also been reiterated that the Board had conducted examination for C.P.Ed./ D.P.Ed courses in the year 1999, 2002 and 2004, but these petitioners never approached the Board or this Court for seeking any relief for conducting supplementary examination.

23. Mr. Satyabir Bharti, learned Counsel appearing on behalf of the Board, has submitted that it was an illegality on the part of the Board to have conducted the supplementary examination in 2015 for the academic sessions 1986-87 to 1993-94. He has argued that though it was impermissible for the Board to have held the examination, in the guise of the certain observations made by this Court, in the case of Brajesh Kumar (supra), the then officials of the Board had proceeded to hold examination in breach of the orders of this Court and against the provisions of law and, therefore, the Board is justified in withholding the result of these petitioners.

DISCUSSION AND CONCLUSION

24. On analysis of the entire facts and circumstances, as narrated above, read with this Court's decisions, in the cases of Kedar Pandey Health and Physical Training College (supra) and Yogendra Rai (supra), I am of the considered view that the Board was not justified in holding examination in 2015 for left over and failed candidates, who claim to be the students of the physical training colleges, nearly 2-3 decades ago. If we carefully read the Supreme Court's decision, in the case of Sunil Kumar Parimal (supra), the order has been passed in exercise of power under Article 142 of the Constitution of India, to do complete justice and is confined to only two persons, who were appellants in that case. It is a different matter that the Board allowed all the students of Tirhut Physical Education College to appear for the examination, hold in the year 2007. The petitioners were to be blamed if they could not avail the said opportunity. There was no obligation; rather, any requirement for the Board to have held yet another examination in 2015.

25. Worse is the case in respect of students of Kedar Pandey Health and Physical Training College. A Division Bench of this Court had specifically denied the claim of the College. Once the Division Bench of this Court held that there could be no direction allowing the students of the College to appear for the examination, there was no occasion for the Board to have decided to hold examination for the students of Kedar Pandey Health and Physical Training College.

26. In my view, it was highly undesirable for the Board to have held examination in 2015. It was, rather, not permissible for the Board to have held examination, in the light of the nature of observations made by the two Division Benches of this Court, in the cases of Kedar Pandey Health and Physical Training College (supra) and Yogendra Rai (supra), In my view, therefore, learned Counsel appearing on behalf of the Board is correct in his submission that the officials of the Board misconstrued a Single Bench order of this Court, in the case of Brajesh Kumar (supra).

27. The connivance of the officials of the Board, for oblique purpose in taking the decision to hold examination without any necessity to do so, with the management of the Colleges and the students, cannot be ruled out. However, no finding can be recorded in this regard in the present proceeding on the basis of the materials available, despite there being lurking suspicion over the conduct of the officials of the Board in this regard.

28. Accordingly, I do not find any merit in these applications, which are devoid of any merit. The Board had wrongly held the examination in the year 2015 in the absence of any statutory requirement and in defiance of this Court's direction, as noted above. Result of such examination cannot be directed to be published.

29. These writ applications are accordingly dismissed.

30. In the facts and circumstances of the case, I direct the Principal Secretary, Education Department, Government of Bihar, to get the entire matter enquired into in relation to the affairs of the Board, leading to holding of the examination,

in question, in the year 2015 and proceed thereafter in accordance with law by bringing the outcome of the said enquiry to the notice of the competent authority.