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**(2004) 02 AHC CK 0042**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 3351 of 2000**

Buddhiman Chauhan

APPELLANT

Vs

Secretary, Board of High School and Intermediate Education  
and Another

RESPONDENT

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**Date of Decision :** 03-02-2004

**Acts Referred:**

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 3

**Citation :** (2004) 3 AWC 2150

**Hon'ble Judges :** R.B. Misra, J

**Bench :** Single Bench

**Advocate :** Indra Raj Singh, for the Appellant; M.C. Chaturvedi, Addl. C.S.C. and S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

R.B. Misra, J.—Heard Sri I. R. Singh, learned counsel for the petitioner and Sri M. C. Chaturvedi, learned Additional Chief Standing Counsel for the State respondent.

2. Counter and rejoinder-affidavits have been exchanged and pleadings are complete, therefore, with the consent of learned counsels for the parties the present writ petition is decided finally at this stage in view of the Second Proviso to Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952.

3. In this petition prayer has been made for quashing the order dated 6.12.1999 (Annexure-10 to the writ petition) passed by the Secretary, Board of High School and Intermediate Education, U.P., Allahabad (hereinafter in short called as the "Board"), and further prayer has been made for issuance of writ of mandamus directing the respondent No. 1 i.e., Secretary of the Board to issue mark-sheet and certificate of the petitioner of Intermediate Examination 1983 bearing roll No. 262302 to the petitioner expeditiously.

4. It appears that the petitioner had passed High School examination in the year

1981 as a regular student of Janta Inter College, Ahiraula, Azamgarh and also passed Intermediate examination in second division in the year 1983 as a regular student of Udyog Vidyalaya Intermediate College, Koilasa, Azamgarh. The petitioner was issued a character certificate on 12.8.1983 by the Principal of the Udyog Vidyalaya Intermediate College, Koilasa, Azamgarh. Thereafter, in due course of time and petitioner obtained Bachelor degree in Arts in the year 1986 and the petitioner was awarded highest marks in Mathematics in B.A. examination. Subsequently, the petitioner also obtained degree of M.Sc. in second division in the year 1988 and B.Ed. in the year 1993. When the petitioner approached the respondent authorities/Secretary of the Board for issuance of mark-sheet of Intermediate Examination of the year 1983, he was communicated by the respondent No. 1 on a prescribed cyclostyled proforma that the Intermediate Examination of the year 1983 has been cancelled and the mark-sheet cannot be given.

5. According to the petitioner, such decision of cancellation of the examination, result of the petitioner and his mark-sheet was never communicated to him and behind the back of the petitioner such order was passed. As the petitioner had never used unfair means during the course of Intermediate Examination, 1983 and no incriminating material was detected or found from the possession of the petitioner and the petitioner on his merits and competency in subsequent years has acquired higher degrees, therefore, cancellation of the mark-sheet behind his back is against the principle of natural justice and against the provisions of Articles 14 and 16 of the Constitution of India.

6. Counter-affidavit has been filed indicating that the result of the petitioner was withheld under the list of W.B. category, meaning thereby mass-copying and inquiry was made in the case of the petitioner along with other examinees, wherein the petitioner was found guilty of mass-copying. The provisional mark-sheet was issued to the petitioner. According to the respondents, the case of the petitioner was scrutinized by the Constituted Disposal Committee and petitioner was found guilty of mass copying, therefore, the result of the petitioner was cancelled and after cancellation the result of the petitioner was communicated to the Principal of the said College. According to the respondent Board the entire records of the year 1983 of the intermediate examination have already been weeded out as the records of the examination are kept only for a period of three years, and only tabulation register is maintained, which shows that the result of the petitioner was cancelled on account of mass-copying. According to the respondents, the petitioner was directed to appear before the inquiry committee, but he avoided the same, as such, there was no option before the inquiry committee than to pass another order except cancellation of the result of the petitioner.

7. The above aspects, however, have been denied by the petitioner, as neither any notice nor information of any kind said to have been conveying to the petitioner has been produced before this Court and the respondents, in fact,

have not demonstrated or brought to the notice of the Court that they have ever informed the petitioner before cancellation of the result of the intermediate examination 1983 in reference to the Regulation 3 of Chapter VIB of the Regulations framed under the Uttar Pradesh Intermediate Education Act, 1921, which reads as below :

"3. The procedure for dealing with the cases referred to in Regulation 2 shall be such as the Board may prescribe but before any penalty or punishment to any examinee or person is awarded the examinee or the person concerned shall be given opportunity of explaining his conduct in regard to the alleged charge unless for reasons to be recorded in writing. It is impracticable to communicate with the examinee or the person concerned."

8. Learned counsel for the petitioner has placed reliance on Kumari Rajni Kumari Vs. Regional Secretary/Additional Secretary, Board of High School and Intermediate Education, U.P., Meerut, where order of withholding of result of intermediate examination of the writ petitioner and non-issuance of mark-sheet and certificates was quashed and directions were issued for issuance of the same in the facts and circumstances earlier writ petitioners' result of intermediate examination was indicated in "W.B. category" and only provisional mark-sheet was issued in the year 1991 and subsequently the writ petitioner passed B.A., M.A, and M.Ed. examination and when the writ petitioner/Kumari Rajni Kumari approached for collecting her intermediate certificate, she was told that her result was withheld for using unfair means. Such decision was said to have been taken after eight years that too without giving opportunity of hearing to the petitioner and without any material in its support, and the equity was said to be in favour of the petitioner. The relevant paragraphs 6, 7 and 8 of Kumari Rajni Kumari (supra) are reproduced as below :

"6. The result of the petitioner was withheld in W.B. category by the respondents. From the documents produced by the petitioner, "Parishad ke high school tatha intermediate pariksha ke liye vibhinna sanket chinho ka vivaran jisake antargat parikshaphal roke gaye hain" it is clear that W.B. category relates to cases of suspicion of using unfair means and not of the candidates who are found copying at the spot as alleged in the counter-affidavit. The respondents themselves were not sure whether the candidate indulged in using unfair means or not, that is why the respondents issued, provisional mark-sheet to the petitioner. Learned standing counsel stated that in 1983 there were some general directions of the High Court for issuing mark-sheet to the candidates whose results had been withheld but no such judgment has been brought on record except a bald statement made in paragraph 3 of the counter-affidavit. The counter-affidavit is also silent as to what they were doing for the last 8 years. They did not disclose any reason for such inordinate delay, in arriving at a conclusion as to whether the petitioner was guilty of using unfair means or not. It appears that the respondents woke up only after the petitioner approached the respondents for issuance of the certificate and on the same date the respondents cancelled the

intermediate result of the petitioner that too without assigning any reason for cancellation of the result of the petitioner. The petitioner in the meantime passed B.A., M.A. and B.Ed. examinations and if her result of intermediate examination is cancelled the petitioner would be seriously prejudiced."

"7. Learned counsel for the petitioner has placed reliance on decision of this Court in Ashok Kumar Srivastava v. Secretary, Board of High School and Intermediate Education at Allahabad and Anr. 1985 UPLBEC 76; Dr. Anil Kumar Agrawal v. Director of Medical Education and Training, U.P., Lucknow and Ors. 1987 (1) UPLBEC 547 and Chhatrapal v. Secretary Madhyamik Shiksha Parishad, U.P. Allahabad, . In all these decisions the Court has taken equitable view to prevent injustice to a candidate who has as a consequence of declaration of result pursued higher studies successfully in this case provisional marks-sheet having been supplied and the authorities having remained silent for eight years the equity is in her favour."

"8. In the result, the writ petition succeeds and is allowed. The order dated 2.8.1999, passed by respondent Annexure-5 to this petition, is quashed. A writ of mandamus is issued to the respondent to declare the result of the petitioner of Intermediate Examination, 1991 and issue a fresh mark-sheet and certificate of Intermediate Examination of 1991 to the petitioner. The aforesaid directions shall be complied with by the respondent within month from the date a certified copy of this order is produced before him."

9. I have heard learned counsel for the parties. The judgment of this Court in Kumari Rajni Kumari (supra) is squarely applicable in the present case. I find force in the contentions of the learned counsel for the petitioner. The petitioner was never informed and no material has been brought before this Court indicating that the petitioner was ever given any notice or information directly or indirectly about the allegations made against him and no incriminating material was ever found from the possession of the petitioner and the petitioner in the subsequent years on the basis of his ability had obtained degree of B.A., M.Sc. and B.Ed. and after such a belated stage of 16 years of passing of the intermediate examination by the petitioner, the cancellation without any rhyme or reason, behind his back, is not legally sustainable, therefore, the order dated 6.12.1999 is set aside, and a mandamus is issued to the respondents to issue actual final mark-sheet and certificate of the Intermediate Examination 1983 to the petitioner bearing roll No. 262302 declaring him to have been passed Intermediate from Udyog Vidyalaya Intermediate College, Koilasa, Azamgarh in the year 1983 expeditiously within a period of two weeks from the date of production of certified copy of this order.

10. In view of the above observations, writ petition is allowed.

11. No order as to cost.