
(1996) 01 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Second Appeal No. 266 of 1995

Central Board of Secondary Education, Ajmer

APPELLANT

Vs

Sanjay Kumar

RESPONDENT

Date of Decision : 04-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 1996 Raj 203 : (1996) 2 WLC 552 : (1996) 1 WLN 176

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : R.P. Singh, for the Appellant; A.K. Gupta and Rinesh Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Arun Madan, J.—The appellant Central Board of Secondary Education (for short "the Board") having its regional office at Ajmer has come up in second appeal before this Court against the judgment and decree of the First Appellate Court dated 13th February, 1995 (ADJ No. 3, Jaipur), whereby the First Appellate Court reversed the judgment and decree dated 27th August, 1994 passed by the Addl. Civil Judge (Junior Division) and Munsiff Magistrate No. 1, Jaipur District, Jaipur in Civil Suit No. 11/94 (42/92).

2. The facts giving rise to the filing of this appeal, briefly stated, are that the respondent-plaintiff who is a student of Tagore Public School, Shastri Nagar, Jaipur, had filed a suit for permanent injunction in the Court of Addl. Court Judge No. 1, Jaipur contending inter alia, that he had pursued the requisite course of study in the aforesaid school for appearing in the examination of Class-XII to be conducted by the Board. It was pleaded in the suit that he had been regularly attending the classes and had completed 145 days of regular attendance for appearing in the said examination as against the requirement of 161 days and the attendance was about 80% as per the record of the school, therefore, he should be accorded necessary permission for appearing in the said examination

as the same was denied to him by the defendants. It was further contended by the respondent-plaintiff that the school authorities were in possession of all the records including the Attendance Register, which would justify the fact that he had attended the classes regularly and was thus eligible for appearing in the examination of Class-XII conducted by the Board in the academic year of 1992. The appellant defendant contested the suit by filing the written statement before the trial court on the ground, inter alia, that since the plaintiff did not fulfil the requisite criteria of having secured the minimum attendance of 75% as required by the school-defendant No. 1, therefore, the plaintiff was not eligible to appear in the ensuing examination. As per the contention advanced by the appellant, against the requirement of 161 days of total attendance, the plaintiff had attended only 145 days and the relaxation which could be granted as per rules was to the extent of 15% of the total attendance only. It was further contended that if this relaxation is allowed then the plaintiff meets the criteria of having completed 80% of the total attendance for being declared eligible for appearing in the said examination. The trial court framed 3 issues, namely, (1) Whether the plaintiff being short of attendance was eligible to appear in the Board's examination for Class-XII and whether in view of this he is entitled to declaration of the results provisionally during the pendency of the suit and whether the final result should not be declared? (2) Whether the plaint was not maintainable in the absence of necessary parties i.e. defendants Nos. 1 and 2 i.e. Tagore Public School, Jaipur and Principal, Tagore Public School, Jaipur? (3) To what relief the plaintiff is entitled?

3. With regard to issue No. 1 it was contended before the trial court by the learned counsel for the parties that the concerned diary which contains requisite entries in respect of the attendance of the candidate is in possession of the plaintiff and, therefore, he alone can verify the position of having attended the minimum days required for being eligible to appear in the said examination. Hence the trial court was of the view that the onus to discharge his burden was on the plaintiff and since he had failed to discharge the onus, this issue was decided against him.

4. This finding has been recorded by the trial court notwithstanding the fact that the school was equally in possession of the Attendance Register which could have been summoned by the trial court to prove the issue as to whether the plaintiff was really falling short of requisite attendance and in my opinion if the plaintiff was not successful in discharging the onus it was equally incumbent upon the trial court to have varified this fact by summoning the Attendance Register from the school and to have examined the same with a view to ascertain and verify the verasity of the statement of the plaintiff with regard to the submissions made in the plaint. I am further of the opinion that nothing prevented the trial court from varifying this possession which admittedly has not been done by the trial court. I am further of the opinion that nothing prevented the appellant from getting this aspect varified from the school authorities as the school authorities were in immediate touch with the Board, but the appellant did not bother to get

this aspect varified from the school authorities before holding the respondent ineligible to appear in the said examination. It is contended by the learned counsel for the appellant in this regard that the Board was not in a position to verify this fact since the records were available with the school. In my opinion this contention is not tenable in view of the observations made above since the Board is the ultimate authority to decide not only the eligibility criteria but also to ensure that the students who are otherwise eligible to appear in the examination do not suffer academically for any lapse of the school authorities. I am further of the opinion that C.B.S.E., Ajmer sh6uld issue suitable directions to all the schools within its overall control in future at least one month in advance before the commencement of the examination so that any bona fide student like the respondent may not be deprived of his career opportunities just as it has happened in this case.

5. With regard to issue No. 2 the trial court has recorded a finding that from the perusal of the pleadings on the record, it was apparent that since the necessary parties to the suit i.e. defendants Nos. 1 and 2 had been deleted from the array of defendants at the instance of the plaintiff, therefore, the plaintiff was not entitled to seek relief as against the said defendants Nos. 1 and 2. With regard to this issue the trial court has recorded a finding that the plaintiff is not entitled to succeed in view of the fact that the relief sought for in the suit was for permanent injunction and since the plaintiff had appeared in the examination and the result has been provisionally declared on the direction of the Court and for this reason he was not entitled to any relief. In view of the findings recorded by the trial court on both the issues, the trial court dismissed the suit vide its impugned judgment dated 27-8-94 against which the plaintiff preferred the First Appeal before the learned Addl. District Judge No. 3, Jaipur, which was allowed by the First Appellate Court whereby judgment of the trial court was reversed vide its judgment dated 13-2-95 against which the present second appeal has been preferred to this Court by the appellant-Board.

6. The First Appellate Court after discussing the evidence as well as the findings of the learned trial court on all the issues, as referred to above, has recorded a specific finding to the effect that academic career of a student should not suffer for the inaction and the lapse on the part of the counsel and primarily the Court must keep this aspect in view that since the student was allowed to appear in the ensuing examination of Class-XII to be conducted by the Board pursuant to the interim directions of the trial court and since the result has also been declared provisionally and also keeping in view the future career of the student which may not be jeopardised and that his academic career may not suffer, the appeal deserves to be allowed and that the plaintiff is entitled to the relief of declaration of the results finally.

7. I have heard the learned counsel for the parties and also perused the relevant record and examined the same. The following sub-stantial questions of law arise for the consideration of this Court :-

(i) Whether the requirement for attendance for appearance in the examination becomes redundant in case a candidate is allowed to appear in the examination pursuant to the interim order of the learned court?

(ii) Whether a plaintiff can be granted a relief in the absence of necessary parties, more particularly when necessary parties have been struck off the array of defendants on an express application by the plaintiff?

(iii) Whether a plaintiff can be allowed to get the relief without an iota of evidence or by way of oral evidence?

(iv) Whether a final relief can be granted merely because interim relief was allowed at a particular stage in the litigation?

8. During the course of hearing, it has been contended by Shri R.P. Singh, learned counsel for the appellant that the plaintiff himself is to be blamed for his lapse since the necessary parties to the plaint namely, Tagore Public School, Jaipur and the Principal, Tagore Public School, Jaipur, defendants Nos. 1 and 2 had already been deleted at the instance of the plaintiff and the only party which was contesting the suit before the trial court was the Board, therefore, the plaintiff was responsible for the consequence, and hence was not entitled to any relief from the courts below. It has been further contended by Shri Singh that the respondent was also falling short of requisite attendance and since he was in possession of the necessary evidence which he did not adduce before the trial court and, therefore, the appellant could not be held responsible for not declaring the result of the respondent.

9. It has been further contended by Shri Singh that the plaintiff at the time of obtaining the interim order was duty-bound to serve all the defendants having obtained dasti notices to which he did not comply with. This contention has been made by the learned counsel for the appellant notwithstanding the fact that the Board which was the principal contesting party to the proceedings and was duly represented had already been served and heard by the courts below.

10. In support of his contentions Shri Singh, learned counsel for the appellant has placed reliance on the decision of this Court in the matter of Dhiraj Joshi v. Board of Secondary Education, reported in (1988) 1 Raj LR 823, wherein the question which had arisen before this Court was as to whether a candidate should not be declared ineligible to appear in the examination of Class-XII to be conducted by the Board of Secondary Education for the reason that there was shortage of attendance for the petitioner having not fulfilled the requisite criteria of attendance. The Board had allowed the candidates to appear provisionally in the said examination but subsequently the Board sent a telegram to the Centre Superintendent, directing that the petitioners should not be allowed to appear in further examination as the position became clear and their attendance was found short of the minimum requirement. It was held by this Court that the action of the Board was not arbitrary and unreasonable and in this case no interference was made by this Court under Article 226 of the Constitution of India. I am of

the considered opinion that the ratio of the aforesaid decision is not applicable to this case since the questions which have to be looked into by the Court while dealing with a writ petition are quite different than what should be looked into while deciding a second appeal and the Court is not concerned with the question of alleged violation of the fundamental rights or enforcement thereof but is primarily called upon to examine the sustainability of the findings recorded by the courts below in the light of evidence on the record and the questions of law so formulated in the appeal.

11. Shri Gupta, learned counsel for the respondent has vehemently opposed the contentions advanced by the learned counsel for the appellant by supporting the judgment of the First Appellate Court and has stated that the view arrived at by the First Appellate Court is perfectly valid, just and is in accordance with law and deserves to be sustained by this Court. In support of his contentions advanced at the Bar, learned counsel for the respondent has placed reliance upon the judgment of the Apex Court in the matter of *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, wherein the question which had arisen for the consideration of the Apex Court was that where a party seeks amendment of the plaint under Order 6, Rule 17, C.P.C. and other relevant provisions of the C.P.C., the trial court should not decline the relief on technical grounds since it is a cardinal principle of law that the rules of procedure are intended to be handmaid to the administration of justice and a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of, the rules of procedure.

12. Reliance has also been placed by Shri Gupta on the matter of *Ritu Sharma v. University of Rajasthan*, reported in (1987) 2 Raj LR 832, wherein the similar question had arisen for the consideration of this Court in a writ petition moved to this Court under Article 226 of the Constitution of India. In this case, the petitioner was provisionally admitted to appear in the B.Ed., S.S.C. Course for the academic session 1984-85. Thereafter dispute arose between the authorities as to whether the petitioner should be declared eligible for appearing in the said examination. It was held by the learned Division Bench of this Court that once a candidate having pursued the academic study and had fulfilled the necessary requirement such as requisite attendance by having attended the classes regularly for the said academic course should not be deprived of the fair opportunity to appear in the examination and since she had already appeared in the examination for the said course, it was held by this Court that equities are in her favour and her results for the academic year in question must be declared by the University of Rajasthan.

13. I am further of the opinion that this is not the case where the First Appellate Court has erroneously reversed the judgment of the trial court without taking all the aspects into consideration particularly when the primary aspect of the matter with which the First Appellate Court was concerned was regarding the academic career of the student, who was otherwise eligible to appear in the Board's

examination and which may not suffer since the said candidate had already appeared in the examination of Class XII provisionally pursuant to the interim directions of the court and only the final declaration of his result was to be done by the Board.

14. After hearing the learned counsel for the parties and after having examined the judgments of the courts below, I am of the opinion that no case is made out by the appellant for interference by this Court in the judgments of the courts below. Consequently the judgment of the First Appellate Court is upheld. The second appeal is accordingly dismissed and the appellant-Board is accordingly directed to finally declare the result of the respondent in respect of Class XII examination conducted by the Board for the academic year 1991-92 within 4 weeks from the date of submission of the certified copy of this judgment. The interim order dated 14-7-95 is vacated. No order as to costs.