
(2020) 08 J&K CK 0020
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 1341 Of 2020

Jaswant Bharti

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Citation : (2020) 08 J&K CK 0020

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : R. S. Kotwal

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

CM No. 4193/2020

1. Learned counsel for the applicant/petitioner submitted that due to lockdown in the City because of Corona-Virus, he had not been able to get the Court fees to be annexed with this petition. He seeks some time to do the needful after the Court re-opens.

2. The application is allowed. The applicant/petitioner is permitted to submit the Court fees in the Registry in terms of Circular No. 16/GS dated 29.03.2020 issued by the High Court.

3. The application is disposed of accordingly.

WP(C) No. 1341/2020 (O & M)

4. The petitioner had approached this Court, praying for the following reliefs:

"Writ of Mandamus commanding the respondent No. 6 (Jammu and Kashmir State Board of School Education) to issue the marks certificate of the petitioner for which he appeared in Higher Secondary Examination Part-II (12th Class)

Annual Session, 2020 Regular (Summer Zone) and has been declared successful/pass under roll number 2310791."

5. Learned counsel for the petitioner submitted that the petitioner appeared in Higher Secondary Part-I examination in the year 2018, however, the petitioner could not clear all the subjects. He was required to re-appear in Physics and Chemistry subjects. Later-on, the petitioner had cleared those subjects in Bi-annual Session Private-2018. The petitioner had cleared his Higher Secondary Part-I examination in the following subjects: (1) General English, (2) Physics, (3) Chemistry, (4) Biology and (5) Environmental Science. He approached Government Boys Higher Secondary School Bishnah, for admission in Higher Secondary Part-II. However, the same was denied to him stating that they do not have any teacher in the school for teaching Environmental Science subject. He was informed that a teacher is available in Government Higher Secondary School Salher Tehsil R. S. Pura (Jammu). The petitioner sought admission, however, was denied by the Principal there stating that he will have to obtain a migration certificate from the Board. The application for the purpose was made and the requisite fee was deposited, however, migration certificate was refused for the reason 'Objection- Private Candidate, Gap Case'. No rules or regulations were referred in support.

6. Aggrieved against the action of the Board in not issuing a migration certificate, the petitioner filed WP (C) No. 3856/2019 in this court. In that petition notice was issued on 18.10.2019 and the Principal Government Higher Secondary School Salher, Tehsil R. S. Pura, District Jammu was directed to admit the petitioner in Class-XII. Subsequent thereto, the petitioner continued attending the classes as a regular student. The examination for the Higher Secondary Part-II Annual Session 2020 Regular (Summer Zone) was scheduled to start in the last week of February 2020. The petitioner was not allowed to fill up his examination form. He again approached this Court by filing WP(C) No. 150/2020, in which vide order dated 21.01.2020, the petitioner was allowed to fill up the examination form for appearance in Class XII examination. The petitioner appeared in that examination and was declared successful. However, the marks sheet is not being issued to him. As a result of the inaction of the authority, the petitioner will be deprived to seek admission in higher classes. The prayer is for a direction to the respondents to issue marks sheet to the petitioner so as to enable him to pursue his further studies.

7. After hearing the learned counsel for the petitioner, I do not find this case to be a fit for interference as the matter which was required to be dealt with by this Court in one petition only, has been bifurcated into three petitions. The facts in detail are not to be noted as it is sufficient to add that the entire case set up by the petitioner is that he deserves to be granted admission in Higher Secondary Part-II for which WP(C) No. 3856/2019 was filed. Vide interim order dated 18.10.2019 passed in the aforesaid case, the Principal Government Higher Secondary School Salher, Tehsil R. S. Pura was directed to admit the petitioner in

Class XII and permit him to attend classes, at his own risk and responsibility. In case there was any issue regarding acceptance of examination form of the petitioner for appearance in Class XII examination, he was required to file application in the same case, vide interim order passed wherein the petitioner was granted admission. Non-acceptance of his examination form of Class XII, in which the petitioner was granted admission by way of interim order passed by this Court in WP (C) No. 3856/2019, cannot be said to be an independent cause of action for which a fresh writ petition could have been filed. Still the petitioner filed WP(C) No. 150/2020. The prayers made in the aforesaid petition are reproduced herein:

"(i) In the nature of mandamus commanding the respondent No.5 (Principal Govt. Higher Secondary School Salher) to allow the petitioner to fill up his form for Higher Secondary Examination Part-II (12th Class) Annual Session, 2020 Regular (Summer Zone) and submit the same to the respondent No. 6 and

(ii) In the nature of mandamus commanding the respondent No.6 to accept the said examination form and issue a roll number to the petitioner and allow him to take the examination."

8. It was fair on the part of the petitioner that he has clearly mentioned about filing of earlier writ petitions in terms of which he was admitted in Class XII. This Court in the aforesaid case vide order dated 21.01.2020 directed the respondent No.5 therein to allow the petitioner to fill up the examination form and issue admit card in his favour for appearance in Class XII examination.

9. In view of the aforesaid interim order the petitioner appeared in the examination and claimed that he has been declared pass. However, the marks sheet has not been issued. The present petition has been filed only for a direction to the respondents to issue marks sheet. Such a relief cannot be possibly granted in this petition as the basic issue on the basis of which right of the petitioner to seek admission in Class XII and consequently appear in examination has to be decided in the first writ petition filed by him i.e WP(C) No. 3856/2019. Unless the rights of the petitioner are crystalized in that case, he cannot be possibly issued the marks sheet. The entire effort of the petitioner is to make the main writ petition infructuous by getting the marks sheet issued by filing a separate writ petition.

10. For the reasons mentioned above, the present writ petition is dismissed. However, it is not debarred the petitioner to claim of other appropriate remedy to seek the relief prayed for in the present petition.