
(2000) 02 PAT CK 0088
In the Patna High Court
Case No : Civ. W. Jurs. Case No. 181 of 2000

Kamakshi Worah

APPELLANT

Vs

Vinoba Bhawe University and Others

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Patna 334 : (2000) 2 PLJR 578

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.M. Banerjee, A. Sen and Anil Kumar Sinha, for the Appellant; I. Sen Choudhary, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for issuance of appropriate writ/order declaring that the decision of the respondents for holding re-examination on 28th January, 2000 for clinical and oral pursuant to the notification dated 13-1-2000 published in the daily news paper is illegal, arbitrary, mala fide and wholly without jurisdiction and further for quashing the office order dated 19-12-99 (Annexure 9) issued by the Controller of the examination whereby he has intimated the Principal, Patliputra Medical College and Hospital, Dhanbad for holding of re-examination for oral and clinical in respect of the candidates who have secured more than 70% marks in clinical examination in surgery.

2. The fact of the case lies in a narrow compass.

3. The petitioner was admitted in the MBBS course in the year 1993 in Patliputra Medical College and Hospital, Dhanbad (hereinafter referred to as "PMC College"). The petitioner successfully competed and passed her MBBS final Part I examination and thereafter she along with other students appeared in MBBS Part II Examination held in the month of August, 1999. The petitioner was declared

successful candidate along with others and the result was published in the newspaper. Thereafter a marksheet was issued by the respondent No. 1 on 9th December, 99. A copy of the result published in the newspaper and the marksheet have been annexed as Annexures 1 and 2 respectively to the writ application. Accordingly the Bihar Council of Medical Registration issued registration certificate in favour of the petitioner after being fully satisfied that the petitioner passed the examination. It is stated that on the basis of the aforesaid provisional certificate issued by the Council "when the petitioner went to join her internship at the PMC College she was not allowed to join her internship. The father of the petitioner immediately wrote a letter to the Principal of PMC College to know the reason as to why his daughter has not been allowed to join internship. The petitioner was then handed over an office order dated 21st December, 99 from the Superintendent, PMC College in which it was intimated that the petitioner will not be allowed to join as per the direction issued by the Controller of Examination till further orders. The petitioner then made a detailed representation before the respondent No. 2, the Chancellor of the University bringing to his notice the entire facts of the case. However, the petitioner could know that an office order dated 12-12-99 was issued by the respondent No. 4 i.e. Controller of Examination to the Principal, PMC College intimating him that the candidates who have obtained more than 70% marks" in clinical examination in surgery will not be allowed to join to complete their internship and they will have to undergo a fresh examination for the oral and clinical. The petitioner, therefore, contended that the action of the respondents in holding re-examination is absolutely illegal and arbitrary and against the provisions of the Statute of the University and Rules and Regulations.

4. A counter affidavit has been filed in this case by the respondent-University in which it is stated, inter alia, that the result of MBBS Part II 1999 Examination of two candidates namely, Bhawna Verma and the petitioner were withheld after the publication of result by an unanimous decision of the Examination Board of the University on consideration of a complaint of mal practice reported by the Principal of PMC College cum Dean of the Faculty of Medicine. It is stated that the Examination Board has the authority u/s 29 of the Bihar State Universities Act to take a decision for re-examination under certain circumstances. It is stated that the Examination Board deliberated twice on consideration of complaint filed by the Principal of PMC College, who is also the Dean of the Faculty of Medicine of the University. The respondents' further case is that according to the complaint, some undue favour was done to the candidates by the examiners in oral and clinical examinations. The Examination Board expressed concern over the award of high mark by a team of four examiners and thought of holding re-examination for all students in this paper but as it would have created administrative law and order problem, the Examination Board decided to subject only, those candidates who have secured more than 70% marks. Accordingly, the petitioner and other candidates were informed that they had to appear at the re-examination in the surgical, clinical and oral test.

5. I have heard Mr. A. K. Sinha, learned Sr. counsel appearing for the petitioner and Mrs. I Sen Choudhary, learned counsel for the University.

6. Mr. Sinha has drawn my attention to the relevant annexures and submitted that the petitioner successfully passed the MBBS Part II final Examination and her result was published and marksheet was issued to her. The petitioner was thereafter issued provisional registration certificate by the Council and thereafter she was entitled to join the internship. Learned counsel then submitted that the result of the petitioner was never withheld nor any complaint was made by the Dean of Faculty against the petitioner. Learned counsel submitted that the Examination Board is the Advisory Authority and the Vice Chancellor is the competent authority to take a decision. On the complaint made by the Dean of Faculty the Vice Chancellor took a decision to withhold the result of only one candidate namely, Bhawna Verma and directed for publication of result of other candidates. Learned counsel lastly submitted that the action of the respondents-authorities in holding re-examination of the petitioner is concerned is absolutely without any basis.

7. From the affidavits filed by the parties the admitted facts emerge are that the petitioner appeared in MBBS Part II 1999 Examination held in the month of August, 99 and the result of the successful candidate was published in the newspaper. Thereafter a marksheet was issued to the petitioner and accordingly provisional registration certificate by the Bihar Council of Medical Registration was granted on 13-12-99. The case of the respondents as stated in the counter affidavit is that by a confidential letter dated 7-12-99 addressed to the Vice Chancellor by the Principal of the PMC College cum Dean of Faculty of Medicine complaint was made regarding the marks obtained by Ms. Bhawna Verma, who secured 90% marks in oral clinical examination when her performance in other subjects was average. The Dean of Faculty, therefore, was of the opinion that a colourful exercise of power in awarding marks was done by the examiners in conducting oral and clinical examination. A copy of [he said complaint has been annexed as Annexure A to the counter affidavit.

8. From perusal of the said document, it appears that on the basis of complaint the Vice Chancellor took a decision to withhold the result of Ms. Bhawna Verma and to publish the results of other candidates. It does not appear from this letter that any complaint was made by the Dean of Faculty against the petitioner or other candidates regarding any mal-practice or unfair means or undue advantage given by the examiners. After the decision taken by the Vice Chancellor the result of Ms. Bhawna Verma was withheld and the result of other candidates including the petitioner was published.

9. From Annexure B to the counter affidavit, it appears that on 17-12-99 a decision was taken by the Examination Board to hold fresh examination of candidates who obtained more than 70% marks. It is surprising that there is no basis for such decision taken by the Board. The Board has not come with any finding that candidates who obtained 70% marks have either indulged in any mal

practice or there had been undue favour by the examiners.

10. Mrs. Sen Choudhary, learned counsel appearing for the University, gave such stress on the provisions of Section 29 of the Bihar State Universities Act, 1976 and Regulation 69 and submitted that the Examination Board has full authority to take any decision concerning the examination and publication of result and also regarding moderation and publication of examination result. For better appreciation Section 29 of the Act is quoted here inbelow :-

"29. The Examination Board.- (1) Subject to the provisions of the Regulations, advice shall be given in respect of conduct of examinations by the Examination Board. The Examination Board shall consist of the Vice-Chancellor as Chairman and Deans of the Faculties of Arts, Science and Commerce as members :

Provided that if the examination concerns any other faculty, the Dean of that Faculty shall be co-opted as a member for that meeting.

(2) The Examination Board shall render advice to the Vice Chancellor on conduct of examinations and appointment of examiners, setting and moderating question paper, preparation, moderation and publication of examination results, submission of such examination result to the Academic Council, and generally regulating the methods of improvement in the procedure of correct evaluation of achievements of students, and the Vice-Chancellor shall be competent to take final decision :

Provided that the Vice-Chancellor shall appoint the question setters and examiners from the panel submitted by the Examination Board :

Provided further that the Vice-Chancellor shall have power to order for re-evaluation of the answer books in case he is satisfied that the evaluation of the answer or answer book has not been fairly done or evaluation has been done in violation of the University Statutes, Regulations, Rules or Orders."

11. From bare perusal of the aforesaid provision, it is manifest that the Examination Board has the power to give advice time to time in respect of conduct of examination to the Vice-Chancellor and other matters referred therein and finally the power to take decision is vested with the Vice Chancellor of the University.

12. Regulation 69 upon which respondents also put reliance reads as under :-

"69. In any case where the result of an examination has been ascertained and published, and it is found that such result has been affected by an error, mal practice, fraud, improper conduct or other sufficient cause, the Examination Board shall have power to amend such result and make such declaration as it shall consider necessary in that behalf."

13. Although, the applicability of this regulation has been seriously disputed by the learned counsel for the petitioner but even assuming that the aforesaid provision is still in force, there is no material in the instant case to even suggest

that the petitioner obtained marks in the clinical examination on account of use of malpractice or improper conduct of examination or fraud. As noticed above, the Dean of Faculty, in his confidential letter sent to the Vice Chancellor, only raised a doubt against one Ms. Bhawna Verma in securing such high marks in clinical examination. No material has been brought on record against the petitioner which will justify the action of the Board in taking the impugned decision. Besides the above, admittedly before taking such decision of holding re-examination, no notice whatsoever was issued to the petitioner asking her to show cause and to give explanation as to why such action should not be taken. On this ground also, I am of the view that the decision of the respondent-Board in holding re-examination so far as the petitioner is concerned is absolutely illegal and violative of principle of natural justice. In this connection, I may rely upon a decision of the Apex Court in the case of Board of Technical Education, U.P. and others Vs. Dhanwantri Kumar and others, .

14. Having regard to the entire facts and circumstances of the case, I am, therefore, of the opinion that the respondents are not justified in taking a decision for holding re-examination for clinical and oral and directing the petitioner to appear in the said examination. Consequently, the office order dated 19-12-99 (Annexure 9) issued by the Controller of Examination is illegal, arbitrary and violative of principle of natural justice.

15. In the result, this writ application is accordingly allowed and the respondents are directed to allow the petitioner to join her internship pursuant to the provisional certificate of registration issued by the Bihar Council of Medical Registration. However, it is made clear that this order will confine only so far as the petitioner is concerned since others have not approached this Court against the impugned decision taken by the respondents.