

(2014) 10 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 3743 of 1997

Ku Kalpana

APPELLANT

Vs

The Director, Maharashtra State Examination Board

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2015) 3 MhLj 257

Hon'ble Judges : P.R. Bora, J; B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.Z. Jibhkate, Advocate for the Appellant; P.B. Patil, Kavimandan and O.W. Gupta, Advocate for the Respondent

Judgement

B.P. Dharmadhikari, J.—Heard learned counsel for the parties. Order passed by respondent no. 1 withdrawing Diploma in Education given to petitioner, has been questioned in present writ petition. This Court issued notice on 24th December 1997 and granted ad-interim relief staying that order dated 6th October 1997. While admitting the matter, after hearing all concerned, ad-interim relief was confirmed.

2. Learned counsel for petitioner submits that petitioner appeared for 1st Year D. Ed. Examination in April 1988 in all subjects. When she was attempting subject of Marathi language, she was questioned alleging recovery of a piece of paper from floor near her chair in the examination hall. Petitioner replied then that it was not belonging to her. She was, therefore, permitted to solve the question paper. Thereafter, Principal of her college took her to the office of respondent no. 1 where she was orally asked about the very same chit found near her chair. She again orally explained everything. No order came to be passed, but when she received mark-sheet, against Marathi subject, no marks were allotted.

3. Petitioner was given admission in 2nd year of Diploma In Education. The said college viz. Siddhartha Adhyapak Vidyalaya was thereafter closed down and all students including petitioner were absorbed in the Government D. Ed. College.

Petitioner then appeared for 2nd Year Examination along with subject of Marathi of 1st Year as also subject of Child Education etc. of 1st Year. Mark-sheet was then issued to her in April 1989 which revealed that she cleared all subjects of 1st Year, but could not clear a subject of 2nd Year. She was declared as failed. Back subject was cleared by her subsequently in October 1989 examination when she was declared to have passed the examination. Accordingly, Diploma in Education was issued to her on 20th February 1990. Petitioner joined employment and started working.

4. Some dispute arose about grant of approval to petitioner's service and respondent no.1 issued communication dated 6th October 1997 to the Education Officer (Secondary), Zilla Parishad, Bhandara pointing out that for adopting unfair means in April 1988 examination, her performance in entire examination was cancelled and she was debarred from appearing in October 1988 and April 1989 examinations. It was further pointed out that suppressing this punishment and taking advantage of automatic absorption in the Government D. Ed. College, petitioner managed to appear for October 1988 and April 1989 examinations. Respondent no. 1 directed the Education Officer to cancel Diploma in Education of petitioner on these grounds.

5. Mr Jibhkate, learned counsel for petitioner submits that if performance of petitioner in April 1988 was to be cancelled, a proper show-cause notice should have been issued and an opportunity to explain ought to have been extended to petitioner. Petitioner did not receive any such show-cause notice and it is her Principal who carried her to the Office of respondent no. 1 where also the exact nature of misconduct was not explained to her and no opportunity to file any reply was given. Upon questioning orally, petitioner also gave her explanation and there was no statement recorded. He contends that in this situation had order of punishment debarring her from two examinations been served on petitioner, she would have immediately approached this Court. He submits that if her performance was cancelled, there was no question of issuing her a mark-sheet of 1st year examination. Mark-sheet was issued to her which did not carry any marks for Marathi subject and, therefore, petitioner legitimately felt that she had to appear for that subject again. Accordingly, she appeared and ultimately succeeded. He contends that in this situation, action taken after more than eight years is not only in conflict with the principles of natural justice, but also bad. He, therefore, prayed for allowing the petition.

6. Learned counsel appearing for respondent no. 2 submits that office of respondent no. 2 did not receive any punishment order and, therefore, there was no question of respondent no. 2 either communicating or not communicating the same to the petitioner. Respondent no. 1 relies on material on record to substantiate the action taken.

7. We have perused submissions filed by respondent no. 1 on affidavit before this Court to oppose admission of writ petition. The submissions have been filed on 23.2.1998 and affidavit in support is sworn by P. M. Panke, Education Officer

(Secondary), Zilla Parishad, Bhandara. Perusal of said reply affidavit shows that after alleged mal-practice, petitioner was called upon vide communication dated 21.6.1988 to remain present before the Commissioner, Government Examination Board, Pune on 7.7.1988. This communication dated 21.6.1988 was sent to petitioner's college and its copy is produced with said reply as Annexure R-1. It is further stated that the case of petitioner was scrutinised by said respondent and an order of punishment was passed. Order of punishment is produced with reply as Annexure R-2. At Annexure R -2 there are about 347 students belonging to various colleges against whom respondent no. 1 has taken action. Name of petitioner figures at Sr. No. 298 in this list.

8. Question before this Court is, whether in present facts, it can be said that proper opportunity was given to petitioner to explain alleged mal-practice or other allegations against her. Letter sent for hearing is dated 21.6.1988 and it is not addressed to anybody in particular. At its bottom, name of College is mentioned. On page appended thereto, at sr. no. 16 name of petitioner with her roll number and name of her college i.e. Siddhartha Adhyapak Vidyalaya appear. Petitioner in her petition has stated that Principal of her college had taken her to the office of respondent no. 1 where she was questioned generally. Respondent no. 1 appears to have passed order of punishment on 22.7.1988. This order of punishment is forwarded to Siddharth Adhyapak Vidyalaya only. Forwarding letter does not mention any misconduct, but it only mentions the fact of grant of hearing and imposition of punishment. This letter, therefore, does not give a specific mal-practice committed either by petitioner or any other student or any reasons, but the chart which contains names of 347 students is enclosed with it. Last column of said chart stipulates punishment inflicted. Therefore, again a particular misconduct or mal-practice is not apparent from this document.

9. Commission of or indulgence in mal-practice or use of unfair means has got grave consequences. Course of action against a student for such mal-practice is required to be determined after extending opportunity to the student. Student should, therefore, be informed of the allegations against him or her and then should be given opportunity to explain the same. Material to be used must also be shown to the student. Here, chit was allegedly found on the floor near chair of petitioner in examination hall, and she declined any connection with that chit and was permitted to sit in hall and complete the answer paper. There is nothing on record to show that said chit was again shown to her and her reply was not obtained in writing when she remained present before respondent no. 1 Board on the date of hearing. If she had given any oral explanation, that explanation does not find any mention in the impugned order. Annexure R-1 is notice of hearing dated 21.6.1988 which calls about 31 students for hearing on 7.7.1988 at 11.00 am. Therefore, it is apparent that proper and effective opportunity of hearing was not given to the petitioner. The order of punishment imposing the punishment on about 347 students does not show that these 347 students were heard on different dates. The order imposing punishment needed to be a reasoned order showing application of mind and pointing out why defence was

not accepted.

10. In this situation, material on record is insufficient to hold that petitioner was given proper and effective opportunity before debarring her. Even allegations against her were not communicated in writing and her answer was not obtained in writing. The order of punishment is thus unsustainable.

11. Petitioner was admitted in 2nd year in very same college and her absorption in the Government D. Ed. College was in December 1988. In this situation, it is clear that petitioner cannot be blamed in any way and it cannot be said that she played any mischief by appearing in the examination. If there was any order of punishment, respondent no. 1 would have very well prohibited her from appearing in next examination. Why respondent no. 1 could not do so, is not apparent. Moreover, if on the basis of such appearance, an action was to be taken after several years of passing of punishment order, again a show cause notice and grant of opportunity was necessary. No opportunity is given to petitioner before withdrawing her diploma in present matter. Therefore, also impugned order dated 6.10.1997 is unsustainable.

12. In the result, writ petition is allowed. Impugned order dated 6th October 1997 (Annexure VI) is quashed and set aside. Rule made absolute accordingly with no order as to costs.