
(2002) 01 PAT CK 0063
In the Patna High Court
Case No : C.W.J.C. No. 13227 of 2001

Manju Kumari @ Manju Devi @ Smt. Manju Devi	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0063

Final Decision : Allowed

Judgement

G.P. Narayan Roy, J.—Heard Counsel for the parties.

2. This writ application arises out of an order published in the daily newspaper "Hindustan" on 24-8-2001 bearing communique No. 25/2001, as contained in Annexure-5, whereby and whereunder the authorities of Bihar School Examination Board, Patna, (hereinafter to be referred to as "Board") have cancelled the matriculation result of the petitioner, published in the year 1983, after expiry of 18 years.

3. Necessary facts giving rise to this application are as follows:

4. The petitioner, Manju Kumari, appeared in the matriculation examination, which was held in the year 1982, as a regular student from High School, Kaswa, Purnea. However, she could not pass the matriculation examination, and, therefore, she obtained the transfer certificate from Kaswa High School and got herself admitted in K.D. Girls High School, Kaswa and directly appeared in the test examination held in K.D. Girls High School, Kaswa and passed the requisite test and he was permitted by the said school to appear in the matriculation examination as a regular student. Thus, she appeared in the said matriculation examination as a regular student in the year 1983 and passed the same in first division. There was no objection from any corner for her appearance in the said examination. After passing the matriculation examination in first division, the petitioner, pursuant to an advertisement issued in the year 1999, applied for the post of E.D. Branch Post Master, Kaswa and she was selected for appointment in

the Postal Department, again the merit list she was placed at serial No. 1, but the Department concerned selected one Alka Rani, ignoring her claim. The petitioner thereafter moved the Central Administrative Tribunal Patna, hereinafter to be referred to as "CAT") challenging the appointment of Smt. Alka Rani before the CAT different pleas were taken by the parties and it was pointed out by Smt. Alka Rani that the petitioner has illegally passed the matriculation examination and the matter is pending inquiry before the Board. The CAT, however, taking note of the facts held that the matter is still sub-judice before the respondent Board and finally claim of the petitioner had not been turned down and then directed the respondents to pass an appropriate order within three months from the date of communication of the order and in the meanwhile, appointment of Alka Rani, respondent No. 4, would be deemed purely provisional as spelt out in her appointment letter. After order of the CAT as aforesaid a notice was given to the petitioner vide Memo No. 7879 dated 5-7-2001 asking her to explain as to why her matriculation result of the year 1983 be not cancelled and seven days" time was given to her to file show-cause. She, accordingly, filed her show-cause on 11-7-2001 and thereafter communique No. 25/2001, as contained in Annexure-5, was published in the daily newspaper, "Hindustan", cancelling her matriculation result of the year 1983, giving rise to this writ application.

5. An intervention petition has been filed on behalf of aforesaid Alka Rani with a view to oppose the prayer of the petitioner.

6. Learned Counsel appearing on behalf of the parties were heard both in the writ application and also in the intervention petition. Besides the intervention petition, a counter-affidavit has also been filed on behalf of the respondent-Board.

7. Learned Counsel appearing on behalf of the petitioner, precisely, submitted that the matriculation result, which was published in the year 1986, where the petitioner was successful, could not have been cancelled on flimsy ground almost after 18 years of its publication. Learned Counsel further submitted that the petitioner even though was unsuccessful in 1982 examination, she took admission in another school and she was allowed to appear in the next matriculation examination held in the year 1983. From no corner her admission was opposed, rather she was allowed even by the Bihar School Examination Board to appear in 1983 matriculation examination and when she was successful, news communique was published cancelling her result of 1983 examination, which should be held as highly arbitrary, unreasonable and without jurisdiction. Learned Counsel further submitted that even if there were certain irregularities in taking admission by the petitioner in another school, the action now is barred by law of acquiescence, and, in no way, after 18 years, the matriculation result of the petitioner could have been cancelled.

8. The respondent Board by filing a counter-affidavit opposed the prayer of the petitioner, contending that as per the provisions laid down under Articles 315, 317 and 326 of the Bihar Education Code, her subsequent admission in another school was illegal, as ordinarily, a student is not permitted within six months of

holding of the second terminal examination and in case, one seeks permission to take admission in another school prior permission of the District Education Officer was required to be taken and the petitioner at no point of time took permission of the District Education Officer for taking admission in another school immediately she failed in 1982 matriculation examination. It is, therefore, contended on behalf of the respondent Board that perse the admission of this petitioner in another school was illegal and not permissible and on that score, when it was pointed out to the authorities her matriculation result of 1983 examination has been cancelled.

9. Learned Counsel appearing on behalf of the intervenor respondent with equal force has opposed the prayer of the petitioner by saying that the petitioner obtained the matriculation certificate after playing fraud and unfair means, and, therefore, her result was liable to be cancelled, as it was against the principles of Code of Conduct of Examinations.

10. Having heard Counsel for the parties at length and considering the pleadings of the parties, it appears to me that admittedly, the petitioner passed her matriculation examination in the year 1983 and almost after 18 years her result has been cancelled. It is not in dispute that necessary admit card, etc. were issued by the respondent Board to the petitioner for her appearance in 1983 matriculation examination. From the pleadings of the parties, however, it appears that the matter was raked up before the respondent-Board by one Amaresh Prasad Sah, husband of Alka Rani, the intervenor respondent, for the first time in the year 1999 by filing an application to cancel the petitioner's 1983 matriculation result as illegal, as she took admission in K.D. Girls High School without taking permission of the authorities, as required under the Bihar Education Code and pursuant to the application filed by Amaresh Prasad Sah aforesaid, the result of the petitioner's matriculation examination has been cancelled.

11. Right to education is a fundamental right and it cannot be denied to a citizen. However, certain regulations have been framed by the authorities to regulate imparting of education to the students. The regulations forbidding a student to take admission in another school immediately after his failure from the previous school, in my opinion, would not have been applied in the case of the petitioner, as the authorities acquiesced in the infirmities and allowed the petitioner to appear in the examination aforesaid.

12. From the pleadings of the parties, it does not appear to be a case of misrepresentation of facts nor a case of playing fraud upon the authorities. The matriculation result of the petitioner was published in the year 1983 and it was not interfered with at any point of time save and except when attention of the authorities was drawn by one Amaresh Prasad Sah aforesaid about the irregularities allegedly committed by the petitioner.

13. Since the petitioner has already passed the matriculation examination and it

was not interfered with for a pretty long time and she was in search of a job in my opinion, equity demands that the order impugned cancelling the matriculation result of the petitioner should not be allowed to sustain.

14. In the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, , the apex Court held that once the candidate is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear and when the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the Examination, then by force of the University Statute, the University had no power to withdraw the candidature of the candidate.

15. In the case of Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh AIR 1879 SC 621 the apex Court held:

Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that every one is presumed to know the law, but that is not a correct statement; there is no such maxim known to the law. Over a hundred and thirty years ago, Maule J., pointed out in *Martindale v. Falkner* (1946) 2 CB 706. "There is no presumption in this country that every person knows the law; it would be contry common sense and reason if it were so." Scrutton, L.J., also once said. "It is impossible to know all the statutory law, and not very possible to know all the common law." But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in *Evans v. Bartlam* 1973 SC 473. the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse a maxim of very different scope and application.

16. In the instant case, nothing has been placed before me to show that the petitioner had any knowledge of the regulation and the Education Code. Moreover, it is fallacious to presume that every person knows the law.

17. A Bench of this Court in the case of *Punam Kumari v. Lalit Narain Mithila University and Ors.* 1993 (1) PUR 609 had taken a similar view and held that if the student acts on the representation of the authorities of the College, then unless the violation is of a nature which cannot be ignored, the career of the innocent student should not be put in hazard.

18. For the reasons and discussions aforesaid and in view of the legal propositions, as noticed above, this application is allowed and the order published in the daily newspaper "Hindustan" on 24-8-2001, bearing communique No. 25/2001, as contained in Annexure-5, is hereby quashed.

19. No order as to costs.

20. Before I part with this order, it would be pertinent to say that I have not

expressed any opinion on merit so far as the order passed by the CAT is concerned.