

(2002) 07 PAT CK 0151

In the Patna High Court

Case No : C.W.J.C. No's. 5857 and 6197 of 2002

Manoj Kumar Sinha and Others

APPELLANT

Vs

State of Bihar
 Ojasvi Nandan and Another Vs Bihar
School Examination Board and Others

RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

Citation : (2003) 2 PLJR 701

Hon'ble Judges : Shashank Kumar Singh, J

Bench : Single Bench

Advocate : Devendra Kumar Sinha, Satya Ranjan Sinha, Ashok Nandan Prasad, in C.W.J.C. No. 5857, Rajendra Prasad Singh, Rajeev Kumar Singh, Niranjana Kumar and Jay hanker, in C.W.J.C. No. 6197, for the Appellant; S.D. Yadav, for the Respondent

Judgement

Shashank Kumar Singh, J.—It is contended by the learned Counsel appearing on behalf of the Petitioners in both the writ applications that they are aggrieved by the same order, as all of them had appeared in 1999 Matriculation examination held by Bihar School Examination Board. The only difference is that they had appeared from two different schools otherwise the facts are exactly same as stated by the learned Counsel for the Petitioners and learned Counsel representing the Bihar School Examination Board, as such, both the matters are being heard together and are being disposed of by this common order with the consent of the parties.

2. The Petitioners in both the writ applications have prayed for quashing the letter dated 7.11.2001 issued by the Assistant Secretary Bihar School Examination Board, as contained in Annexure-9 in C.W.J.C. No. 5857/02 and Annexure-1 in C.W.J.C. No. 6197/02 and further for directing the Respondents to issue the original certificate of the Bihar School Examination Board, 1999 to the Petitioners of both the writ applications.

3. The contention of the learned Counsel for the Petitioners is that the Petitioners

had appeared in the examination held by Bihar School Examination Board, 1999 privately through Government High Schools. Their names were duly registered by the Bihar School Examination Board. Subsequent thereto fees and forms were deposited and Admit Card was issued to them.

4. It has further been contended by the learned Counsel for the Petitioners that the Petitioners had appeared in the examination, their result was duly published and they obtained their respective marks-sheets after which they applied and were admitted to different courses. Some of them have completed their Intermediate course and were doing their Graduate course. Some of them are said to have been waiting interview for appointment.

5. It is contended by the learned Counsel for the Petitioners that once the marks-sheet was issued to them and when they have been found to be genuine candidates, who have appeared in the examination and they are not said to have obtained the marks-sheet fraudulently. Today cancellation of their result would mean irreparable loss to them as their Intermediate certificate would also be cancelled and the period they have spent in the B.A. course would also be futile. The Petitioners should not suffer for the laches, which is not on their own part.

6. In support of his contention, learned Counsel for the Petitioners has relied upon a judgment of this Court dated 19.10.2001 in C.W.J.C. No. 12277 of 2001. Though it has been contended by the learned Counsel appearing on behalf of the Board that the facts of this case are different from the facts of the case being relied upon but the Petitioners had taken support from the observation of the court.... "At this stage they cannot be allowed to take the stand that the admission was irregular and therefore, the Petitioner is not entitled to the result". As the Petitioners in those cases had completed two years in B.A. Hons. Course and had gone to third year B.A. Hons, course when this irregularity in admission was taken out, as such, to my mind to an extent the fact also supports the present case.

7. Mr. S.D. Yadav, learned Counsel appearing on behalf of the Bihar School Examination Board, has stated that from the very beginning some people were operating to encourage these private candidates to appear through them without following the provisions of the Act, which require them to pass the preliminary examination before appearing in the final examination. Though they had fairly stated that the Petitioners had cleared the examination mark-sheets had been issued but subsequent thereto the result was stayed and as such any benefit accrued to the Petitioners during the period of their stay, which has now been made absolute cannot be allowed to remain as they were never declared to have passed the examination in view of the subsequent development. He has further contended that a Bench of this Court in C.W.J.C. No. 13733/ 2001 by its order dated 17.1.2001 had restrained itself from issuing any direction to the Board for issuance of the marks-sheet.

8. I have gone through the aforesaid order of this Court. I am afraid the same

does not support the case of the Board. It is entirely on a different context. There a result had been declared. Subsequently as the enquiry was being conducted, the Board had restrained from issuing marks-sheet to any of those successful candidates, whose case was under consideration. Those persons wanted a mandamus from this Court. In view of the fact, that their right, if any had been after violating the provisions of the statute, the court was not inclined to issue any direction.

9. Admittedly in the present case after declaration of the result of the Petitioners, their marks-sheets have been issued, they have utilised those marks-sheets to get admitted in the Intermediate course which they, have successfully completed, they are pursuing their Graduation, some, of them have applied and are waiting to join service, now at this stage if one comes to the conclusion whether they had cleared the preliminary examination before sitting in the final examination as they were private candidates and if so, their result has been cancelled, to my mind may be technically correct but such order cannot be allowed to be passed as equity weighs in favour of these Petitioners. There is nothing on the record to show that they had played fraud or had not appeared in the examination or those marks were not genuine and in view of the subsequent development when they had completed their Intermediate course and are doing Graduation, they cannot be thrown out on a technical ground. It was the duty of the Board to put its house in order first to see that such students are screened at the very threshold, their fees and forms are not accepted, they are not issued Admit cards and are not allowed to appear in the Examination before they comply with the entire provisions as are required by the Regulation of the Board, which is mandatory in nature.

10. In the result the order dated 7.11.2001 issued by the Assistant Secretary, Bihar School Examination Board, as contained in Annexure 9 in C.W.J.C. No. 5857/2002 and Annexure-1 in C.W.J.C. No. 6197/2002 is quashed so far as it relates to the Petitioners to the extent as indicated above. This order is passed in the special circumstances of the present case as indicated above and shall not be treated as a precedent.

11. Both the writ applications are thus, disposed of.