

(2018) 06 PAT CK 0049

In the Patna High Court

Case No : Letters Patent Appeal No. 458 Of 2018 In Civil Writ Jurisdiction Case
No. 11008 Of 2017

Mukesh Choudhary And Ors

APPELLANT

Vs

Bihar School Examination Board Through Its Secretary And
Ors

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Constitution Of India, 1950 — Article 142

Citation : (2018) 3 PLJR 841

Hon'ble Judges : Rajendra Menon, CJ;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Y.V. Giri, Ranjan Kumar Singh, Satyabir Bharti

Final Decision : Dismissed

Judgement

1. Challenge in the present Letters Patent Appeal is to the judgment dated 30.01.2018 passed in CWJC No.11008 of 2017 by which the learned Writ

Court has been pleased to dismiss the two writ applications being Civil Writ Jurisdiction Case Nos.10027 of 2017 and 11008 of 2017 by a common

judgment and order. The present Letters Patent Appeal has been preferred by the petitioners of CWJC No.11008 of 2017.

2. We have heard Mr. Y.V. Giri, learned senior counsel assisted by Mr. Ranjan Kumar Singh, learned advocate on record for the appellants and Mr.

Satyabir Bharti, learned advocate representing the Bihar School Examination Board and its authorities.

3. Learned senior counsel representing the appellants refers Annexure-P/2 and P/3 to the writ application to demonstrate that in compliance of the

order passed by the Honâ?ble Supreme Court in S.L.P. No.3145 of 2007, the

Bihar School Examination Board (hereinafter referred to as the Board) had decided to conduct supplementary examination for the failed candidates and the left over candidates of Certificate in Physical Education (in short C.P.Ed.) and Diploma in Physical Education (D.P.Ed.) courses respectively pertaining to Sessions 1994-95 and 1995-96 belonging to Tirhut Physical Education College, Jhapahan, Muzaffarpur. It is his submission that once the Board in its wisdom decided to conduct the supplementary examination and the petitioners appeared in the examination conducted by the Board, at the subsequent stage, the Board cannot deny publication of their results. It is submitted that the learned Writ Court has not been able to appreciate that these petitioners having appeared in the supplementary examination are entitled to get their results and the Board cannot be allowed to contend that the petitioners have no legal right to seek a mandamus for publication of their results.

4. On the other hand, learned counsel representing the Board submits that earlier two students of Tirhut Physical Education College, Muzaffarpur had preferred a writ application bearing No.8091 of 2006 seeking conduct of the examination for C.P.Ed./D.P.Ed. courses for the Sessions 1994-95 and 1995-96. The writ application was dismissed vide order dated 12.09.2006 primarily on the ground that on and with effect from the date of enforcement of the National Council for Teachers Education Act, 1993, the college concerned was de-recognized and thus the respondent Board could not have allowed the students to appear in the examination who were pursuing their course from a non-recognized institution. The Letters Patent Appeal bearing No.697/2006 was also dismissed on 24.01.2007. As the matter went to the Hon'ble Supreme Court, vide order dated 11.09.2007 the Hon'ble Supreme Court allowed the Special Leave Petition in the case of Sunil Kumar Parimal and Anr. Vs. the State of Bihar and Ors. (Annexure-P/1) whereunder taking note of the submissions on behalf of the parties and the interim order passed by the Hon'ble Apex Court a direction was issued in Paragraph 22 in the following terms:-

“We, in the interest of justice to the appellants, direct respondent Nos.1 to 6 to permit the appellants to appear in the examination for the courses of C.P.Ed. and D.P. Ed. For the sessions 1994-95 and 1995-96 to be conducted by the respondent-Board on the next available

opportunity in the near future and thereafter the result of the appellants shall be declared without loss of further time.â??

5. Learned counsel for the Board submits that the order passed by the Honâ?ble Apex Court (Annexure-P/1) is an order passed under Article 142 of

the Constitution of India, the ultimate relief was restricted and only the appellants were permitted to appear in the examination for the said Sessions

which was to be conducted by the Board on the next available opportunity in the near future. In fact in the last paragraph of the order, the Honâ?ble

Apex Court made it clear by further observing that â??the observations made by us are only prima facie and tentative observations for the disposal of

this appeal and the same would not be construed as an expression of opinion on the merits of any future proceedings of any nature, if any, between

the parties in this appeal.â??

6. In the aforementioned backgrounds, learned counsel submits that the Board had conducted the examination for C.P.Ed. and D.P. Ed. Courses in

the year 1999-2000 and 2004, but these petitioners-appellants never approached the Board or this Honâ?ble Court seeking any relief for conducting

the supplementary examination. It is further submitted that in terms of the judgment of the Honâ?ble Apex Court the Board had conducted the

examination for the said institution in the year 2007 itself, the result of which was published in the year 2008. The State government took a policy

decision vide memo no.2660 dated 26.12.2011 wherein it was decided that it would not request the Board to conduct examination of students of such

institutions which had not been granted recognition by National Council for Teachers Education (NCTE). It is in this background that the Board has

come out with a stand that it was an illegality on the part of the Board to have conducted supplementary examination in the year 2015. Learned

counsel for the Board submits that it was impermissible for the Board to have held examination and action of the then officials of the Board to hold

examination is in the breach of the orders of the Board and the provisions of the Act.

7. Having heard learned senior counsel for the appellants and learned counsel representing the Board and upon going through the impugned judgment

and order of the learned Writ Court, we find that these petitioners claim themselves students of Tirhut Physical Education College, Jhapahan,

Muzaffarpur, they are said to be the left out students of the Sessions 1994-95 and 1995-96 of C.P.Ed. and D.P.Ed. courses respectively. In paragraph

5 of the writ application, the petitioners have admitted that pursuant to the order/judgment dated September 11, 2007 passed by the Honâ?ble Apex

Court as contained in Annexure-P/1 examination of college in question was conducted by the Bihar School Examination Board in 2007 itself and result

thereof has already been published in 2008. The subsequent averments made in the writ application are with regard to the action of the Board in

issuing office order dated 28.02.2015 directing for constitution of Three Men Committee, report thereof and then the subsequent conduct of the

supplementary examination by the Board.

8. The learned Writ Court has thoroughly examined the case of the petitioners vis-Ã -vis the case of the Board. The learned Writ Court has apart of

the facts stated above also took note of the amendments brought in the Bihar School Examination Board Regulation, 1964 with effect from 20.07.2011

wherein Rule 8 of Chapter IV of the said Regulation was omitted. The said Regulation â??8â? provided that a candidate may be admitted to the

supplementary examination if (a) he was enrolled for annual secondary examination, but failed to appear thereat, or (b) he appeared only in some

papers at the Annual Examination but could not take the full examination, or (c) he failed at the Annual Examination, (d) he is sent up by the school to

appear at the Supplementary Examination. The learned Writ Court has noted that there appears to be a conscious decision of the competent authority

to do away with the said provision for holding supplementary examination. The learned Writ Court has taken note of the fact that some of the students

had approached this Court by filing separate writ application being CWJC No.20843 of 2011 (Brajesh Kumar and Others Vs. the State of Bihar and

Others) which was disposed off by an order dated 28.08.2012 with a direction that â??the petitioners shall be given a chance to appear in the

examination, if it is otherwise permissible in the next Semester examination scheduled to be held soon by the Bihar School Examination Boardâ??.

9. The learned Writ Court found that the Division Bench judgment of this Court dated 06.07.2011 passed in LPA No.311 of 2011 was not brought to

the notice of this Court in the case of Brajesh Kumar (supra). Earlier in the case of Dr. Jakir Hussain Physical Teachers Training College, Pojhi,

Parsa (Saran) a Division Bench of this Court had dismissed the writ application being CWJC No.21326 of 2011 (Yogendra Rai and Others Vs. the State of Bihar and Others) taking note of the order dated 06.07.2011 passed in LPA No.311 of 2011 (Kedar Pandey and Anr. Vs. State of Bihar and Ors.).

10. Since the petitioners-appellants of the present case heavily relied upon the order dated 28.08.2012 passed by the learned Writ Court in CWJC

No.20843 of 2011 (Brajesh Kumar and Others Vs. the State of Bihar and Others), the learned Writ Court went through the previous judgments and

the views expressed by the Honâ?ble Division Bench in those judgments and also referred the specific plea taken in the counter affidavit of the Board

in one of the cases that the Board had misconstrued the order of this Court dated 28.08.2012 passed in the case of Brajesh Kumar (supra) and for

that reason the Board decided to hold examination for these students in the year 2015. The specific plea has also taken in the counter affidavit that the

petitioners, in connivance with the erstwhile management of the Board, took a calculated risk in appearing for the said examination with a chance to

succeed if everything went positive. Once the Board detected the irregularity in holding the examination, a decision was taken not to publish the

results. The learned Writ Court has taken note of the stand of the Board in the counter affidavit while opposing the writ application.

11. In our considered opinion on the face of the admitted facts appearing from the records it is evident that earlier after the order was passed by the

Honâ?ble Supreme Court in the case of Sunil Kumar Parimal (supra) the Board had conducted the examination allowing all the left over students of

Tirhut Physical Education College to appear for the examination in the year 2007, the order of the Honâ?ble Supreme Court had already been

complied with and the wisdom of the Board in conducting the examination for all the left over candidates was not questioned. The petitioners did not

avail the said opportunity and, therefore, the Board cannot be blamed for the failure of the petitioners to avail opportunity given to them in the year

2007. In the year, 2011 by virtue of the amendments introduced in the Bihar School Examination Board Regulation, 1964, after omission of Rule 8 of

the said Regulation, the provision for holding supplementary examination had already been done away with. In the given circumstances, the conduct of

the examination in the year, 2015 in the name of the compliance of the order of the Honâ?ble Supreme Court passed in SLP No.3145 of 2007 was

nothing but an attempt to confer benefit to the petitioners-appellants contrary to the governmentâ?s policy and without there being any provision of law

permitting such conduct of the examination in the year, 2015.

12. The manner in which Annexure- P/2 and P/3 have been drafted showing that exercise towards conduct of the supplementary examination is being

taken in compliance of the judgment of the Honâ?ble Supreme Court of India, we are concurring with the views of the learned Writ Court that the

officials of the Board not only misconstrued the single bench judgment of this Court in the case of Brajesh Kumar (supra) the connivance of the

officials of the Board for oblique purpose in taking decision to hold examination in the year 2015 without any necessity to do so, with the management

of the college and the students cannot be ruled out. We do agree that with regard to issue of connivance no findings can be recorded in the present

proceeding.

13. The learned Writ Court has directed the Principal Secretary, Education Department, Government of Bihar to get the entire matter enquired into in

relation to the affairs of the Board, leading to holding of the examination in question in the year 2015 and to proceed thereafter in accordance with

law. We would direct that such enquiry in terms of the order of the learned Writ Court must be completed within a period of four months from today

and appropriate steps in accordance with law be taken without further delay.

14. The Letters Patent Appeal has no merit. It is, accordingly, dismissed.