

(1993) 04 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19643 of 1991

Nagendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Citation : (1993) 3 AWC 1710

Hon'ble Judges : S.K. Mookerji, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; V.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mookerji, J.—Heard learned Counsel for the Petitioner and also learned Standing Counsel, appearing for the Respondents.

2. In this case, counter and rejoinder affidavits have been filed and the original records have been placed before me. This is a fit case which can be disposed of finally at the stage of admission itself. Therefore, I am proceeding to decide it finally.

3. The Petitioner appeared in the Intermediate Examination of 1990 from Lalauli Inter College, Lalauli, Fatehpur and the roll number allotted to him was 269787. From the record it appears that the charge against the Petitioner was that he has been guilty of mass copying, therefore, he was called before the Principal along with others and his statement was recorded. In his statement he has clearly stated that he had not copied, as alleged against him. It is averred in the chargesheet that the Petitioner has copied question No. 3-Kha of IIIrd Paper of Mathematics. Learned Standing Counsel states that the mistakes found in the answer book of the Petitioner are similar with other students. No doubt, the petition has not been very happily drafted. The entire records have been produced before me and, therefore, technicality of not making a proper prayer shall not stand in the way of the Petitioner. In paragraph 10 of the Writ Petition it

has specifically averred as under:

10. That surprisingly enough, the Petitioner came to know that 4 persons namely Dharendra Singh (Roll No. 269762), Jeet Bahadur Singh (Roll No. 269771), Mahadeo Singh (Roll No. 269780) and Pankaj Singh Kushwaha (Roll No. 269792) have been declared as successful and have been discharged from the allegations and charges levelled against them.

In the counter-affidavit, this paragraph 10 of the Writ Petition has not been denied and the averments in reply made therein are deliberate with a view not to give clear reply to the assertions made in paragraph 10 of the Writ Petition. Under the circumstances the records of Roll Nos. 269762, 269771, 269780, and 269792 were produced before me. I am conscious that this Court is not sitting in appeal. The Nistaran Committee is comprised of responsible persons and, therefore, the decision of the said committee cannot normally be questioned except, mainly on the ground of arbitrariness.

4. I have perused the concerned answer books bearing Roll No. 269762, 269780 and 269792. The charges against the students, having the above all numbers and the Petitioner, are the same in respect of the answer given by them to question No. 3-kha of IIIrd Paper of Mathematics. Like the Petitioner, I found, all the above three candidates have committed the common mistake in respect of figure "-45". Their answers to the charge sheet are also similar to that of the Petitioner but the above three candidates have been acquitted of the charges levelled against them with exception of the Petitioner and their results have been declared. I do not find any reason to distinguish the case of the Petitioner from the case of other three students having Roll No. 269762, 269780 and 269792. Their mistakes are common in attempting the common question. Thus, I have no doubt, in my mind that the decision against the Petitioner suffers from gross arbitrariness. The case of the Petitioner has been discriminated from the above three students. Normally similar order is expected to be passed but that has not been the case in respect of Petitioner. The three students have been acquitted on similar charge but no reason has been disclosed in counter-affidavit for taking a different view in the case of the Petitioner.

5. Yet there is another ground that the student having Roll No. 269771 was also one of the students along with the Petitioner on charge of mass copying. The charge against this student, bearing the above Roll No. 269771, was that he had committed mass copying in respect of question Nos. 5-kha and 3-Kha in the aforesaid IIIrd Paper of Mathematics. I have examined his answer book also and it was surprising to note that this candidate did not even attempt the question No. 3-Kha, as such, there was no question of common mistake vis-a-vis the Petitioner. Thus, the irresistible conclusion is that the Nistaran Committee did not carefully apply their mind and have decided the cases in haste involving the career of the students. In respect of the cases, mentioned in paragraph 10 of the Writ Petition, the committee has certainly acted in their favour on the same charge and on similar reply, the committee took the decision against the

Petitioner and thus the decision of the Nistaran Committee in respect of the Petitioner, cancelling his result of Intermediate Examination held in the year 1990, deserves to be quashed. No doubt, this prayer has not been made in the Writ Petition but by examining original record this Court is quite competent to pass suitable order. Petitioner is also entitled to similar benefit as has been given to the students mentioned in paragraph 10 of the Writ Petition.

6. In the result, the Writ Petition, filed by the Petitioner bearing Roll No. 269787, is allowed with costs. The order cancelling his result of Intermediate Examination held in the year 1990, is quashed. The Respondent No. 2, Secretary, Madhyamik Shiksha Parishad, Allahabad, is directed to declare the result of the Petitioner within three weeks from the date of presentation of a certified copy of the order before him passed by this Court today.