
(2009) 06 PAT CK 0007
In the Patna High Court
Case No : CWJC No. 12625 of 2007

Nigar Sultana

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Citation : (2009) 4 PLJR 585

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the petitioner and counsel for the Bihar School Examination Board. Prayer of the writ petitioner in this application reads as follows:-

"That this writ application is being filed for issuance of writ/writs, order/ orders, direction/directions in the nature of MANDAMUS directing the respondent to publish the result of S.T.C. examination of Sessions 89-90 held by the Bihar School Examination Board, Patna, Bihar."

2. At the outset to an objection raised by learned counsel for the respondents to an unexplained delay over seventeen years in filing this writ petition learned Counsel for the petitioner has tried to explain that such delay of 17 to 18 years in filing of this writ application would not be fatal because the respondent-Bihar School Examination Board (hereinafter referred to as the Board) has itself failed in performing and discharging its statutory duty in maintaining the records and properly entering the marks secured by the petitioner. He would, also rely on the unreported judgment of this Court dated 5.2.2009 in C.W.J.C. No. 13182 of 2007 to buttress his submission that the Board is under obligation to give average marks to the petitioner so that she may pass her examination.

3. On the other hand, Mr. Lalit Kishore, learned Senior Counsel appearing on behalf of the Board has submitted that the writ application filed by the petitioner

itself is misconceived inasmuch as result of the petitioner has already been declared, wherein she has been shown to have been failed in the aforementioned examination. He would further explain that under the Regulation of the Board, the answer book of a student has to be preserved only for a period of three months from the date of publication of result of the examination concerned and therefore this writ application pertaining to the examination held in the year 1991 for an academic session of 1989-90 is itself not maintainable on the ground of unexplained delay. He has also referred to certain orders of this Court wherein both the Division Bench and the learned Single Judges have held that the delay itself would be fatal in maintaining the writ application of the present nature seeking relief of declaration of result. He has finally submitted that the reasons for declaring the petitioner to have been failed in the examination have also been well explained in the counter affidavit stating therein that the petitioner had secured 28 marks in Paper-4 and was found to be absent in paper-8 examination.

4. Counsel for the petitioner in reply would submit that the stand-taken by the Board in the counter affidavit that the petitioner had not appeared in Paper-8 examination and that she was absent in the said paper is an error of record, inasmuch as, tabulation register against the name of the petitioner as with regard to Paper-8 shows blank space and there is also communication of Centre Superintendent to the effect that the petitioner had appeared in paper-8 examination.

5. In the opinion of this Court, such factual issue could have been decided if there had been connected documents including answer book and/or attendance sheet to show that the petitioner had appeared in Paper-8 examination. It is in fact this aspect of the matter which makes the writ application absolutely not maintainable because the Board has rightly taken a plea that there is no compulsion for the Board to retain the answer book for a period of 17 years. Had the petitioner raised such grievance of non-declaration of her result and/or assailing the decision of the Board to have failed her in the examination and the issue could have been brought before the Court of law within the reasonable period of time, the Board could have been directed to produce the answer book and other materials. However now after a gap of 17 years when the answer books have already been destroyed by the Board, this Court will have to decide the matter in the light of the materials existing on record and as such it will be difficult for this Court to reject the stand taken by the Board. That the petitioner did not appear in Paper-8 examination. This aspect has been explained in paragraph Nos. 6 and 13 of the supplementary counter affidavit which needs to be quoted hereinbelow:-

"6. That it is relevant to mention here that in the concerned Tabulation Register of the Board the petitioner's result has already been declared fail because she was absent in "Diutiya Bhasha Shikshan Vidhi Tatha Pathya Vastu".

13. That with regard to statement made in paragraphs 7, 9 and 13 it is stated here that except tabulation register other documents of the said examination is

no more preserved in the office of the respondent-Board as such at this juncture it is not possible to accept the petitioner's claim or to verify the documents contained in Annexures 3 and 4. Moreover, the document as contained in Annexure-3 is dispatch statement of answer books. The subject mentioned on the dispatch statement is "Math Bhasha Shikshan Vidhi Tatha Pathya Vastu". Centre Superintendent also mentions same subject name on the representation contained in Annexure-4. From perusal of the cross-list as contained in Annexure-7 it is apparent that the aforesaid subject "Matri Bhasha Shikshan Vidhi Tatha Pathya Vastu" is theory Paper-IV and in this the petitioner has already obtained 28 marks. In the cross-list marks of "Diutiya Bhasha Shikshan Vidhi Tatha Pathya Vastu" is not entered and this is VIII theory paper."

6. In presence of this stand and there being no specific denial of paragraph 13 of the supplementary counter affidavit, this Court has to accept that communication of the Centre Superintendent does not literally mean that the petitioner had appeared in Paper-8 examination. Paper-8 is a paper named as "Diutiya Bhasha Shikshan Vidhi Tatha Pathya Vastu".

7. The over emphasis of counsel for the petitioner on Annexure-3 and Annexure-4 as with regard to their being proof of appearing of the petitioner in Paper-8 examination is also wholly misplaced. It has to be noted that Annexure-3 is the memorandum of answer books sent by the Centre Superintendent bearing the date of 16.10.1995 with reference to sending certain documents (answer books) as on 25.1.1991. In the said document the subject for which the answer books have been sent is recorded as "Math Bhasha Shikshan Vidhi Tatha Pathya Vastu" which directly relates to Paper-4. Paper-8 about which the petitioner is claiming is the subject, titled as "Diutiya Bhasha Shikshan Vidhi Tatha Pathya Vastu". In presence of the aforesaid documentary evidence it would be difficult for this Court to record a finding in favour of the petitioner that she had appeared in Paper-8 examination. In view of the aforementioned stand of the respondent-Board as is also explained from its uncontraverted statement of paragraph No. 13 of the counter affidavit, this Court will have no other option but to hold that Annexure-3 is not the proof of appearing the petitioner in Paper-8 examination. Had the petitioner enclosed similar statement as with regard to Paper-4 and Paper-8 probably things could have been something different, but when now the report of the Centre Superintendent only goes to show about dispatch of Paper-4 answer book it would be difficult for this Court to hold that the petitioner had appeared in Paper-8 examination.

8. Moreover, this aspect of the matter as explained in paragraph 13 of the supplementary counter affidavit was capable of being verified had the petitioner moved this Court within the reasonable period of time so that from the attendance sheet and other connected paper of the examination it could have been verified as to whether as a matter of fact the petitioner had appeared in the said examination. As noted above the Board has taken a categorical stand that the answer sheet, marks sheet and attendance sheet of 1991 examination have

already been destroyed. This Court thus finds no error in the aforementioned action of the Board because under the statutory regulation 26, the liability of the Board to maintain such documents is only for a period of three months from the date of publication of the result of the examination concerned.

9. This question, in fact, has been also examined and settled by a Division Bench of this Court in the case of Upendra Bahadur Singh vs. Bihar School Examination Board & Ors.", wherein the order of the learned Single Judge was affirmed in appeal by the Division Bench in the order dated 19.5.2005 holding that the Courts are meant for those who are vigilant and not for those who are indolent and sleepy. In that case delay of 13 years was taken to be fatal in the order dismissing the writ application. Similar view has been taken by the learned Single Judge of this Court in the order dated 12.8.2003 in C.W.J.C. No. 3340 of 2003, wherein also the delay of 12 years was held to be fatal and even recently a learned Single Judge of this Court in his order dated 9.8.2006 in C.W.J.C. No. 1070 of 2006 had held the delay of 11 years to be fatal for maintaining the writ application seeking declaration of result of 1995 examination.

10. The petitioner, however, as noted above, has heavily placed reliance on the order of this Court dated 5.2.2009 in the case of Ram Dayal Singh vs. The State of Bihar and Others, C.W.J.C. No. 13182 of 2007 by relying on facts of that case wherein declaration of 1991 examination was allowed by this Court. First of all the said judgment does not deal the question of delay and therefore it is not an authority for the proposition which as noted above has been decided by the Division Bench followed by at least two judgments of the learned Single Judges holding delay itself to be fatal in regard to the declaration of result. That apart, the facts of Ram Dayal Singh's case (supra) are altogether different and in fact in the said case the learned Single Judge had reason to hold that result of four other persons of same examination were already been declared but the petitioner in that case, namely, Ram Dayal Singh was discriminated. The learned Single Judge in fact had issued a direction to give pass marks as her answer book was not available. Moreover the result of Ram Dayal Singh was not declared on account of certain anomaly, whereas, in this case result of the petitioner had already been declared and she had been shown to have been failed in the examination.

11. Once this Court arrives at the aforementioned conclusion that the result of the petitioner had already been declared, the writ application with the only relief of declaration of result, in fact must be held to have become infructuous.

12. This Court, however, has proceeded to also examine the aforesaid oral submissions of the learned counsel for the petitioner as in respect of the correctness of declaration of result of the petitioner showing her to have failed in the examination and would find nothing illegal in the same. That being so, for the reasons stated above, this Court would find no merits in this writ application and the same is accordingly dismissed.