
(2006) 10 AHC CK 0214
In the Allahabad High Court

Pradeep Johari

APPELLANT

Vs

Secretary, Board of High School and Intermediate
Examination and Secretary, Board of Secondary Education

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Citation : (2007) 6 AWC 6244

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Second Supplementary counter affidavit filed today is taken on record.

3. Petitioner appeared in the Intermediate Examination twice - in the year 1988 with roll number 161565 and in the year 1989 with roll number 610456. On both the occasions his result was with-held. However, marks sheet was issued to him in view of the Division Bench judgment of this Court reported in Ramji Yadav v. Secretary Board of High School 1983 U.P.L.B.E.C. 695. On both the occasions he passed the Intermediate examination in II Division. Through this writ petition it has been prayed that respondents may be directed to declare petitioner's result.

4. Respondents filed counter affidavit stating therein that the result of 1988 was cancelled on the ground that petitioner was found to have copied from another student. It was further stated in the counter affidavit that petitioner was debarred from appearing in the examination for one year, hence legally he could not appear in 1989 examination. It was further stated that even in the examination of 1989 the petitioner was found to have indulged in mass copying in the papers of Mathematics I and Physics I. Petitioner had categorically stated that he was not communicated the decision of the inquiry even though after receiving the show cause notice he had filed his reply. In view of this a detailed order was passed on 8.4.1997 in this writ petition (on the order sheet). In the

said order it was mentioned that even though in the counter affidavit it had been pointed out that result of 1988 was cancelled and the petitioner was prevented from appearing in the same examination for one year and, therefore, permission granted to appear in 1989 examination was in violation of the said order, though particular of the said order by which the said order was communicated has been disclosed, but no copy of the said order has been enclosed with the counter affidavit. It was further observed therein that "learned Counsel for the petitioner challenged the veracity of the said statement in absence of any proof. Learned Standing Counsel prays for and is granted one month time to produce relevant record or to file supplementary counter affidavit enclosing therewith the relevant communication or other record."

5. In pursuance of the said order supplementary counter affidavit has been filed today and copies of the petitioner and Anr. student Pradeep Sharma of 1988 English paper have been shown to the Court. Along with the supplementary counter affidavit filed today communication of with-holding of the result of 1989 sent to the Principal concerned on 2.2.1990 has been enclosed as Annexure "I". Annexure II is a chart containing the names of several students, including the petitioner. Against petitioner's name it is mentioned that "Examination of 1989 cancelled". No document has been filed showing communication of 1988 order through which petitioner was debarred from appearing in the examination in future for one year. In this manner compliance of the order dated 8.4.1997 has not at all been made. The copies of Mathematics and Physics of 1989 examination have also not been shown to the Court.

6. If a student is issued notice regarding use of unfair means and he files reply thereof then a reasoned order is required to be passed. It is also necessary to communicate the said decision to the student. In any case if such thing has not been done and the student concerned files writ petition then the Board is obliged to intimate the Court and disclose in the counter affidavit the decision and its grounds for cancellation of the examination. In all such cases in which writ petitions are filed Board is expected to preserve the answer sheets so that this Court may peruse the same to verify as to whether unfair means were used by the student concerned or not. It is rather unfortunate that copies of 1988 are available with the Board but copies of 1989 are not. Neither any reasoned order passed by any authority of the Board holding the petitioner guilty of copying in Mathematics and Physics papers nor the relevant copies have been produced before the Court. In view of this it can not be held that the decision holding the petitioner guilty of use of unfair means (copying from another student) is proved. More over 16 years have already passed and petitioner has suffered for all these 16 years.

7. Accordingly writ petition is allowed. As per marks sheet of 1989 Examination, copy of which is Annexure "3" to the writ petition, petitioner has already passed the examination, hence a formal/final marks sheet and certificate shall be issued to the petitioner in respect of 1989 examination within 3 months. Formal

declaration of result of the petitioner, if necessary, shall also be made.

8. Writ petition is accordingly allowed.