
(2009) 01 RAJ CK 0089
In the Rajasthan High Court

Rajendra Kumar Jindal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 2 RLW 1361

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The callous attitude, lethargic conduct and the confusion created by the respondent Nos. 1 & 2 has brought the petitioner before this Court.

2. In short compass the facts of the case are that the petitioner's father was a railway servant, who expired. The appellant applied for training as apprentice for the trade of Electrician. From 24.11.1991 to 22.11.1994, the petitioner underwent the said training at Loco Workshop at Ajmer. After, successful completing the training, the petitioner was allowed to appear in the 63rd All India Apprentice Examination held from 08.11.1995 to 15.11.1995. The petitioner appeared in all the papers, namely, Engineering Drawing, W/S Cal. & Sc. Social Studies and also in the practical. Vide letter dated 08.02.1996, the petitioner was informed that as he had failed in social studies, he was required to re-appear in the said examination which was going to be held in April 1996. Therefore, he applied for the permission to re-appear in the said examination. But the respondent neither reacted to his application, nor permitted him to re-appear in the examination. From 1996 till 2001, he continuously approached the respondents for permitting him to re-appear in the social studies examination. Despite the fact that the petitioner was running from pillar to post, the respondent No. 2 kept silent till 2004. Again, vide letter dated 31.08.2004, the petitioner was informed to apply for reappearing in the social studies

examination in the up-coming All India Trade Test. Consequently, he again applied. Although, the respondent No. 2 again sat quietly over the petitioner's application, the Dy. Director vide letter dated 09.09.2004 requested respondent No. 2 to sympathetically consider the petitioner's application. Similarly, the Dy. Director vide letter dated 14.09.2004 also recommended the petitioner's case and directed the Senior Divisional (Personal) Officer of the North Western Railway, Ajmer to forward the complete record of the petitioner to the Directorate.

3. To the utter surprise of the petitioner, vide letter dated 02.02.2005, he was informed that in the earlier examination, All India Apprentice Examination, he had failed in practical and in the paper of Engineering Drawing. Therefore, he could not be permitted to sit in the next All India Trade Test. The letter dated 08.12.1996 surprised the petitioner as he was informed that he had failed in the social studies paper and after a lapse of nine years, suddenly the respondents have changed the position and claimed that the petitioner has failed in practical and in the engineering drawing examination. Therefore, on 27.02.2005, the petitioner sent a notice for demand of justice. The shifting stand of respondent No. 2 has created a confusion and has compelled the petitioner to file the present petition before this Court.

4. Mr. Mahendra Sharma, the learned Counsel for the petitioner, has contended that the petitioner was never given a clear-cut picture by the respondent. Initially, vide letter dated 09.02.1996 (Ann.2), he was informed that he had failed in the social studies subject. However, according to the letter dated 25.10.2004 written by the Divisional Manager, respondent No. 3, the Railway itself was unaware about the subject in which the petitioner had failed. According to the letter dated 02.02.2005, the Divisional Manager claimed that in fact, the petitioner had passed in the social studies paper, but had failed in the practical and in the engineering drawing paper. Because of the confusion created by the respondent Nos. 1 to 3, the petitioner had been running from the pillar to post, from office to office, requesting that he be granted the permission to re-appear in social studies paper in which he had failed. But, because of the apathy, the respondents never revealed the truth to him. Therefore, the respondents cannot deny the petitioner the right to re-appear in the papers of practical and in the engineering drawing paper.

5. On the other hand, Ms. Kavita Bhati, the respondent Nos. 1 & 2 has contended that according to Rules, the petitioner should have applied for re-appearance in the paper within a period of three years from the date of declaration of the result. The result was declared in 1996, yet, the petitioner has not applied for re-appearing in the practical and in the engineering drawing paper till 2005. Therefore, he cannot be permitted to sit in the re-examination.

6. On the other hand, Ms. Sonal Singh, the respondent No. 3, has contended that vide letter dated 08.07.2004 (Ann.R/2), the Divisional Manager had recommended the petitioner's case and had recommended that the petitioner be permitted to re-appear in the social studies paper. Vide order dated 31st August,

2004, even the Ministry of Labour had directed the petitioner to apply for re-appearing in the social studies paper. Therefore, according to the learned Counsel, respondent No. 3 was under a bona fide belief that the petitioner had failed in social studies subject. However, respondent No. 3 is merely a recommendatory body and the examination is to be held under the aegis of respondent No. 2.

7. We have heard the learned Counsel for the parties, with their consent this writ petition is being decided at the admission stage itself.

8. The respondent No. 2 is a public officer. Thus, he is a facet of the State. The relationship between a citizen and the State is that of a trustee. The State is the trustee of the people. As a trustee, it is supposed to act in the interest of the people. Therefore, every action of the State should be fair, just and reasonable towards its people. Any action which is unjust, unfair and unreasonable would be an anathema to the very concept of equality enshrined in Article 14 of the Constitution of India. Therefore, respondent No. 2 owed a legal duty to the petitioner to clearly inform him about the papers in which he had failed in the year 1996. However, the respondent No. 2 failed to do so. Because of the omission on part of respondent No. 2, the petitioner was kept in the dark from 1996 till 2005 i.e., for nine long years. It is only the petitioner's tenacity and undying hope for a bright future that kept him going from one corridor to another, for groping in the dark. The petitioner had no idea that he had failed in the practical and in the engineering drawing test in 1996. For the first time, vide letter dated 02.02.2005, he was informed that he had failed in the practical and Engineering drawing test. Therefore, the requirement of the Rules that he should have applied within three years from the date of declaration of the result cannot be applied to him. After all, it was not the fault of the petitioner, but clearly the fault lies on the part of the respondent No. 2 who never told him emphatically that he had failed in the practical and in the engineering drawing test.

9. A valid Inference can be drawn from the letter dated 02.02.2005 that the petitioner had, in fact, passed in the social studies paper in the year 1996 itself. Thus, the only question before this Court is whether the petitioner should be permitted to reappear in the practical and in the engineer drawing paper in the next All India Apprentice Examination or not. The right to re-appear in the examination under the Rules is a substantive right. The said right cannot be made illusory because of lethargic and callous attitude of the respondent. Thus, this Court has no hesitation in directing the petitioner to apply for re-appearance in practical and in the engineering Examination. The respondents are directed to permit the petitioner to sit in the practical and in the engineering drawing test in the upcoming examination.

10. With these observations, this writ petition is hereby allowed.