
(1998) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3187 of 1998

Rajesh Kumar

APPELLANT

Vs

The Institute of Engineers (India)

RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1998) 120 PLR 706

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : R.S. Mittal and Sudhir Mittal, for the Appellant; R.K. Chhiber and Anand Chhiber, for the Respondent

Judgement

H.S. Bedi, J.—The petitioner, a Junior Engineer with the Haryana State Electricity Board, passed his Section "A" examination of the AMIE in the summer of 1989 and appeared in Section "B" of the said examination the next year. The result of the petitioner and two other candidates Kuldip Raj and Harbir Singh for the second examination was, however, withheld by the respondent-Institute and a show cause notice dated 15.10.1990 was issued to them for having indulged in mutual consultation, copying and adoption of malpractices etc at the time of the taking of the examination. The petitioner submitted a reply to the show cause notice and also filed C.W.P. No. 4259 of 1991 against the action of the respondents withholding his result. The petition was however, dismissed as withdrawn by order dated 19.11.1991 leaving liberty with the petitioner to file a civil suit. The petitioner, accordingly, filed a civil suit at Karnal. During the pendency of the Civil Suit, the order dated 19.12.1991 cancelling the petitioner's examination was conveyed to him. The petitioner, thereafter, amended the plaint to challenge the fresh action. The suit was, ultimately, decreed by the trial court and a direction was issued to the respondent- Institute to declare the petitioner's result. The respondent-institute, however, filed an appeal before the first Appellate Court and the same was allowed. The petitioner, thereafter, filed R.S.A. No. 632 of 1994 in this Court and the same was allowed vide judgment

dated 4.4.1995 whereby the judgments of both the Courts below were set aside and the respondent-institute was directed to decide the matter afresh after giving an adequate opportunity of hearing to the petitioner and to the other two candidates as well. The petitioner appeared before the respondent-Institute in accordance with the direction of this Court, but vide order dated 14.12.1995, the order cancelling the petitioner's result was reiterated. This decision too was challenged by the petitioner and Harbir Singh in C.W.P. No. 9699 of 1996, which was dismissed on 10.7.1996 by a Division Bench of this Court. Aggrieved thereby, the petitioner as also Harbir Singh filed SLP (Civil) No. 28 of 1997 and this was allowed by the Hon'ble Supreme Court on 25.7.1997 and the order of the respondent-institute dated 14.12.1995 was quashed. A copy of the order of the Supreme Court has been appended as Annexure P-1. The Supreme Court also observed that the respondent-institute had disqualified the petitioners by acting in an unfair and biased manner and the method of evaluating the Unfair Means Cases was itself faulty. A direction was, accordingly, issued to declare the result forthwith and on its declaration vide Annexure P-2, the petitioner was shown as having passed in 7 out of the 8 papers but failed with 31 marks (35 being the pass mark) in the paper of Structural Design. Annexure P-2 has been impugned in the present writ petition on the plea that the action of the respondent-institute was wholly malafide (as also found by the Supreme Court in its judgments Annexure P-1) as it had taken umbrage as the petitioner had been pursuing his remedy doggedly in one Court or the other since 1990.

2. On notice of motion, a reply has been filed on behalf of the respondent and an objection has been taken that the respondent-institute was not a "State" within the meaning of Article 12 of the Constitution of India so as to make it amenable to the writ jurisdiction. It has also been pleaded that the petitioner's marks had been correctly assessed without any bias and that the petitioner's marksheet had also been produced before the Hon'ble Supreme Court at the time when he had impugned the order of the High Court dated 10.7.1996, dismissing the petition in limine. It has also been pleaded that the petitioner's claim that he be awarded 4/5 grace marks so as to enable him to pass the paper in Structural Design was without substance as no such authority lay with the respondent-Institute under the examination rules.

3. Mr. R.S. Mittal, the learned Senior Advocate appearing for the petitioner has first and foremost argued that the respondent-Institute was a "State" in terms of Article 12 of the Constitution of India and in this connection has cited *Miss. Ravneet Kaur Vs. The Christian Medical College and Another*, and has contended that as the respondent-Institute was performing very important public duty inasmuch as that it was conducting examinations for the AMIE Course for Engineers (which was a diploma qualification in Engineering recognised all over India) the functional test was satisfied and as such the respondent-Institute was amenable to the writ jurisdiction of this Court.

4. Mr. Chhibar, the learned senior counsel appearing for the respondent-Institute

has, however, placed reliance on *Ghanshyam v. Institution of Engineers (India)* and *Anr.* (1994)106 P.L.R. 532, a Division Bench Judgment of this Court wherein it had been held that the respondent-Institute was not a "State" in terms of Article 12 of the Constitution.

5. I have considered the arguments raised by the learned counsel for the parties. In the Full Bench Judgment in *Ravneet Kaur's* case (*supra*) this Court examined the latest position on the point in issue and placing deep reliance on various judgments of this and the Hon"ble Supreme Court ultimately came to the conclusion that the words "any person or authority" used in Article 226 did not mean only a State as defined in Article 12 or a statutory authority but also included any person or body performing a public duty. The Full Bench observed that the functions exercised by an institution, rather than the method of its creation was the primary test. In the light of the observations of the Full Bench, the Division Bench of this Court must recede into the background. The respondent-institute was performing a significant public duty by holding the test for the AMIE Courses which has been recognised as being equivalent to a degree in Engineering. I am, therefore, of the opinion that a writ petition would be maintainable against the respondent-institute.

6. Mr. Mittal has then argued that the Hon"ble Supreme Court in its judgment Annexure P-1 had, in no uncertain terms, commented on the bias of the respondent- institute with respect to the evaluation of the petitioner's result and as such, a viamedia should be adopted by this Court to ensure some redress to the petitioner as he had been fighting since the year 1990 in one forum or the other to vindicate himself. He has also urged relying on *Sheodhari Prasad Sah Vs. State of Bihar and Others*, , that where a specific direction by the Court had been issued to produce on record, and that order had not been complied with (as in the case before me), the Court had itself awarded some marks in one paper on the basis of the average marks obtained in the other papers. He has, accordingly, urged that the petitioner should be granted some additional marks in the paper of structural Design on this analogy.

7. Mr. Chhiber has, however, placed reliance on Rules 36 and 37 of the Examination Rules and on the judgment *Punjab University, Chandigarh Vs. Sunder Singh*, , to contend that no grace marks could be awarded unless provided by the Rules and that the Court had also observed that the award of grace marks in Post Graduate Courses was not justified.

8. This argument would have to be examined in the light of Rules 36 and 37, which are reproduced below :-

"36. Scrutiny of answer book as to whether marks allotted in the answer books were added correctly and all answers within the answer books were appropriately marked is undertaken by the Institution before declaration of results of each examination, and no applications from candidates for rechecking of answer books will be considered.

"37. Any complaint regarding any particular examination must be lodged before the last date for receiving applications for the next examination, failing which the same will not be ascertained".

9. It will be evident that no revaluation or rechecking of the answer books is envisaged at the instance of the examinee and there is no rule whatsoever which provides for the award of grace marks. In S.P. Gupta's case (supra), their Lordships of the Patna High Court did suggest that the petitioner therein be granted some marks in the subject in which he had failed or in the alternative, he be permitted to take a fresh examination in the same subject within sixty days from the date of judgment. To my mind, the ratio of the aforesaid judgment would not apply to the facts of the present case inasmuch as that in the aforesaid case, there was no provision for a re-appear in the examination in the failed subject as it pertained to an entrance examination to a public service. In the present matter, it is the stand of the respondent-institute (in paragraph 12 of the reply) that the petitioner would be entitled to re-appear in the subject in which he had failed in accordance with the Regulations. It is, therefore, evident that the second choice given by the Patna High Court is available to the present petitioner at the instance of the Institute itself. I am further of the opinion that the petitioner's claim to the award of grace marks on account of the observations of the Hon'ble Supreme Court in this judgment Annexure P-1, would be wholly unjustified because those observations were made in a peculiar context while setting aside the order quashing the petitioner's result for the AMIE Section B held in year 1990. Moreover, in Panjab University's case (supra), the Hon'ble Supreme Court has observed (while dealing with Post Graduate Classes) that it was improper that grace marks should be awarded in such cases. To my mind, these observations would fully apply to the facts of the present case as well as the AMIE qualification has been recognised as being equivalent to a degree in Engineering.

10. Mr. Chhibbar, has nevertheless pointed out that the examination record for the year 1990 was not traceable despite efforts having been made to locate it. He has, however, put in record a tabulation sheet of the result of the Summer 1990 PartB Examination pertaining to the petitioner and two other candidates in which the petitioner has been shown as having failed in the subject of Structural Engineering. It has also been pointed out that one Kuldip Raj, who was one of the other two persons disqualified alongwith the petitioner and had also filed a C.W.P. No. 1158 of 1996 on 16.4.1998 for the declaration of his result and a similar tabulation sheet pertaining to him had been produced before the Division Bench and he was shown as having passed in the subject concerned. To my mind, therefore, the tabulation sheet now produced also reflects the correct position.

11. The question now arises as to the relief that is to be granted to the petitioner.) It is evident from the sequence of events narrated above that the petitioner has been fighting persistently in one court or the other since 1990 and

ultimately, it was after a prolonged legal battle that he had received an order in his favour from the Supreme Court. However, despite this order, he is still shown as having failed in the subject of "Structural Design". It is the conceded position that the petitioner's chance for further promotion would be shut out unless he was able to clear the paper concerned. It has also been pointed out from the reply that the petitioner would be entitled to reappear in one paper in which he has failed. While dismissing the writ petition with regard to the other claims made by the petitioner, it is nevertheless directed that he will be re-examined in the paper of "structural design" as per the syllabi for the year 1990. It is further directed that the petitioner will make an application to the respondent-institute for this purpose and make a deposit of the fee and other charges if any and on this, the respondent-institute shall fix a date for the examination as soon as possible and give at least one month's notice of the date of examination. There will be no order as to costs. Dasti order.