

(2008) 09 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 5952 of 2007

Rameshwar Suradkar

APPELLANT

Vs

The Divisional Secretary, Maharashtra State Board of
Secondary and Higher Secondary Education Aurangabad
Division Board, The Principal, Yuvak Vikas Adhyapak
Vidyalaya, The Head Master, Ashram School and The
Commissioner, Maharashtra State Examination Council

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 —
Regulation 102(3), 89, 89.8, 91, 92

Citation : (2008) 6 ALLMR 799 : (2009) 1 BomCR 76 : (2009) 2 MhLj 363

Hon'ble Judges : K.U. Chandiwal, J; F.I. Rebello, J

Bench : Division Bench

Advocate : S.P. Sonpawale, for the Appellant; V.R. Sonwalkar and G.N. Kulkarni,
holding for P.K. Joshi, for the Respondent

Judgement

F.I. Rebello, J.—Rule, heard forthwith.

2. The petitioner had appeared for the S.S.C. Examination in the year 1997 and secured 54.66% marks. The petitioner was thereafter admitted for 11th and 12th Standard in Mahatma Phule Junior College, Pishor, Tq. Kannad District Aurangabad and he appeared for H.S.C. Examination in the year 2000 and secured 382 out of 600 marks (63.67%). The petitioner decided to take admission for D.Ed. course but due to less percentage, he could not get admission. In the year 2002, the petitioner inquired about procedure for admission to enrol as a private candidate under Regulation 89 and 92 of the Maharashtra Secondary and Higher Secondary Education Boards Regulation 1977 (hereafter referred to as "The Regulations"). He paid the prescribed fees and enrolled himself as a external candidate. Form No. 17, filed by the petitioner came to be accepted. The hall ticket was issued and the petitioner passed that examination the second time and secured 71.33% marks.

After passing H.S.C. examination, the petitioner registered his name for admission to D.Ed. course and was selected for the year 2002-2003 and in November 2004 he has completed D.Ed. course from respondent No. 2 College. According to the petitioner, on 11-10-2007, respondent No. 1 published a notification and cancelled the results of H.S.C. examination 2002 and intimated to respondent No. 2 to cancel admission of the petitioner, which he had taken for D.Ed. course. The petitioner also has joined in service as a teacher in Ashram school after completing the D.Ed. course.

3. It is the submission of the petitioner that considering rules and regulations, the Board has no right to cancel the results of any candidate after six months of its declaration. The results were declared in the year 2002 and cancellation was only done in the year 2007. The petitioner also contended that he had appeared for external course of H.S.C. examination after due inquiry and he was allowed to do so. The petitioner had not suppressed any material and therefore, the respondents are estopped from contending that the petitioner is not eligible and that they were entitled to cancel the results of the examination.

4. Reply has been filed on behalf of respondent No. 1. In the reply, it is set out that it is not correct that the petitioner was fulfilling the terms and conditions of Regulations 89 and 92(5) of the Regulations, 1977, because he had already been declared passed in the H.S.C. examination in the year 2000 and as per provisions of Regulation 92(5), once the candidate is declared passed in the examination then he/she is not eligible to appear a second time for the examination for any subject in which the candidate is declared passed. For submitting Form No. 17, there are certain conditions and only those who are fulfilling those conditions are eligible to fill up the said form and appear for the examination. In the said form there is a condition to submit an affidavit stating that earlier the candidate did not appear and had been declared passed in the examination for which he/she is submitting the form No. 17. It is further the condition, that if the information given in the form appears to be incorrect and incomplete information is given then the respondent has power to take action as prescribed under the Regulations and his/her candidature/performance is liable to be cancelled. It is a further condition that the certificate by the Head of the recognized Junior college forwarding the application is an essential requirement with the form No. 17. In the said certificate, it is the duty of the institution to verify the documents submitted by the candidate and put the signature and seal of the institution. As a large number of candidates appear for the examination externally, it is practically impossible for the respondent to verify each and every information and certificate submitted alongwith the form No. 17 by each candidate. It is, in these circumstances, that the petitioner was issued hall ticket and accordingly appeared for the examination. It is set out that the Board has every right and power to revise and cancel the result of any candidate who has obtained the result fraudulently, by adopting illegal means, hiding or by giving wrong information in the examination form. If the act of the candidate is contrary to the provisions of the Regulations of the Board, it is open to the Board to revise the

results if it is affected by any malpractice, fraud or any other improper conduct. Reliance is placed on Regulation No. 102(3). It is then submitted that the petitioner obtained the hall ticket by hiding some information and by giving wrong and incorrect information to the Board. The petitioner was not eligible to appear for the examination in view of Regulation No. 92(5). As admission for D.Ed. course is taken fraudulently, the petitioner is therefore not entitled to retain the diploma.

5. The first question, therefore, that we are called upon to answer is whether it was open to respondent No. 1 to have cancelled the results of HSC examinations, which were declared in the year 2002 by passing an order on 11-10-2007.

6. We shall refer to the Regulations referred to by respondent No. 1, for the purpose of considering whether there is power to cancel the results of an examination. Regulation No. 102(3) reads as under:

102(3) - In any case, where the result of the examination has been ascertained and declared and it is found that such result has been affected by any malpractice, fraud or any other improper conduct whereby a candidate has, in the opinion of the Standing Committee, shall have power that any time, notwithstanding the issue of the Higher Secondary Certificate or the award of a prize of scholarship, to amend the result of such examinee and to make such declaration as it may consider necessary in that behalf.

A perusal, therefore, of this Regulation would show that power conferred on the Standing Committee is to amend the result of examinee in a case of malpractice, fraud, or any other improper conduct. The expression any improper conduct would have to be read ejusdem generis with the expression malpractice or fraud. Improper conduct could be of getting admission contrary to the regulations when known to a candidate. In other words, candidate getting himself admitted knowing that he was not eligible.

In the instant case, the only contention advanced on behalf of respondent No. 1, is that the petitioner having once appeared for H.S.C. examination, it was not open to the petitioner to have appeared a second time for the same examination.

7. We may consider some other Regulations. Regulation No. 91 reads as under:

91 -Cancellation of admission to the Examination: (1) In any case, where it is found that the candidates admission to the Higher Secondary Certificate Examination has been affected by error, malpractice, fraud or improper conduct, or where his very admission to the Second Year of a Junior College is found to be irregular, the Divisional Board, on the recommendation of the Standing Committee, shall have the power to cancel the candidates admission to the examination and to forfeit the examination fee, if any, paid by the candidate, notwithstanding the inclusion of the name of the candidate in the list of candidates registered for the examination, or the candidates actual appearance at the examination, in one or more subjects and also to debar the candidate from

appearing for the examination for such further period as the Divisional Board may determine in each case.

(2) It shall be competent for the Divisional Chairman to admit a candidate to the examination provisionally, where any enquiries in respect of his eligibility for admission to the examination are in progress or contemplated and in the light of the final decision regarding his eligibility, to deal further with his case as per the provisions of these Regulations.

A reading of this regulation would disclose that where it is found that the candidates admission has been affected by error, malpractice, fraud or improper conduct or admission is found irregular then there is power to cancel the candidates admission to the examination and forfeit the examination fee, notwithstanding the inclusion of the name of the candidate in the list of candidates registered for the examination or the candidates actual appearance at the examination in or or more subjects. This regulation, therefore, is a power to cancel the candidates admission to the examination. This power cannot be read to mean a power to cancel the results after candidate is allowed to appear for the examination.

8. The next Regulation is Regulation No. 92 in which there is a power to permit a candidate who has failed to reappear at a subsequent occasion. Regulation No. 92(5) reads as under:

92(5) -A candidate who has passed the Higher Secondary Certificate Examination conducted by the Maharashtra State Board of Secondary and Higher Secondary Education or any other equivalent or Higher Examination of any Statutory Board or University in India, and desires to appear in one or more isolated subjects will be allowed to appear in the subject/subjects nor offered by him at the Higher Secondary Certificate Examination or Higher Examination of any Statutory Board or University in India. However, if he offers the subjects in which practicals are prescribed, he will have to complete the practical courses prescribed for those subjects for first year and second year in a recognized junior college and attach the necessary certificate from the head of recognized junior college of his having completed a practical course in those subjects for the two years along with his application. Such a candidate will not be entitled to the award of any certificate but shall be given a certified statement of marks obtained in the isolated subject or subjects offered at the examination, on payment of the fee prescribed under Regulation 94.

A perusal of this Regulation would indicate that a candidate who has passed his H.S.C. examination will be allowed to appear in the subject/subjects not offered at the Higher Secondary Certificate Examination or Higher Examination of any Statutory Board or University in India. The power, therefore, is limited in respect of those subjects which were not offered at the time of passing of the first examination.

Then we have Regulation No. 89. The relevant portion of which reads as under:

89(1) :A candidate who has passed the Secondary School Certificate Examination of the Board or any other equivalent Public Examination of Boards outside the State can appear at the Higher Secondary Certificate Examination as a private candidate three years after his passing the Secondary School Certificate Examination.

Regulation No. 89 appears to be a self contained regulation of which Regulation 89.8 reads as under:

89(8) A person who been enrolled as a private candidate for the Higher Secondary Certificate Examination conducted by the Divisional Board need not apply for such enrolment again. Enrolment certificate once granted will be valid for any subsequent Higher Secondary Certificate Examination conducted by the Divisional Board, provided that there is no change in the subjects he has offered at the first attempt.

It appears that this sub-regulation is in respect of private candidate who has failed and who seeks to appear as a repeater candidate.

9. Thus, on a reading of regulation 89, there is no bar on the candidate appearing for a second time for H.S.C. Examination, except that it is restricted to subject which the candidate had earlier not offered, in what is described as one or more so subjects. Regulation No. 89 is an independent provision whereby the candidate who has passed SSC examination of the State Board or any other equivalent Public Examination of Boards outside the State can appear at the HSC examination as a private candidate after his passing the SSC examination. In other words, such a candidate without complying with other regulations can appear provided he was not on the roll of junior college in Maharashtra State during last two academic years or if he has passed first year junior college during last two academic years preceding the date of H.S.C. examination and which he desires to appear.

10. We may now consider the impact of Regulation No. 102(3). As observed earlier, no doubt, such power has been conferred on the Standing Committee, to amend result of an examinee and to make such declaration as it may consider necessary. But that has to be on account of malpractice, fraud or any other improper conduct. As we have noted earlier the expression improper conduct will have to be read ejusdem generis with the expression malpractice or fraud. If it is so read, in our opinion, there was no material before the Standing Committee to arrive at a conclusion that the petitioner here had committed any malpractice, fraud or any other improper conduct or that his conduct was inequitable. The petitioner in order to better his percentages appeared a second time for the H.S.C. examination. The action, therefore, of respondent No. 1 in cancelling the results of the H.S.C. Examination would be contrary to law.

11. We then consider another aspect of the matter namely whether considering the facts that the petitioner had disclosed all facts, and had not suppressed any material fact and in the meantime has passed his H.S.C. examination, D.Ed.

examination and also procured a job, whether it is open to the Board to have cancelled the results of the H.S.C. examination as an external candidate. It is now settled law that doctrine of promissory estoppel would apply. If authority needs to be cited may refer to the judgment of Supreme Court in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, . That judgment in an authority for two propositions. Firstly, if there be a power, that power can be exercised before the power exhausts itself and secondly, if the petitioners have acted in good faith, based on a promise and there is no fraudulent act on their part, the respondents would be estopped in contending that the petitioners result could be cancelled. We may point out that this Court in the matter of admission in the absence of fraud has been consistently apply the doctrine of promissory estoppel taken a stand. Reference for that may be placed in the judgment in the case of Shri Kalpesh Suhas Pawar etc. Vs. Mah. State Board of Secondary and Higher Secondary Education and Others, .

In the judgment of Division Bench of this Court in Ganesh R. Baheti Vs. The University of Pune and Another, , in the case of Sunil Tuvlare and Another Vs. Principal, Sou. Vasudhatai Deshmukh Krishi Vidyalaya and Others, , and in unreported judgment of this Bench in the case of Mohan Madhavrao Dhapse v. The Maharashtra State Board of Secondary and Higher Secondary Education, Pune, Aurangabad Division, Aurangabad, decided on 7th November 2006 in W.P. No. 5425/2006, as also order passed in Vijay S/o Ramesh Dighole v. The Divisional Secretary, Maharashtra State Board of Secondary and Higher Secondary Education, Aurangabad Divisional Board, Aurangabad in W.P. No. 5256/2006 decided on 27-07-2006. In fact, in the last judgment, the learned Bench directed that the first certificate of H.S.C. should be seized and the petitioner would have liberty to seek admission on the basis of the second certificate.

12. In our opinion, considering the facts of the present case, the action of the respondents in cancelling the results of the petitioner for Higher Secondary Certificate Examination when he had appeared for a second time, is clearly contrary to law and in the light of that Rule made absolute in terms of prayer Clause - B and B - 1.