

(2009) 08 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No's. 24507-508 of 2009

Siddartha K.M. and K.N. Akarsha

APPELLANT

Vs

The Assistant Director Examination Pre-University Education
and The Principal, The Canara Pre-University College,
Konkani Linguistic Minority Institution

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Citation : (2010) ILR (Kar) 674

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K.O. Vijayakumar, for the Appellant; B. Manohar, AGA for R-1, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—Petitioners in these writ petitions are challenging the communications dated 10.08.2009 issued by the 1st respondent -Assistant Director (Examination), Pre-University Education, Bangalore.

2. By Annexure-Q - endorsement, petitioner No. 1-Siddartha K.M. is informed that as he has not taken reexamination in Mathematics after rejection of his results of March, 2009 examination in respect of Chemistry and Biology subjects, he is shown to have failed in Mathematics. According to the respondent-authorities, petitioner No. 1 ought to have rejected the results in Mathematics subject as well as he had scored only 30 marks therein. Admittedly, petitioner No. 1 had scored 30 marks in Mathematics, 45 in Chemistry and 41 in Biology and was declared passed. He chose to reject the result of Chemistry and Biology and appeared for reexamination during June, 2009 for these two subjects and has now scored 63 in Chemistry and 70 in Biology. He did not opt to reject the result in Mathematics though he had scored only 30 marks.

3. Likewise, petitioner No. 2- K.N. Akarsha had passed in March, 2009

examinations by scoring 34 in Biology, 30 in Mathematics, 52 in Chemistry, 36 in Physics. He rejected the results only in Mathematics subject wherein he had scored only 30 and reappeared for the examination during June, 2009 and has scored 44 marks. By the impugned communication Annexure-R the 2nd petitioner is informed that as he did not appear for Biology subject, which result also he ought to have rejected as he had scored only 34 marks, he is shown as failed in the said subject during June, 2009 examination.

4. Counsel for the petitioners contends that as per the "Regulations, Courses of Study, Scheme of Examination and Syllabus for the II Year Pre-University Course" published by the Department of Pre-University Education, insofar as the II year Pre-University Course is concerned Regulation 4 provides for rejection of results and the said Regulation does not impose any obligation on a candidate who has scored marks between 30 to 34 in a particular subject to compulsorily reject the result of that subject as well if he intended to reject the results in other subjects wherein he has scored less marks provided he had been declared as passed. In this background, he submits that both the petitioners who had been declared passed in March, 2009 examination chose to reject the result of their chosen subjects for the purpose of improving their performance. The 1st petitioner rejected the results in Chemistry and Biology, whereas the 2nd petitioner rejected the result in Mathematics. His contention is that the impugned endorsement wherein the authorities have taken a stand that the petitioners ought to have rejected the result of the subjects where they had scored less than 35 and more than 30 marks is without authority of law and does not have any sanction of the Regulations, Rules or Executive Orders.

5. Learned Additional Government Advocate taking me through the statement of objections filed in the Court submits that even though a student scores marks between 30 to 34 in a subject, if the aggregate marks of all the other subjects is 35 or more than 35 he will be declared as passed in the said subject as well. Therefore, he contends, once a student who has scored marks between 30 to 34 in some subjects and 45 or 41 etc. in other subjects, he gets the benefit of being declared as passed in those subjects. If he opts for rejection of the result in some subjects to improve his results in those subjects, he should also appear for reexamination in the subjects where he has scored marks between 30 to 34. He also points out that even in the application meant for rejection of the result, in Column No. 3, it is specifically mentioned that a "student has to reject the results of the subjects where he has scored marks between 30 and 34". He draws the attention of the Court in this regard to Annexure-D Format of the application. It is, in this background, he submits that at the time when the students were permitted to take the examination in the month of June, 2009, in the Hall Ticket issued, petitioners were required to take the examinations in the subjects wherein they had scored less than 35 marks.

6. Having heard the learned Counsel for the parties and on perusal of the materials on record including the relevant Regulations and the Scheme of

examinations, copy of which is placed before the Court for perusal by the learned Additional Government advocate, I find that there is no Rule which requires a candidate to reject compulsorily the result of the subject wherein he has scored marks between 30 to 34 and has been declared passed in the said subject. In the absence of such requirement, petitioners have exercised their option to reject the results of subjects of their choice and have appeared for the examination wherein they have performed well. Merely because the Format of the Application submitted by the student opting to reject the results mentioned that he had to reject the results of the subjects wherein he had scored marks between 30 to 34, petitioner-students cannot be found fault with at this distance of time for not taking re-examination in those subjects also.

7. The respondent-authorities have not rejected the applications submitted by the petitioners choosing to reject the " results of the subjects of their choice for not choosing to reject the results wherein they had scored marks between 30 to 34. Having accepted their application and having permitted them to appear for the examination in the subjects which they had chosen to reject, now, while issuing the marks card the petitioner-students are being shown to have failed in the examination in the subject Mathematics in respect of petitioner No. 1 for which he had not rejected, and for Biology in respect of petitioner No. 2. This approach adopted by the respondent-authorities, in the absence of any express Regulations in this regard governing the field, cannot be sustained. The contention of the learned Additional Government Advocate that once the results of some of the subjects are rejected, exemption available for a student to get declared as passed, though he had scored less than 35 marks in some subjects cannot be accepted, as long as the candidate secures 35 marks in aggregate. In the absence of any Rule governing the field, the stand of the Government cannot be accepted. More so, because the petitioner-students have been permitted to reject only those two subjects and are permitted to take up the examination for rejected subject. Even after the declaration of results of the examinations now held, their aggregate marks will be more than 35. Hence, the impugned communications cannot be sustained in law.

8. In view of the above, these two writ petitions are allowed. Impugned communications are set aside. The respondent-authorities are directed to issue fresh marks card to petitioners-1 and 2 showing the marks obtained by them in different subjects.