
(2005) 08 PAT CK 0031
In the Patna High Court
Case No : CWJC No. 12672 of 1999

Smitaraj

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-08-2005

Acts Referred:

Citation : (2005) 4 PLJR 166

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mrs. Mahasweta Chatterjee for the petitioner, Mr. Sanjay Prakash Verma, learned junior counsel to Government Pleader No. 1, and Mr. Gyanendra Shukla for the Bihar School Examination Board and its functionaries. According to the writ petition, the petitioner had appeared at the matriculation examination held by the Board in 1999. She was allotted Roll Code No. 6317, and Roll No. 152. A photocopy of the admit- card is marked Annexure-2 to the writ petition. The petitioner was declared to have passed the examination in the second division. Photocopy of the results published by the Board is marked Annexure-3, and petitioner's marks-sheet is Annexure-6, to this writ petition. It is further stated in the writ petition that the Board has published advertisement No. 20/99 (Annexure-4), calling upon the candidates of the aforesaid examination for "Punarikshan" of the answer-books on payment of fee stated therein. After the results were published, the petitioner learnt that answer-books of the candidates including herself were examined by Class III employees of the State Government because of the on-going strike of the School Teachers in Bihar. Hence this writ petition.

2. The Board has placed on record its counter affidavit as well as supplementary counter affidavit.

3. I have perused the materials on record and considered the submissions of

learned counsel for the parties. The petitioner has made categorical statements in paragraphs 4 and 6 of the writ petition that answer-books of the candidates of the said examination including the petitioner were examined by the Clerks of some of the private intermediate colleges because of the on-going, indefinite strike of Secondary Teachers Association. Paragraphs 4 and 6 are set out hereinbelow for the facility of quick reference:-

"4. That unfortunately all the teachers of Secondary Schools went for indefinite strike on the call of Secondary Teachers Association for pressing some of their demands early in the year 1999 prior to Matriculation examination and the State Government decided to go ahead with the Matriculation Examination in schedule time i.e. from 5th April, 1999 during the strike period of all the teachers and the strike was called off on 7th May, 1999. In the meantime the Matriculation Examination was held throughout Bihar in which the petitioner also appeared and Admit Card was also issued to her by the Board duly allotting the Roll Code and Roll Number and the Answer Books were sent to be evaluated by different persons, not having proper qualifications and experience some of the Clerks of some private Intermediate College also were entrusted with the duty of evaluating answer books of Matriculation Examination. Even it is happened that copies of Science subject were checked by Ordinary Arts Graduate who happen to be a Clerk of private Intermediate affiliated college and also by teachers of Art subject resulting gross irregularity in evaluating the answer books of the Matriculation Examination of the year 1999.

...

...

...

6. That it is stated that since all the Secondary Teachers were on strike the answer books were not evaluated by any subject teachers of Secondary School which is absolutely necessary for proper evaluation of the answer books. The teachers who are teaching secondary syllabus they are the competent persons to evaluate the answer books of the subjects of the Secondary Course. The Board has replied to the same in paragraphs 9 and 11 of its counter affidavit, which are reproduced hereinbelow:-

"9. That the allegation alleged in paragraph No. 4 of the writ petition under reply is totally baseless and imaginary because the S.S. Examination, 1999 was conducted under the strict provisions of District administration and the answer books were evaluated at the evaluation center by able and senior teachers under the supervision of Divisional Commissioner and District Magistrate.

...

...

...

11. That so far the allegation alleged in paragraph No. 6 of the writ petition under reply, it is totally baseless whereas the fact is that the evaluation of the answer books were done by the examiner."

4. This was followed by the Board's supplementary counter affidavit sworn on 25.4.2005, and filed on 28.4.2005, paragraph 8 of which is set out hereinbelow for the facility of quick reference:-

"8. That so far the allegation alleged by the petitioner in para 5 of the rejoinder petition that answer books were checked by the clerk of private intermediate colleges is concerned it is totally baseless, whereas from the aforesaid facts it is apparent that the respondent Board had taken utmost care with regard to appointment of examiners hence the petitioner's wild allegation is totally baseless and is fit to be rejected with heavy cost."

5. The case was taken up on 2.5.2005, and the following order was passed:-

"7. 2.5.2005. Heard Ms. Mahasweta Chatterjee for the petitioner, and Mr. J.P. Shukla for the respondents. It is stated in paragraph No. 4 of the writ petition that "...some of the Clerks of some private Intermediate Colleges also were entrusted with the duty of evaluating answer-books of Matriculation Examination....". The petitioner complains before this Court that her answer-books were evaluated by persons who were not qualified to do the job.

2. The respondents have placed on record their counter affidavit, wherein vague and general statements have been made that the evaluation work was done by qualified persons.

3. I have no manner of doubt that the Board has not discharged its onus by making such a vague and general statement, and has instead confronted the Court with its conclusion. Law is well-settled that the duty conferred on this Court by the Constitution of India is to adjudicate disputes between man and man and man and the State. In case a challenge is made to an executive action, then it is the duty of the respondent authorities to place all relevant materials and documents before the Court for its perusal to enable it to come to its own conclusion rather than confronting it with its conclusion as seems to be happening in this case. If that were permitted, the power of judicial review conferred on this Court shall be rendered nugatory and the respondent authorities will be free to declare the validity of the impugned action.

4. In that view of the matter, the Board is hereby directed to submit an exhaustive supplementary counter affidavit, inter-alia, giving the names, designations, and the posting of the persons who had evaluated the answer-books of the petitioner. All statements in the supplementary counter affidavit shall be supported by copies of the documents to be made part of the supplementary counter affidavit within a period of four weeks.

5. Put up on 4.7.2005 at the top of the list. The time in the meanwhile may be utilised by the petitioner to file rejoinder, if so advised."

In defiance of the order, the Board has not filed supplementary counter affidavit.

6. On a perusal of the averments and the statements made by both sides on the issue in question, it is manifest that the Board has refused to answer the question with any amount of frankness. This matter has come up before this Court on various occasions and it was argued again and again on behalf of the petitioner, the issues were clarified to the learned counsel for the Board repeatedly, and the result is the aforesaid statement on behalf of the Board in reply to the averments made on behalf of the petitioner. Law is well settled that when an executive action is challenged, then it becomes the duty of the concerned authorities to place before the Court all the relevant materials accompanied with contemporaneous documents which led to the impugned action. Instead of disclosing the names and the designations of persons who evaluated the answer-books of the petitioner, the Board has confronted this Court by its conclusion, namely, "... the answer-books were evaluated at the evaluation centre by able and senior teachers under the supervision of Divisional Commissioner and District Magistrate..." This Court is in no doubt that the Board has purposely suppressed relevant materials from this Court to cover up its mistakes.

7. I must at this stage note the submission advanced by learned counsel for the Board that it is unable to answer the charges specifically because of the long lapse of time since examinations took place. A more untenable contention could not have been advanced on behalf of the Board for two reasons. Copies of this writ petition were served on the learned counsel for the Board on 23.12.1999, meaning thereby that issue had already been brought to the notice of the Board soon after the results were published and, secondly, the Board has been able to produce before this Court all the answer-books of the petitioner.

8. It is obvious that such a vital decision to entrust the answer-books for evaluation to Clerks of private Intermediate Colleges or such other persons not qualified to the job must have been taken at a high level. It further appears to me from the materials on record that the strike had partially or substantially been called-off in March 1999, the Board had proceeded to announce that the examination shall be held from 5.4.1999 to 10.4.1999, and the Board could not act quickly to revert to the normal system of evaluation of answer-books by qualified teachers. This matter can be viewed from another angle, namely, the petitioner's version becomes all the more credible because the impugned decision was taken in the background of the indefinite strike. I record my extreme sense of displeasure against the Board's decision to have the answer-books evaluated by the Clerks or such other unqualified persons, and its brazen attempt to mislead this Court by suppressing vital materials in an effort to take this Court down the garden path. The writ petition is allowed. The Board shall ensure re-evaluation of all the answer-books of the petitioner by persons qualified to be appointed as Head Examiners which obviously means that they should be well conversant with the respective subjects. The Board shall pay to

the petitioner costs of this writ petition quantified at Rs. 50,000/- (Fifty thousand), and further deposit of Rs. 50,000/- (Fifty thousand) with the Secretary, Patna High Court Council of Legal Aid and Advice, within a period of four weeks".