

(1958) 08 AHC CK 0016
In the Allahabad High Court
Case No : Special Appeal No. 268 of 1958

The Board of High School and Intermediate Education, U.P.,
Allahabad and Another

APPELLANT

Vs

Ram Krishna Verma

RESPONDENT

Date of Decision : 20-08-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35, 35A
Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 15

Citation : AIR 1959 All 226

Hon'ble Judges : R.N. Gurtu, J;D.N. Roy, J

Bench : Division Bench

Advocate : K.B. Asthana, for the Appellant; J.N. Agarwala, for the Respondent

Final Decision : Allowed

Judgement

R.N. Gurtu, J.—This is an appeal from a judgment of a learned single Judge of this Court given in Civil Miscellaneous Writ No. 2292 of 1957.

2. The petitioner, according to his affidavit filed in support of his petition, appeared in the High School Examination held by the Board of High School and Intermediate Education, U. P., (hereinafter called the Board) in March, 1955, and passed the same. Subsequently he appeared in the Intermediate examination held by the Board in March, 1957. According to the affidavit, the petitioner received a letter from the District Inspector of Schools on the 30th of May, 1957, which greatly surprised him. We will quote the relevant part of this letter, which is :

"Has the honour to ask him to present himself just when he is in receipt of this registered letter before the undersigned for making some inquiry with him."

The petitioner states in his affidavit that the result of the Intermediate examination for 1957 was published in the papers in June, 1957, but his name

and roll number were not found therein. The petitioner swears that in compliance with the said letter of the District Inspector of Schools he appeared before the said District Inspector on or about the 8th of July, 1957.

According to the affidavit, the District Inspector of Schools did not accuse the petitioner of any misconduct in connection with his examination of March, 1957, but he put to him certain questions, namely, whether his name was Ram-krishna Verma or Ram Kishore Verma; and whether he was ever rusticated from Nehru Intermediate College. He was also asked his age and his father's age.

According to the petitioner's affidavit, he gave his correct name as Ramkrishna Verma, and further told the District Inspector of Schools that he had never read in Nehru Intermediate College, Bindki, and no question of his rustication arose. The petitioner swears that the petitioner's younger stepbrother Ram Kishore Verma was a student of the VIIth class in 1953 in the Nehru Intermediate College, Bindki, and that he namely, his stepbrother was rusticated for one year.

He swears that interested persons by misrepresentation have informed the District Inspector of Schools that it was he (the petitioner) who had been rusticated from the aforesaid institution. The petitioner swears that from the centre of his examination on enquiry he learnt that his result had been withheld, although he had passed the examination and was placed in the IIIrd division.

He then swears that in July, 1957, and finally on the 20th of August, 1957, he requested the Board by registered letter to announce his result as he desired to pursue his further studies, but the Board did not pay any heed and that it had not announced the results up to the day the petition was made. The petitioner swears that he was desirous to join the University and in case the result was not announced it would be too late for him to join the University and his educational career would be marred. He also pleaded that the Board had no right to withhold his result.

3. Upon these statements the petitioner prayed for a writ of mandamus or other suitable writ, direction or order to be issued to the Board to announce the result of the petitioner. He also asked that he be awarded his costs of the petition. There was a prayer for an interim direction or order to be issued to the respondent No. 1, namely, the Board, to announce the result of the petitioner provisionally subject to the result of the writ petition and pending its disposal.

4. The writ petition was admitted on the 18th of September, 1957, by Hon'ble Chaturvedi, J., who refused to issue any interim order as he thought that it was not possible to do so in the case.

5. The Board put in appearance and filed a counter-affidavit which was sworn to by Sri Ram Gopal Sand, Additional Deputy Secretary of the Board. That counter affidavit stated that the question whether the petitioner had fulfilled all the required and prescribed conditions for eligibility to appear in the Board's examinations was still under inquiry and the inquiry had not yet been completed.

It was also stated in the counter affidavit that information had been received in the office of the Board that the petitioner's real name is Sri Ram Kishore Verma and that he had been rusticated in 1953 when he was a student of Class VIII of Nehru Intermediate College, Binkdi, Fatehpur, and that after that he changed his name as Ram Krishna Verma and succeeded in appearing in the High School Examination of 1955 with the assumed name.

It was sworn that it was because of this that the communication, which has been referred to, was sent to the petitioner. It was admitted that the petitioner's result for the Intermediate examination was withheld, but it was said that that was because the matter was under inquiry. In the counter-affidavit it was further said that it was not admitted that the correct name of the petitioner was Ram Krishna Verma and that the matter was still under inquiry.

Finally, it is said in the counter-affidavit that as the matter of finding out the correct name of the petitioner was under inquiry, the Examination Committee recommended to the Results Committee that the result of the petitioner be withheld and the Results Committee withheld the result accordingly. It was finally sworn that the said inquiry was not yet complete. This counter-affidavit was sworn on the 8th day of November, 1957.

6. The petitioner filed a rejoinder affidavit in which he swore that the information received by the Board was false. He also said that his result had been withheld for an unreasonably long time. He also said that since the result of the High School examination, 1955, had been previously declared the holding of the alleged inquiry was altogether irrelevant and the Board, in the guise of holding an inquiry, have withheld the result for an unreasonably long time and have therefore caused great loss to him.

7. The learned single Judge of this Court after considering all the affidavits came to the conclusion that as the period between the 4th of April, 1957, and the date when he was dealing with the case was a period of 15 months there was ample time for the inquiry to be completed and he therefore held the Board and its officials to be guilty of extraordinary and unreasonable delay in holding the inquiry.

He also held that these officials had not exercised their power in bona fide or reasonable manner and their conduct came within the legal meaning of a mala fide exercise of a statutory power or discharge of a duty. It was submitted before the learned Single Judge that the petitioner had received sufficient number of marks in each paper, which would entitle him, if he was declared to be successful, to be placed in the third division.

The learned Single Judge was therefore of the view that the petitioner had established his case on merits and that he had passed the Intermediate examination of 1957, but his result had been wrongfully withheld. The learned Single Judge was of the view that the Board and the District Inspector of Schools (respondents before him) had not been able to show any valid reason for

withholding this result and he was of the view that in the absence of anything to the contrary, the petitioner's result as having passed the Intermediate examination should be declared.

Therefore the petition was allowed and it was directed that a writ in the nature of mandamus commanding the Board of High Schools and Intermediate Education, Uttar Pradesh, Allahabad to declare the petitioner's result within two days of the date of the order should issue. Then the learned Single Judge dealt with the question of costs and pointed that the petitioner had lost one year of his educational career irrespective of the result of the inquiry. The learned Single Judge observed further:

"If the respondents had the courage to award any of the penalties prescribed in paragraph I(i) mentioned above, the petitioner would have been in a position to obtain redress from this Court under Article 226 of the Constitution or by a suit for damages. But the result of the spreading out of the so-called inquiry for 15 months had been that the petitioner has suffered a loss which may prove incalculable."

The learned single Judge therefore awarded the petitioner a sum of Rs. 500/- as costs.

8. This appeal is by the Board of High School and Intermediate Education, U. P., and by the District Inspector of Schools, who were respondents to the writ petition.

9. Learned counsel when the arguments began stated that he desired to file an affidavit giving the details of the material which was available to the Board on the basis of which the Board would be entitled to cancel the petitioner's examination under Chapter VI, Rule 1 (I) framed under the Intermediate Education Act, 1921. We did not accede to this prayer of the learned counsel because we think that this appeal can be and ought to be decided upon the material already on the record.

The contention of the learned counsel for the appellants is that the learned single Judge has decided, in effect, that the petitioner is Ram Krishna Verma and not Ram Kishore Verma and that the petitioner was not rusticated from the Nehru Inter-mediate College Bindki. It is contended that it is for the statutory authority, namely, the Examinations Committee to decide whether the petitioner was Ram Krishna Verma or Ram Kishore Verma, and that it was not open to the learned single Judge to come to a decision on this question and on the basis of such decision to order the Board to declare that the petitioner had passed.

It is contended that by doing this the learned single Judge has decided the very questions of fact which are to be decided by the Statutory body concerned. It is contended that if there was, in the view of the learned single Judge, delay in the performance of its statutory duty by the Board, then the learned Judge could have directed the Board to perform such duty within a stated reasonable time.

And that, once that duty had been performed by the Board and its order had issued then if it were shown that the order passed by the Board was beyond jurisdiction or there was any error apparent on the face of the record in connection with the passing of that order then this Court could have been moved by means of an appropriate writ to quash the said order, and then this Court could have issued an appropriate writ or direction.

10. The next contention is that the learned single Judge has wrongly allowed damages on the ground of delay in deciding the question whether the allegations made concerning the real name of the petitioner were correct or not and in not declaring the result within a reasonable length of time or cancelling the examination within a reasonable length of time. We will deal with these arguments now.

11. It is necessary to point out that under the Intermediate Education Act, 1921, as amended by U. P., Act No. V of 1941, the Board has been established by Section 3 thereof, and subject to the provisions of the Act the Board has been given powers u/s 7, two of which powers are :

(v) to admit candidates to its examinations; and

(vii) to publish the result of its examinations. Then under the said Act the Board is authorised to appoint Committees by Section 13 of the Act, and one of such Committees which the Board may appoint is an Examination Committee. It is admitted that an Examination Committee has been appointed by the Board under the power granted u/s 13, Section 15 authorises the Board to make regulations relating, inter alia, to the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates. Certain Regulations in regard to the duties of the Examinations" Committee have been framed. These Regulations are contained in Chapter VI. The duty of the Examinations" Committee under this Chapter and Rule 1 (1) thereof is : --

"To consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following :

- (1) Withdrawal of certificate of having passed the examination;
- (2) cancellation of the examination;
- (3) exclusion from the examination."

We may note that the Regulations provide that the duty of the Examinations" Committee is to be performed subject to the sanction and control of the Board. It is under the aforesaid provision that the Examinations" Committee is examining the question whether the petitioner is Ramkrishna Verma or is Ram Kishore

Verma, and whether the charge that he being Ram Kishore Verma was rusticated from the Nehru Intermediate College, Bindki, is correct or not. We have already stated, that according to the Board's counter-affidavit paragraph 11, the Examinations' Committee had recommended to the Results' Committee that the result of the petitioner should be withheld pending inquiry by it and that therefore the Results' Committee withheld the results accordingly.

12. The question now is whether the Examinations' Committee should be prevented from completing its inquiry and coming to a definite conclusion whether upon the facts proved, the examination of the petitioner can be cancelled under the authority given to the Examinations Committee of the Board by Rule 1 (1) of the Regulations as framed under Chapter VI, and whether the learned single Judge should have upon the material which had been placed before him, come to a definite conclusion as a question of fact that the petitioner is not Ram Kishore Verma and that it was another person of the name of Ram Kishore Verma who was rusticated and that therefore there could not be any question of the petitioner having made any false statement in his application for the Intermediate Examination when he applied for and obtained permission to sit for his examination under the name of Ram Krishna Verma.

13. It is true that there is a statement sworn on personal knowledge in the affidavit of the petitioner that he is Ram Krishna Verma and that he has reaffirmed this position in his rejoinder affidavit. It is also true that he has expressly stated that it was a step brother of his named Ram Kishore Verma who was rusticated from the VIIIth Class from Nehru Intermediate College of Bindki.

On the other hand, it is merely on the basis of information received that it is stated in the counter-affidavit of the Board that the petitioner is not Ram Krishna Verma but is the same Ram Kishore Verma who was rusticated and that the Board is making an inquiry which has not been completed. Nonetheless in our view, and with respect, this was a case where if a final decision on the question of the correct name was to be taken at least the affidavit of the petitioner's parent or guardian and of the step-brother should have been called for by the learned single Judge.

14. The learned single Judge was of the view that, inasmuch as the inquiry had taken such a long time and had not been completed that was proof of the fact that it was mala fide. Presumably he meant that the Examinations' Committee knows it in its heart of heart that the allegation that the petitioner is not Ram Krishna Verma was not correct and yet the Board was dilly-dallying with a view to harm the petitioner.

15. We would like to examine this question of the alleged delay of 14 months. The anonymous letter, it is now admitted before us, was received by the authorities on the 4th of April, 1957. It is the case of the petitioner himself that on the 30th of May, 1957, he was asked to present himself forthwith before the District Inspector of Schools. It is to be noted that it was not until the 8th of July,

1957, that the petitioner presented himself before the District Inspector of Schools.

This shows that he himself was not acting with any degree of diligence. It has been submitted by the appellants that he refrained intentionally from contacting the District Inspector of Schools until the results were published on the 18th of June, 1957, and it was only when he did not find his name amongst the candidates who were declared to have passed the examination that he went to see the District Inspector of Schools.

The 8th of July, 1957, was the first time that the petitioner was brought into personal contact with the Inspector of Schools for the purpose of his statement being taken. There are one or two letters which he wrote thereafter asking the Board to declare his result, and then on the 17th of November, 1957, he filed this writ petition.

Looked at from one angle, therefore, actually the Board had time between the 8th of July, 1957, and the 17th of September, 1957, to complete its inquiry, for if it had started making enquiries before the petitioner appeared before the District Inspector, it might have been said that, without even obtaining a denial or affirmance of the alleged allegation from the petitioner, the Board had started recklessly contacting other people. Of course it was possible for the Board, even after the writ petition had been filed, to continue its investigation, and it does appear that it did continue to make investigations.

It may be that the Board was not very active during the pendency of this writ petition in taking steps to get all the material necessary to establish the truth or otherwise of the allegation that the petitioner was not Ram Krishna Verma. On the other hand if a fictitious step-brother has been set up it would naturally take time to clear up the question of his alleged existence.

But the delay with which we are principally concerned is the delay which occurred prior to the filing of the writ petition, and the question we have to examine is whether the learned single Judge was right in not allowing the Examinations" Committee to carry out its statutory duty because of the alleged delay which occurred between the 8th of July, and the 17th of September, 1957. We are of the view that the period of two months did not constitute such an inordinate delay that the learned single Judge was justified in preventing the Examinations" Committee from finally deciding the issue.

16. That this petition was taken up so late as on 22-7-1958, i.e. almost a year after it was filed, is not due to the conduct of either the appellants or respondent to this appeal. It is due to the pressure of work on this Court and, although the learned Single Judge would certainly have been justified in directing that the Examinations" Committee conclude its investigation within the shortest possible time, we do not think, with all respect, that he was justified, in effect, in taking the matter out of the hands of the Examinations" Committee and in dealing with the facts himself and coming to a conclusion on material which appears to be

scanty and quite insufficient.

17. The object of a mandamus is to compel performance of a legal duty on the part of some person or body entrusted by law with that duty. The Court in a proceeding for mandamus will never sit as a court of appeal so as to examine facts or to substitute its own wisdom for the discretion vested by law in the person or body against whom the writ is sought -- See the case of Vice-Chancellor, The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others, In the present case as a result of the order of the learned single Judge the statutory body which is charged with the performance of the duty will have no opportunity of coming to a final conclusion on the facts and exercising its discretion.

18. Here, with respect, the facts have been examined and also the discretion has been exercised by the learned Judge at once and in the first instance.

19. We are not disposed to generalise in this matter. There may be a case where the facts not being controverted and only one inference and no other being possible and the delay may warrant an immediate direction of the type given by the learned single Judge in this case. Article 226 of the Constitution has a wide scope. But after having heard learned counsel for the parties and having considered the totality of the circumstances of this case, and having particular regard to the fact that some of the delay in completing the investigation before the 17th of September, 1957, which we consider to be the crucial date in this matter, was also occasioned by the petitioner, we think that, though he was entitled to a mandamus, the mandamus which should have been issued should have directed the Board to perform its statutory duty as indicated above. We therefore think that for the order passed by the learned single Judge we should substitute a direction to the effect that the Board should now decide the matter.

20. In regard to the second question of damages, although it is alleged in the rejoinder affidavit that great loss has been caused to the petitioner, there is no express prayer for any damages to be awarded for loss suffered on account of delay in contradistinction to a prayer for costs of the writ petition.

It is not even stated as to what is the amount of damages. Moreover, we do not think that in these mandamus proceeding it is proper that a decision on the question of damages which the petitioner may eventually suffer as a result of his result being withheld and not being announced at the proper time should be given. We have read the order of the learned single Judge and it is quite clear that the costs have been awarded, because, to use his own words : "the result of the spreading out of the so-called enquiry for 15 months has been that the petitioner has suffered a loss which may prove incalculable." It appears therefore that the respondents were made to pay Rs. 500/- not as legal costs incidental to the writ petition but by way of damages because of the delay in completing the enquiry. We have in mind the provisions of Ss. 35 and 35A of the Civil Procedure Code. No doubt the rule that costs should follow the event would apply even to

proceedings under the writ jurisdiction, unless of course some special reason can be shown for making an order otherwise. But an order of costs is one thing, and an order of costs which is really an order for damages independently of the conduct of the suit or proceeding is quite another matter. We will consequently have to set aside the order so far as it is an order for damages.

21. The question arises as to what should be the position in regard to costs in this matter. The petitioner respondent is a student who felt compelled to file the petition because he was desirous of obtaining admission to the University which he could not do until the Board had come to a final conclusion and declared his result. He did give the Board two month's time, and he succeeded in getting an order for a mandamus in his favour, the terms of which alone have been varied by us. We think that in the circumstances the petitioner should have his costs of the first Court, which we assess at Rs. 100/-.

22. Learned counsel for the petitioner-respondent urged after we had dictated the above that the Board could not cancel the High School certificate now and make such cancellation the basis for cancellation of the Intermediate examination of the petitioner. We do not think that in these proceedings we are called upon to adjudicate upon this contention because we do not know what will be the ultimate result or outcome of the examination of the matter by the authority concerned and- we cannot surmise the reasons of their order.

23. We therefore allow this appeal and in substitution of the order passed by the learned single Judge on 22--7-1958 in Writ Petition No. 2292 "of 1957, we direct that an order be issued to the Board of High School and Intermediate Education. U. P., directing that the statutory duty cast upon the Board under Chapter VI, Rule 1 (1) of the Regulation of the Board in regard to the present matter be completed and the action taken be announced by the Board within thirty days of this date. In the circumstances of this case the petitioner will get the costs and counsel's fee so far as the hearing in the first Court is concerned which we assess at Rs. 100/-. In regard to this appeal costs will be on the parties.