
(1999) 04 AHC CK 0124
In the Allahabad High Court
Case No : Writ Petition No. 22457 of 1998

Tushar Gupta

APPELLANT

Vs

Madhyamik Shiksha Parishad & Ors.

RESPONDENT

Date of Decision : 02-04-1999

Acts Referred:

Citation : (1999) 04 AHC CK 0124

Hon'ble Judges : I.M.Quddusi, J

Final Decision : Allowed

Judgement

I. M. Quddusi, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for the respondents. This writ petition has been filed with the following prayer

(i) issue a writ, order or direction in the nature of certiorari quashing the show cause notice issued by the respondent No. 3 and the order of cancelling the result of the petitioner by respondent No. 2 (dated 151097 and 9498).

(ii) issue a writ or direction in the nature of mandamus directing the respondent Nos. 2 to 3 to declare the result of the petitioner of the Intermediate examination, 1997.

(iii) issue any other writ, order or direction as this Hon''ble Court may deem fit and proper.

(iv) to award the cost of the petition.

2. Learned Counsel for the petitioner has submitted that earlier when the result of the petitioner was not declared, a writ petition No. 1120 of 1998 was filed with the prayer that a writ in the nature of mandamus be issued directing the respondent to decide the matter and declare the result of the petitioner within 15 days. But as the result of the petitioner was cancelled the aforesaid writ petition was dismissed on the ground that his result was cancelled.

3. The necessary facts draped in brevity are that the petitioner appeared in the Intermediate Examination, 1997 from the U.P. Board of High School & Intermediate as regular candidate and he was allotted Roll No. 492077. It has been averred in paragraph 8 of the writ petition that on 1131997 examination for General Hindi was held. While the petitioner as was writing the answers on the answer book at a bout 1 1/2 hours after the examination had started, flying squad came to the college for routine checking. The petitioner was busy at that time in writing the answers of questions and was not aware of the fact that someone had thrown "chit" on the ground which was lying beneath the desk of the petitioner and since the "chit" was lying beneath his desk, the flying squad kept the responsibility of the same upon the petitioner. Ultimately, the petitioner was chargesheeted. In the chargesheet, it was alleged that the petitioner had kept the slip/chit inside his answer book/ on his desk/inside his shoes/inside his pocket/ was copying from the recovered material/was trying to copy the same. This chargesheet was issued on 151097. The petitioner denied the charge levelled against him and stated that the "chit" which was lying on the ground had no concern with him and he was busy in writing the answers and all of sudden, he was asked by the Invigilator about the "chit" in question and he replied that he had no concern with it and said that he was not copying and that they can tally the chit with his answer book, ii" they had any suspicion.

4. This Court vide order dated 167 1998 had summoned the Answer Book and the other relevant record and the explanation which was submitted by the petitioner that time when the "chit" was recovered. In that explanation dated 1131997, he had stated that he was not using unfair means at all and the "chit" was recovered from near the side of his table and was lying on the ground. The remarks of the Examiner also shows that the petitioner did not take help of the said "chit" and the said fact has been indicated in the report of the Examiner. This Court has also perused the "chit" and it appears that the "chit" was moulded earlier. The writing on the slip is also quite different to the writing of the Answer book of the petitioner and on the chit/slip only on one side, some words have been written, but on the back side, it is blank, in the chargesheet, no specific charge has been leveled against the petitioner about the recovery of "chit" from a particular place or from the possession of the petitioner and so many places have been indicated in the chargesheet which is in cyclostyle/mechanical way. When the "chit" was recovered, it should have been indicated as to from which part of the body or cloth or place, the chit was recovered. At one place, it has been mentioned in the chargesheet that he had denied to give his statement at the place of incident i.e. examination hall and this fact is wrong as there is already a statement of the petitioner as indicated above which was written by him at the place of incident and thus, it is clear that from very beginning, he is saying that the "chit" was found near his desk lying on the ground. Therefore, possibility cannot be ruled out that some body else would have thrown it while the flying squad was seen coming and for this, the petitioner could not have been punished. As such, atleast, a reasonable doubt

has arisen whether the petitioner was having "chit" or the same was recovered from near his desk.

5. In view of the facts and circumstances mentioned above, the writ petition succeeds and is here by allowed. The order dated 23 21998 cancelling the result of the petitioner is quashed. A writ in the nature of mandamus is issued commanding the respondents to declare the result of the petitioner of Intermediate Examinations, 1997 and issue him mark sheet with in a month from the date of presentation of a certified copy of this order. The petitioner shall deposit the mark sheet, if any, issued to him under the head "W.B.". No order as to costs.