

(2024) 01 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8494 Of 2020

Uday Shankar Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Bihar Intermediate Education Council (Establishment of Colleges and Conduct of Examination) Rule, 1994 — Rule 12(1), 12(10)

Citation : (2024) 01 PAT CK 0045

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Nivedita Nirvikar, Mrityunjay Kumar, Jitendra Kumar Roy, Girijesh Kumar

Final Decision : Dismissed

Judgement

1. The petitioner has filed the instant writ application being aggrieved by the Office Order, as contained in Memo No. BSEB (SS) 173/LS/17-DAR/EX/4288/D-20, dated 21.02.2020, issued by the Secretary, Bihar School Examination Board, Patna (Annexure 1), whereby the result of Intermediate of Science Examination, 2004, of the petitioner, having Roll Code 5109 and Roll No. 10069, has been cancelled.

2. The brief facts of the case is that the petitioner, after passing out his matriculation examination, took admission in C. M. College, Darbhanga, in the Sessions 1999-2001 of Intermediate of Arts in the year 1999. He appeared in the said examination in the year 2001 and passed with second division. He again got himself enlisted with the Bihar Intermediate Education Council, in the year 2002 in Intermediate of Science from the L.C.S. College, Darbhanga, on the basis of his matriculation certificate of the year 1999 as a regular student in Science stream and appeared in the Intermediate of Science Examination, 2004 and passed with First Division. On the basis of result of Intermediate of Arts Examination, 2001, the petitioner also got admitted in Graduation course.

3. A notice was published by the Bihar School Examination Board in the Hindi newspaper 'Dainik Jagran' on 26.04.2013, stating therein that the Intermediate of Science certificate obtained by the petitioner in the year 2004 stands cancelled on the ground that he had also appeared in the Intermediate Examination held in the year 2001 in different stream and had passed the said examination with Second Division. Therefore, his appearance in the Intermediate Examination for the second time in different stream is not in accordance with Rules/Regulation.

4. The petitioner challenged the aforesaid notice issued by the Bihar School Examination Board before this Court, in CWJC No. 9556 of 2013. A co-ordinate Bench of this Court arrived at the finding by its order, dated 26.07.2017, that after examining the statutory provisions, the Court is satisfied that the petitioner could not have been allowed to be admitted in the Intermediate of Science course after having passed the Intermediate of Arts Examination within three years, since the second enlistment was not permissible under the Rules. As a matter of fact, the petitioner cannot be allowed to continue with two certificates. This being legally impermissible, the co-ordinate Bench dismissed the writ application.

5. The petitioner, being aggrieved by the dismissal of his writ application, preferred L.P.A. No. 1122 of 2017, and a Division Bench of this Court disposed the appeal, vide order, dated 29.11.2019, observing that in view of the discussions made above, we allow the appeal setting aside the order dated 26.07.2017 passed by learned single Judge in C.W.J.C. No. 9556 of 2013. The impugned notice no. 23 of 2013 issued in the newspaper dated 26.04.2013, whereby the result of the appellant pertaining to Intermediate examination of 2004 was cancelled is modified to the extent that the said notice shall be treated as a show cause notice to the appellant, as to why his result pertaining to the examination year 2004 and the certificate issued by the Board be not cancelled in this regard on the ground that he had appeared in the Intermediate examination in the year 2001 and passed the same. The appellant shall be required to submit his reply to the show cause notice before the Secretary of the Board within four weeks from today giving his cell phone number and postal address. Thereafter, the Secretary of the Board shall fix a date of hearing and communicate the same to the appellant by post as well as by sending message on his cell phone. The appellant shall be required to be present on the date so fixed by the Secretary of the Board for personal hearing. After considering the show cause reply of the appellant and after giving an opportunity of personal hearing to him, the Secretary shall be required to pass a speaking order in accordance with law.

6. In view of the aforesaid observation of the Division Bench passed in LPA No. 1122 of 2017, the Bihar School Examination Board, after giving opportunity to the petitioner and after hearing him, has passed the impugned order, dated 21.02.2020, by which the result of intermediate of Science Examination, 2004 of the petitioner, having Roll Code 5109 and Roll No. 10069 has been cancelled.

7. Learned Senior Counsel for the petitioner argued that on the basis of misinterpretation of the provisions contained in Bihar Intermediate Education Council (Establishment of Colleges and Conduct of Examination) Rule, 1994 (in short, "1994 Rule"), the Secretary, Bihar School Examination Board, has cancelled the result of the petitioner after more than fifteen years of its issuance for no fault on the part of the petitioner. The petitioner has obtained the qualification of Intermediate of Science with bona fide intention. There is no change in the date of birth or identity of the petitioner. The Bihar School Examination Board itself has accepted the registration form of the petitioner and only then, the petitioner appeared in the examination held in the year 2004. She further argued that Rule 12 (10) of the 1994 Rule provides that enlistment shall be valid for examinations of three consecutive years only. Since the petitioner was enlisted/registered with the Bihar Intermediate Education Council in the year 1999, through C. M. College, Darbhanga, and passed the Intermediate of Arts Examination, held in the year 2001. After three consecutive years, from 1999, in the year 2002, the petitioner got himself admitted in L.C.S. College, Darbhanga, in Intermediate of Science and passed the said examination also in the year 2004 with First Division. The petitioner never concealed his identity or changed his date of birth, therefore, there was no mala fide intention on the part of the petitioner behind getting second registration in Intermediate of Science.

8. On the other hand, learned Counsel for the Bihar School Examination Board submits that the impugned office order does not suffer from any illegality and the same has been passed after following the direction, issued by the Division Bench of this Court, in LPA No. 1122 of 2017. The petitioner has been provided opportunity of filing show cause reply and also personal hearing in this matter. He further submits that as per Rule 12 (1) of 1994 Rule, all students admitted to the Intermediate Courses shall be required to enlist themselves with the Council, which shall be valid for examination of three consecutive years only, which means that the enlistment/registration of the petitioner was firstly done in the year 1999 as student of Intermediate of Arts from C. M. College, Darbhanga, the same was valid for the academic sessions 1999-2001, 2000-2002 and 2001-2003, but the petitioner again enlisted himself afresh as a student of Intermediate of Science student from L.C.S. College, Darbhanga in the year 2002, as would be evident from the mark sheets of the year 2001 and 2004. In view of the aforesaid specific provisions, the petitioner was not entitled to seek fresh enlistment in the year 2002, when his enlistment of the year 1999 was valid up to the year 2003.

9. I have heard learned Counsel for the parties concerned and have gone through the materials available on record, including the impugned order.

10. The relevant fact, which emerges from the record, is that after having passed the matriculation examination in the year 1999, the petitioner got himself enlisted with the Bihar Intermediate Education Council as a student of Intermediate of Arts from C. M. College, Darbhanga, and after passing the

Intermediate of Arts examination in the year 2001, the petitioner took admission in three-years graduation degree course in 2001 itself.

11. From perusal of the impugned order, it appears that after passing the Intermediate of Arts Examination in the year 2001, the petitioner again got himself enlisted with the Bihar Intermediate Education Council as a student of Intermediate of Science, from L.C.S. College, Darbhanga, in the year 2002 and in the same sessions, the petitioner appeared in the examination as a regular student in B.A. Part I and Part II as well as Intermediate of Science Examination, 2004.

12. Having considered the facts and Rule and the finding arrived at by the Secretary, Bihar School Examination Board, in its impugned order, dated 21.02.2020, I am of the considered opinion that the petitioner could not have pursued the Bachelor of Arts course as a regular student and at the same time, the Intermediate of Science course also as a regular student simultaneously.

13. Accordingly, the Bihar School Examination Board has rightly cancelled the result of Intermediate of Science Examination of the petitioner held in the year 2004 after giving due opportunity to him

14. In the result, this writ application is dismissed.

15. There shall be no order as to costs.