

(2014) 03 MP CK 0036
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 478/2010

Vijay Singh Tomar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2

Citation : (2014) 3 MPHT 175

Hon'ble Judges : Sheel Nagu, J; M.K. Mudgal, J

Bench : Division Bench

Advocate : K.S. Tomar, Sr. Advocate and J.S. Kaurav, Advocate for the Appellant; Praveen Newaskar, Dy. Govt. Advocate and R.B.S. Tomar, Advocate for the Respondent

Judgement

1. This writ appeal preferred u/s 2 of Madhya Pradesh Uchcha Nyayalaya Khand Nyayapeeth Ko Appeal Adhiniyam, 2005 assails the final order dated 16-9-2010 passed by learned Single Judge in Writ Petition No. 3737/2010, whereby petition in question has been dismissed. Learned Counsel for the rival parties are heard.

2. The appellant has moved I.A. No. 17126/10, an application for adding the grounds in the writ appeal, which has not been considered. However looking to the contents of the said I.A. and the claim of the appellant being untenable in law as enunciated below, the said I.A. No. 17126/10 deserves to be and is, therefore, rejected.

3. Learned Counsel for the appellant assailing the order of the learned Single Judge has contended that sole reason, which persuaded the Single Judge to pass the impugned order was that one of the mark sheet of Class 10 was forged as the appellant cannot appear in two separate examinations conducted by separate Boards in the same year. The mark sheets were marked as A-5 (the one issued by the M.P. Board of Secondary Education) and the other as A-6 (issued by the Hindi Sahitya Sammelan Prayag).

4. It is further contended by relying upon the contents of LA. No. 17126/10 (an application for adding the grounds in the writ appeal) and placing reliance on the decision in case of *The Punjab School Education Board, S.A.S. Nagar Vs. Harinder Kaur Chandhok*, that it is possible for a person to appear in two examinations in the same academic year and, therefore, no adverse inference ought to have been drawn merely because he had appeared in two separate examinations of Class X conducted by distinct Boards.

5. Per contra, the learned Counsel for the respondent has supported the order of the learned Single Judge and stated that the petitioner/appellant has played fraud and has further referred to the order of the Commissioner dated 22-6-2010 (P-1) that the Commissioner further found the appointment of petitioner as Panchayat Karmi to be unlawful as at the time of appointment, i.e., on 2-9-2008, the petitioner/appellant Vijay Singh Tomar was occupying the office of Panch in the Gram Panchayat where he was appointed as Panchayat Karmi and it was only on 20-10-2008 that his resignation from the said office of Panchayat was accepted.

6. Considering the arguments of the rival parties, this Court finds it strange that despite filing both the mark sheets of Class X as A-5 and A-6 alongwith writ appeal, no explanation is offered by the petitioner/appellant as to how and in what circumstances, the petitioner/appellant was compelled to appear in two separate examinations of Class X conducted by two separate Boards. Though ground "C" in the writ appeal discloses that the examination of Class X conducted by M.P. Board of Secondary Education was conducted in March, 1909 whereas the other examination conducted by Hindi Sahitya Sammelan Prayag was conducted in December, 1998, but that reason is not enough.

7. Moreso, the explanation contained in Ground C of this appeal cannot be taken up and considered at the writ appeal stage.

8. Moreover, the explanation given is not satisfactory. No reason has been assigned as to why there was occasion to appear in two separate examinations of Class X conducted by two separate Boards and also as to why the mark sheets pertaining the Class X Examination conducted by M.P. Board of Secondary Education was not produced for recruitment to Panchayat Karmi. The reason appears to be obvious. The petitioner/appellant produced the mark sheet issued by the Hindi Sahitya Sammelan showing the petitioner/appellant to have secured a 1st division. On the other hand, the petitioner had secured a 3rd division as per the mark sheet issued by the M.P. Board of Secondary Education.

9. The petitioner/appellant has also failed to disclose as to whether law permits any such repeat attempt to appear in Class X examination conducted by two separate Boards in the same academic year to improve the percentage of marks.

10. Reliance on the decision of the High Court of Punjab and Haryana is of no avail to the petitioner as the facts attending the cited case were different where a regular student failed in the Matriculation examination in March, 1986,

whereafter he successfully undertook the supplementary examination conducted in September, 1986. Thereafter, the said student was allowed by the Punjab School Education Board to take part in + 2 examination in April, 1987. In this factual background, the Division Bench of Punjab and Haryana High Court held that the candidature cannot be cancelled on the ground that requirement of one year gap between two examination was not fulfilled. In view of the above, this Court does not deem it appropriate to unsettle the view taken by the learned Single Judge in the impugned order.

In view of the above, no case for interference is made out, and therefore, this writ appeal stands rejected sans cost.