(1997) 07 GAU CK 0010

Gauhati High Court

Case No: Civil Rule No. 199 of 1989

Rasaraj Debnath		APPELLANT
	Vs	
Calcutta University and Another		RESPONDENT

Date of Decision: July 22, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 35
- Constitution of India, 1950 - Article 226

Citation: AIR 1998 Guw 112

Hon'ble Judges: N.G. Das, J

Bench: Single Bench

Advocate: N. Majumdar, for the Appellant; B. Das, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.C. Das, J.
This application under Article 226 of the Constitution of India has been filed by one Sri Rasaraj Debnath who appeared, as an external candidate, in the B.A. Compartmental Examination of the Subject English under Calcutta University on 9-7-1987, 14-7-1987 and 15-7-1987 held at the Women''s College Centre, Agartala for issuance of a Writ of Mandamus directing the respondents to declare him to have passed in the aforesaid Compartmental B.A. Examination.

2. I have heard Mr. N. Majumdar, the learned counsel appearing on behalf of the petitioner and Mr. B. Das, the learned senior counsel appearing on behalf of the respondents.

3. The petitioner''s case, shortly put, is that in the year 1986 he appeared in the B.A. Examination of the Calcutta University as an external candidate. But he could not secure pass mark in the subject English arid hence he was allowed a chance to sit for the Compartmental Examination for the same subject which was held on 9-7-1987, 14-7-1987 and 15-7-1987 at the Women''s College Centre of Agartala. The petitioner was granted Admit Card indicating his Roll No. 117/MCXA/3 (Annexure-3). The petitioner appeared in the Compartmental Examination and he wrote his Roll Number as 117/MCXA/3 in the answer scripts. The result was published on 31-3-1988 and on obtaining a Booklet containing the result of the aforesaid Compartmental Examination of Calcutta University, the petitioner came to know that he passed the B.A. Compartmental Examination of Calcutta University securing 95 marks in total out of 300. Thereafter the petitioner went to the College to get his mark-sheet when officials of the College informed him that the Roll Number which he wrote was of another candidate and that his Roll Number was 117/MCXA/0005. He was, however, supplied with the mark-sheet which showed that he was absent in all the three papers (Annexure-3). But Principal of the Women''s College, Agartala in the mean time issued three Memoranda contained in Annexures ''D'', ''E'' and ''F'' which would show that no candidate having the Roll Number as 117/MCXA/0005 appeared in the B.A. Compartmental Examination of that year. The petitioner, therefore, submitted a representation to the Controller of Examinations, Calcutta University but he was not favoured with any reply. So, he again sent a reminder by registered post with A.D. and the A.D. Slip which he received showed that that reminder was received by the Controller of Examinations Calcutta University on 6-1-1988. But even though the petitioner approached the Controller of Examinations to cause enquiry into the matter and issue him a corrected mark-sheet, the Controller of Examinations, Calcutta University paid no heed to that and hence the petitioner has come up before this Court to have his result declared.

4. This writ petition has been resisted by the respondents by filing an affidavit-in-opposition wherein it has been admitted that the petitioner appeared at the B.A. Compartmental Examination in 1987 in English Papers-I, II and III with Roll No. 117/MCXA/3 as is evident from the type copy of Centre Certificate, Admit Card and Top Sheet. But it has been contended that the correct Roll Number of the petitioner was 117/MCXA/5 and this mistake was due to the reason of subsequent anomaly. It has been alleged that the petitioner used wrong Roll Number, namely, 117/MCXA/3 although his correct Roll Number was 117/MCXA/5 and hence the petitioner has no leg to stand for getting relief.

5. Before entering into the rival contentions it is considered pertinent to mention here that under para 7 of the writ petition the petitioner stated that Principal of the Women''s College issued, three Memoranda contained in Annexure-''D'', ''E'' and ''F'' which would show that no student having Roll Number 117/MCXA/0005 appeared in the Compartmental Examination of English in that year. The respondents dealt with this contention of the petitioner under para ''13 of their counter affidavit as follows:--

That with regard to averments in paragraphs 7 to 9 of the writ petition it is suffice to what has been stated in the earlier paragraphs of this reply; However, it is reiterated that the petitioner used the Roll Number of another candidate. The University was pursuing the matter. On getting information from the petitioner that he appeared at the examination with Roll No. 117/MCXA/3 the concerned Head Examiner in English Paper-I, II and III at the B.A. Compartmental Examination, 1987 was contacted and was requested to furnish the marks with reference to the Registration No. NC 1521 of 1984-85. Accordingly the marks of paper-II and III were received on 11-4-1989 and that of Paper I on 18-1-1990.

6. The above statement in the counter affidavit clearly shows that the respondents do not deny that Memoranda contained in Annexures-''D'', ''E'' and ''F'' were issued from the office of the Women''s College, Agartala. Now a bare perusal of these three documents will clearly show that no candidate having the Roll Number 1177 MCXA/0005 appeared in that English Compartmental Examination. These documents clearly indicate that in total 11 candidates sat for the examination and the answer scripts of those 11 candidates were sent to the Calcutta University. This fact has not been denied. But it is surprising to note that even though it is an admitted fact that answer scripts were received, the respondents did not think it necessary to disclose what marks the petitioner obtained in those three papers. The petitioner categorically stated that as per the Booklet which was published he obtained 95 marks out of 300 marks i.e. he passed the examination having secured more man 30%. The respondents did not deny the fact that the petitioner did not obtain 95 marks in those three papers. Moreover, the Certificate dated 13th May, 1988 issued by the Principal, Women''s College contained in Annexure-A clearly shows that this petitioner''s Roll Number was 117/MCX A/3 and he appeared in all the papers of the aforesaid English Compartmental Examination. The respondents did not deny this fact. Annexure-B which is the Admit Card of the petitioner shows that his Roll Number was 117/MCXA/3. When all these facts came to light during arguments of Mr. Das, the learned senior counsel for the respondents, Mr. Das sought time for furnishing the correct mark-sheet. Accordingly by the order dated 30-6-1997 two weeks'' time was granted fixing the next date on 14-7-97. But no mark-sheet was submitted. Thereafter also Mr. Das was asked if he would be in a position to furnish the mark-sheet or the answer-scripts. A few days time was again allowed but he failed to produce mark sheet.

7. Therefore, in the back-ground of all these facts I am constrained to opine that the stance taken by the respondents docs not at all appeal to me. Was it not incumbent upon the respondents to cause an enquiry to find out as to who was at fault? But the records do not show that the Controller of Examinations thought it worth his while to cause an enquiry. Without causing any sort of enquiry he straightway assumed that the candidate was guilty and as such he has to be deprived of the result of the examination. Such an attitude of the Calcutta University must, in the circumstances, be said to be unjust, harsh and untenable. The petitioner''s clamour for his rightful result on the detection of his Roll Number seems to me indefeasible and right in the circumstances.

8. For the aforesaid reasons the petition is accepted and the respondents are accordingly directed to declare the petitioner to have passed in the aforesaid Compartmental Examination held on 9-7-1987, 14-7-1987 and 15-7-1987.

9. Now as regards the costs, it is submitted by learned counsel for the petitioner that the petitioner has lost the best period of his life for the callousness and unjust attitude of the Calcutta University and hence he should be adequately compensated. The case is pending before this Court for over 7 (seven) years and on a number of occasions the case had to be adjourned on the prayers of the learned counsel for the respondents. Therefore, considering all the facts and circumstances this writ petition is allowed with costs which I quantify at Rs. 10,000/- (ten thousand). This order shall be implemented within a period of 6 (six) weeks.