

(2009) 06 MP CK 0002
Madhya Pradesh High Court
Case No: W. A. No. 402 of 2009

Board of Secondary Education,
Bhopal

APPELLANT

Vs

Rakesh Kewat and Another

RESPONDENT

Date of Decision: June 29, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 - Section 2

Citation: (2010) ILR (MP) 3 : (2010) 1 MPLJ 181

Hon'ble Judges: R. K. Gupta, J; Dipak Misra, J

Bench: Division Bench

Advocate: Vivek Mourya, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dipak Misra, J.

In this appeal preferred u/s 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 defensibility of the order dated 23-3-2009 passed by the learned Single Judge in W.P. No. 12969/08 is called in question.

The facts which are requisite to be exposited are that the writ petitioner, the respondent No. 1 herein, invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India for issue of a writ of mandamus to the Board of Secondary Education, Bhopal (for short "the Board") to declare his result of Class XII Examination which he had undertaken in March, 2008. In consequential relief it was prayed that on declaration of such result if it is found that the petitioner was entitled to appear in the supplementary examination to give a direction to reevaluate

the answer scripts or to permit him to appear in the supplementary examination and to issue a further direction for taking provisional admission in college. As is evident, the undisputable facts are that the writ petitioner, the respondent No. 1 herein, was informed about the cancellation of his results on a complaint of copying allegedly reported by the Centre Superintendent. Subsequently the information was found to be incorrect. Roll number of the respondent No. 1 had got mixed up with another roll number. After the mistake was detected his result was declared on 26-8-2008 and the mark-sheet was issued on 27-8-2008 wherein he was shown having supplementary in the subject of English (General). By that time the supplementary examination was already over. The Board realising its mistake permitted him to appear in the examination to be held in the year 2009.

It is noticeable from the order of the learned Single Judge that he had declined the relief of revaluation by placing reliance on Regulation 119 of the Board of Secondary Education Regulation, 1965 and the decision rendered in [M.P. Board of Secondary Education and Another Vs. Ku. Vinita Rupra](#), . The learned Single Judge further took note of the fact that as the supplementary examination has already been held in July, 2008 no direction could be given to hold a special supplementary examination for the writ petitioner. However, the learned Single Judge took note of the fault committed by the Board which resulted in the loss of entire year forcing the petitioner to reappear in the Class XII Examination, 2009. He expressed anguish about the mental agony that had been suffered by the petitioner therein because of the approach of the Board and the concomitant facts and awarded compensation of Rs. 25,000/- for the loss of entire year. A direction was given to pay the said amount within a period of sixty days from the date of communication of the order. Liberty was granted to the Board to recover the same from the officer concerned after fixing the liability in accordance with law.

We have heard Mr. Vivek Mourya, learned Counsel for the appellant on the question of admission.

It is submitted by Mr. Mourya, learned Counsel for the appellant that the learned Single Judge has fallen into serious error by awarding compensation to the respondent No. 1 without taking note of the fact situation that when the Board conducts the examination at a large scale mistakes of this nature are likely to occur. It is his further submission that in the absence of any kind of impropriety by the Board awarding of compensation is absolutely unjustified. It is canvassed by him that the action of the Board was not mala fide or biased and hence, no compensation should have been awarded.

To appreciate the submissions raised by Mr. Mourya, learned Counsel for the appellant we have bestowed our anxious consideration and carefully perused the pleadings and the order passed by the learned Single Judge. On a scrutiny of the factual matrix it is clear as crystal that the result of the appellant was cancelled treating his roll number to be 283616996 whereas his roll number was 283616906. It

is vivid that an erroneous information was given by the Centre Superintendent. The mistake was detected in the month of August, 2008. It is luminescent that the writ petitioner was treated to be supplementary in English (General) for the said year but by the time result was declared the supplementary examination was over. The submission of Mr. Mourya is that when the Board conducts an examination for lakhs of students such mistake can occur and there is no bias of mala fide. The fact remains that the Board had treated the respondent No. 1 to be involved in copying, though he was not involved. His result was cancelled. The mistake was rectified later on, but by that time, time had expired to sit in the supplementary examination. This led to waste of one year of the respondent No. 1. The Board, as it seems, tried to redeem the situation by permitting him to appear in the 2009 Supplementary Examination. What appears to be redemption for the Board is humiliation to the writ petitioner, respondent No. 1 herein, and waste of his time. What flows with the efflux of time, cannot always be redeemed. It is not loss of money that one can recover. It is not a case where one is deprived of promotion and given promotion with retrospective effect with all consequential benefits. The factual scenario, as is luculent, put the writ petitioner in such a situation that he had to lose a valuable span of one year. The time that passed, never comes back. It does not revisit. One may, hypothetically sit in a time machine and reconstruct the past but in the sphere of living reality the clock is never put back. It is an impossible facet of life. It is not only difficult to chain time but well nigh, impossible to arrest it even for a while. The Board, which has been bestowed the responsibility under the Statute and the Regulations to conduct the examination, is expected to have the requisite expertise and is expected to be extremely cautious and vigilant. No acts of the Board should be done in a hurry as it deals with the life and career of young students. Today's youth is tomorrow's social governor. Any authority while putting forth an allegation of copying has to be really careful so that, an innocent student is not put to unnecessary harassment and suffer mental agony. The anguish which a student suffers because of these kinds of faults can be very well imagined. Not for nothing it has been said, he who enjoys the power has to act with commensurate responsibility. The Board cannot advance a specious plea that it has to conduct examination for lakhs of students and, therefore, this kind of mistake may sometimes happen because for the Board it may be conducting an examination but for the students it is the lifetime participation in life and for life of a student. A single lackadaisical act of the Board can mar the career and destroy the life. No Statutory Authority which has the responsibility towards the students can be unfair to them. It is worth noting that a student who is at fault is bound to suffer. He who gets involved in copying or indulges in malpractice, has to face the wrath of law. But, a pregnant one, he who is innocent, cannot become a victim because of fault of the Board. Whoever may be the authority at fault, it is the vicarious liability of the Board to pay compensation to the grieved student, the writ petitioner. Therefore, we are disposed to think that the learned Single Judge has appositely awarded compensation of Rs. 25,000/- keeping in view the relief sought for by the writ

petitioner, for in the relief clause there is a prayer for grant of compensation.

Ex consequent, we perceive no merit in this appeal and accordingly, the same stands dismissed in limine.