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**(1958) 05 MP CK 0004**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** C. Miscellaneous Petition No. 22 of 1958

Gulabrao

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** May 2, 1958

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1958) JLJ 697

**Hon'ble Judges:** H.R. Krishnan, J; A.H. Khan, J

**Bench:** Division Bench

**Advocate:** P.L. Dube, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

H.R. Krishnan, J.

This is an application under Article 226 of the constitution for issue of an appropriate writ or order of Mandamus or direction on the respondent No. 2 to admit the petitioner to its Intermediate Examination in Arts, which it is alleged it has wrongfully refused.

2. The petitioner passed the Matriculation examinations held by the Board of Examinations Nagpur, in 1956. He was admitted in the Victoria College, Gwalior, and later on to the Vikrama Ditya Intermediate College, Rajgarh in the Intermediate classes where he has studied for two years. When however, he applied, along with the other scholars for admission to the I A. examination held by the Board of Secondary Education Madhya Bharat region, M. P., it was refused, because under Regulation 2 in Chapter -XVII of the Board's Regulations, the Matriculation Examination of the Nagpur Board is not one of those declared equivalent to this Board's High School Examination. No doubt, the time for the I. A. Examinations, 1958, is over but there are supplementary examinations in the near future, as well

as the examination of 1959.

3. However hard it be on the petitioner to be informed at the last moment that he cannot take the examination for which he has been preparing for two years, this Court can interfere only, in certain circumstances; firstly, the law or regulation or rule applied to his case is ultra vires of the Constitution; or secondly, that under them he is really entitled to appeal, but is kept back by a misapplication or misconstruction of the relevant provision. Obviously, the application is not on the first ground; but as will presently appear it is apparently on the second. The respondent No. 2 the Board of Secondary Education M. B. region has been constituted by the Madhya Bharat Secondary Education Act (51 of 1950). It is empowered to hold a number of examinations but we are concerned only with the Intermediate Examination in Arts. Under its Regulations which are equivalent to law, being made under S. 17 of the Act, no student can be allowed to sit for the I. A. Examination unless he has passed the Board's own High School Examination or an examination which by the Regulations has been declared equivalent to it. Regulation 2 in Chapter XVII has a long list of as many as 31 headings of examination held declared to be equivalent to the Board's High School's examination but the Matriculation Examination held by the Nagpur Board is not one of them. This in fact is admitted, by the applicant. Still he urges that having been admitted in the colleges within the Board's jurisdiction, and having undergone the prescribed course of study satisfactorily, he is now entitled to take the Examination.

4. He has no doubt been seriously inconvenienced by an oversight on his own part and on the part of college authorities committed with the best of intentions. It appears that the Nagpur Board used to hold examinations at different places outside its jurisdiction, including Indore. The applicant took the said examination at Indore, at a time when it was perfectly easy for him to have taken the Madhya Bharat High School Examination there. Afterwards, he came with his father on transfer to Gwalior, and was admitted in the Intermediate Arts (1st year) in a college here. Now the proviso to rule No. 2 Section C made under Regulation 2, Chapter XX of the Regulations, contains a caution that no scholar should be allowed to migrate from any school or college outside the jurisdiction of the Board preparing candidates for an examination, until at the time of his admission to the college he was eligible for admission to the Intermediate Classes of a college in the Board's jurisdiction under Regulation 2 Chapter XVII of the Regulation. Whether there is such a proviso or not, it was only common prudence that the scholar and the college should have satisfied themselves that if admitted, he would be able to sit for the Intermediate examination after undergoing the prescribed course of study. In the present case they seem to have assumed that he would be able to do so, a perfectly understandable position, but wrong in view of the omission of the Nagpur Board's examination from the list of equivalent examinations in Regulation 2 Chapter XVII. The applicant transferred himself to another college at Rajgarh as his father was transferred to that district and satisfied the college authorities that he had attained

that amount of proficiency in his subjects as would enable him to sit for the Board's I. A. examination; but he still lacked the qualification required by Regulation 1 in Chapter XVII. When this was detected the Board found themselves unable to permit him to take that examination, unless and until the Regulation 2 in that Chapter is amended by the addition of the Nagpur Board, the Madhya Bharat Board cannot do so.

5. Thus, there is no prima facie ground in this application: it is dismissed summarily.

A.H. Khan, J.

6. This is rather an unfortunate case. The petitioner having passed the Matriculation Examination from the Nagpur Board in 1956 took admission in the Victoria College, Gwalior, for the Intermediate Class. Consequent upon his father's transfers to various places, the petitioner prosecuted his studies in different Colleges of Madhya Bharat. But it was overlooked, both by the petitioner as also by the Principals of the various Colleges of Madhya Bharat in which he studied, that according to Regulations (Chapter 17 Rule 2) made by the Board of Secondary Education constituted under the Madhya Bharat Secondary Education Act (Act No. 51 of 1950), that the Matriculation examination of the Nagpur Board was not recognised for the purpose of enabling the candidates to enter upon the courses of study prescribed for Intermediate Examination on a reciprocal basis. In utter oblivion of these regulations, the petitioner continued his studies for two years. At the time of obtaining form for appearing in the Intermediate Examination of the Madhya Bharat Board, the mistake was discovered and the Madhya Bharat Board refused permission to the petitioner to appear in the Intermediate Examination of 1958. The examination is now over and it is against this refusal of permission that the petitioner has filed this application under Art. 226 of the Constitution of India.

7. However unfortunate the mistake may be, the Madhya Bharat Board has refused permission according to its Rules and Regulations. The Board itself is constituted under the Madhya Bharat Secondary Education Act and the Regulations made under it have the force of law. It seems that the examinations recognised by the Board as equivalent to its Matriculation Examination are on reciprocal basis. Since the Nagpur Board did not recognise the Madhya Bharat Board, the Madhya Bharat Board too did not recognise the Matriculation Examination of the Nagpur Board. A list of examinations which have been recognised by the Madhya Bharat Board as equivalent to its own examination is given in Chapter 17 (2) of the Regulations. It contains no mention of the Matriculation examination of the Nagpur Board. The section of the Regulations, with which we are concerned in this case, does not in any way offend the Act under which the Regulations have been made. There is no breach of the provisions of any law and there is no violation of any fundamental right either. In these circumstances there is no reason to issue any writ or direction to the Board of Madhya Bharat Secondary Education.

8. There is another reason also for dismissing this petition. The examination in which the petitioner wanted to appear commenced from 12-3-58, this petition was filed on 25-4-58, namely after the examination was over. The prayer for a declaration that the petitioner be declared eligible to appear in the Intermediate Examination of 1958 is futile.

9. For reason stated above I agree with my learned brother that the petition be dismissed.