

(2000) 05 MP CK 0068

Madhya Pradesh High Court

Case No: Letters Patent Appeal No. 70 of 2000

Ku. Kalpana Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: May 2, 2000

Acts Referred:

- Kurukshetra University Calendar, 1970 - Ordinance 10, Ordinance 19, Ordinance 48
- Madhya Pradesh Board of Secondary Education Regulations, 1965 - Regulation 139, 2(16), 97
- Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 - Section 28

Citation: (2000) ILR (MP) 583 : (2000) 4 MPHT 408 : (2000) 2 MPLJ 599

Hon'ble Judges: Bhawani Singh, C.J; A.K. Mishra, J

Bench: Division Bench

Advocate: R.B. Singh and S.N. Tiwari, for the Appellant; J. Choudhary and Jaylaxmi Aiyer, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Bhawani Singh, C.J.

This Letters Patent Appeal under Clause 10 of the Letters Patent is directed against the Order dated 18-1-2000 passed by the Learned Single Judge, in Writ Petition No. 4616/99, whereby the writ petition has been dismissed.

Briefly, the material facts of the case may be narrated hereafter. The appellant is seeking direction for declaration of her XIIth Class examination result conducted by the Board of Secondary Education, M.P., Bhopal, through correspondence course and to pay her compensation of Rs. 50,000/- on account of humiliation, harassment and mental agony.

The appellant submitted examination form for 12th Class Board Examination to be conducted by the Board of Secondary Education, M.P., Bhopal, for academic session 1998-99. She alleges that after scrutiny of form, she was allowed Admission Card, allotted the Roll No. 27186309 and appeared in the examination. The respondents did not declare her result despite several representations. By communication dated August 8, 1999 (Annexure P-6), the appellant was called upon to furnish the original High School Certificate along with Migration Certificate. Despite of all the necessary documents, the result was not declared and the appellant filed writ petition challenging the inaction of the respondents. The examination has been cancelled without any justification and prior notice to the appellant.

Further, it is submitted that the appellant appeared in 10th Class for the academic session 1996-97. She was described supplementary in Mathematics. Accordingly, she appeared in the Supplementary Examination and cleared the same. It is pointed out that the supplementary examination is part of the Annual Examination and therefore, cannot be treated fresh/annual examination. It is also submitted that the appellant submitted all the requisite information together relevant documents, which were duly scrutinised by the Principal, Pandit Lajja Shanker Jha, Higher Secondary School, Jabalpur and then to Secretary of the Board and thereafter the examination admission card and roll number were allotted. The documents were scrutinised by the respondents and were returned, which is clear from Annexure P-8. At no stage prior to filing of the reply of the respondents, the appellant/petitioner was informed about any deficiency or ineligibility, which demonstrates prejudice and malafide attitude on the part of the respondents.

The defence taken by the respondents was that the appellant furnished false and misleading information in the application form (Annexure R-i). Against the column No. 12 of the application, the appellant did not disclose the fact that she got compartment in Mathematics and was to appear in the supplementary examination. She cleared the deficiency in March, 1998. Therefore, she is taken to have passed 10th Class Examination in March, 1998. Thus counted, the requirement of two years gap between the qualifying examination and the examination, in which she was to appear, has not been made; therefore, she was not eligible to appear in the examination, hence, her result was liable to be cancelled.

The learned Single Judge considered the rival submissions advanced by the learned counsel for the appellant/petitioner and came to the conclusion that the appellant did not furnish the requisite certificate of her passing examination and demonstrated that she had passed examination, although she had passed the said examination in 1998. Thus, repelling the contention of the appellant that no fraud was played nor misleading statement was made. The respondent No. 2 was furnished the entire material whereafter the appellant was allowed to appear in the examination and the respondents were stopped from cancelling the examination. In the penultimate paragraph of the order, the Board has been directed to issue

requisite form for Class 12th examination scheduled to be held in March, 2000 and permit the appellant to appear in the said examination without payment of fee. The appellant is not satisfied with the order, therefore, it has been challenged through this appeal.

We have heard the learned counsel for the parties and perused record carefully.

Madhya Pradesh Board of Secondary Education has been constituted under the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 (hereinafter referred to as the Act, for brevity). Section 28 of the Act, empowers the Board to frame Regulations, which are not inconsistent with the provisions of the Act or Rules made therein, for the purpose of carrying into effect the provisions of this Act. In exercise of power, the Board of Secondary Education, Madhya Pradesh Regulations, 1965, have been enacted. Regulation 2 (16) defines "Private Candidate" as under :

"Rule 2 (16). "Private Candidate" means a person seeking admission to an examination for which regular attendance at a recognised institution is prescribed, without putting in the requisite amount of attendance or a person who has enrolled for regular guidance in the Correspondence Courses started by the Board."

It is not disputed that the appellant was a correspondence course candidate; therefore, by virtue of the definition "private candidate" extracted above, she was a private candidate. Regulation 97 falls under Chapter XVI, which deals with "private candidates". Regulation 97 envisages that:

"Rule 97. No student shall be permitted to appear at the High School or Higher Secondary School Examination as a private candidate in a year earlier than that in which he would have appeared, if he had continued his studies of a recognised institution :

Provided that at least four academic years shall have elapsed since the date of passing VIII Class examination and the year in which the candidate intends to appear at the Higher Secondary Examination of the Board as a Private Candidate."

The appellant passed VIIIth Class examination in 1995. She completes four academic years in 1999. Thus, she is eligible to appear in the examination in dispute.

Learned counsel for the respondents stated that the instructions issued by the Board referred to requirement for private candidate, which is not fulfilled by the appellant. We do not appreciate the submission on our interpretation of Regulation 2 (16) and Regulation 97. Chapter XIX deals with "Supplementary Examination". Regulation 139 facilitates the candidates having compartment to appear in supplementary examination at times that may be prescribed. Such candidates can be permitted by principals of the College provisionally in the next higher class in an institution recognised by the Board, pending result of the supplementary examination and count attendance in case, they are successful in supplementary examination. Such candidates can appear in the supplementary examination as well

as Higher Secondary School Certificate examination simultaneously, but the result of the later examination is declared after the result of supplementary examination is declared. In case, the candidate fails in the supplementary examination, the result of Higher Secondary School Certificate is cancelled, and rightly so. Therefore, there cannot be two methods to deal with the candidates, one appearing as a regular candidate and other a private candidate, later may skip one class and straight way appear in 12th Class since passing of 11th Class examination is not mandatory for private candidate. Therefore, we hold that the appellant was eligible to appear in 12th Class examination and the respondents could not cancel her examination.

We deal with the alleged allegation of fraud put up by the respondents against the appellant and alternative case of estoppel so vehemently argued by the learned counsel for the appellant. It was contended by the learned counsel for the respondents that the appellant committed fraud by not disclosing that she had compartment in Mathematics in 10th Class Examination and did not furnish the requisite documents thereby suppressing the material information. It was because of misstatement that the respondents acted and allowed for appearance in the annual examination. We do not agree to this submission. Apart from the fact that in terms of Regulations, no default in the case of appellant is made out on facts and we find that the appellant did not commit any fraud on respondent No. 2 as alleged. In the admission form, there is no column for mentioning that the appellant had supplementary in Mathematics. It was furnished at a time when she had passed the examination and it was accompanied by a requisite document, which fact is clear by Annexure P-8, whereby the original documents furnished by the appellant to the respondent No. 2 have been returned. This apart, the appellant understood the situation as such, therefore, it cannot be said that she committed fraud intentionally with a view to defraud the respondents.

Now, the question is whether the respondents are stopped from changing the situation after having permitted the appellant to appear in the examination with all material facts before it. In support of this plea, the learned counsel for the appellant drew our attention to certain decisions touching principles of estoppel. Some of the decisions are AIR 1976 SC 376 (Shri Krishan v. Kurukshetra University), following by this Court in Full Bench Decision in [Bal Krishna Tiwari Vs. Registrar of Awadhesh Pratap Singh, University, Rewa and Others](#), . On the same principle is the decision of this Court reported in [Ku. Bharti Shrivastava Vs. Jiwaji University, Gwalior and Another](#), . In Shri Krishan's case (supra), the Apex Court in Paragraph 6 said that:

"Mr. Sibbal learned counsel for the appellant submitted two points before us. In the first place, it was argued that once the appellant was allowed to appear at LL.B. Part II Examination held on May 19, 1973, his candidature could not be withdrawn for any reason whatsoever, in view of the mandatory provisions of Clause 2 (b) of the Kurukshetra University Calendar Vol. I, Ordinance X under which the candidature could be withdrawn before the candidate took the examination. Secondly, it was

argued that the Order of University was mala fide because the real reason for cancelling the candidature of the appellant was the insistence of the District Education Officer that the appellant should not have been admitted to the faculty unless he had obtained the permission of his superior officers. In Order to appreciate the first contention, it may be necessary to extract the relevant portions of the statute contained in Kurukshetra University Calendar Vol. I, Ordinance X. Clause 2 of the this Ordinance runs as follows :

"Clause 2. The following certificates, signed by the Principal of College/Head of the Department concerned, shall be required from each applicant:--

(a) that the candidate has satisfied him by the production of the certificate of a competent authority that he has passed the examinations, which qualified him for admission to the examination, and

(b) that he has attended a regular course of studies for the prescribed number of academic years.

Certificate (b) will be provisional and can be withdrawn at any time because the examination if the applicant fails to attend the prescribed course of lectures before end of his terms."

The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr. Nandy, learned counsel for the respondent that the names of the candidates who were short of percentage were displayed on the Notice Board of the College and the appellant was fully aware of the same and yet he did not draw the attention of the University authorities when he applied for admission to appear in LL.B. Part II Examination. Thus, the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court."

Then in Paragraph 7 of the said decision, the Apex Court said that:

"It appears from the averments made in the counter affidavit that according to the procedure prevalent in the College, the admission forms are forwarded by the Head of the Department in December, preceding the year when the Examination is held. In the instant case, the admission form of the appellant must have been forwarded in was to take December, 1971, where as the Examination was to take place in April/May, 1972. It is obvious that during this period of four to five months, it was the duty of the University authorities to scrutinise the form in Order to find out

whether it was in order. Equally, it was the duty of the Head of the Department of before submitted the form to the University to see that the form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestive falsi, or suppressive veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defects. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April, 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in [Premji Bhai Ganesh Bhai Kshatriya Vs. Vice Chancellor, Ravishankar University and Others,](#) where a Division Bench of the High Court of Madhya Pradesh observed as follows:

"From the provisions of Ordinances Nos. 19 and 48, it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or Ordinance No. 48, which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result."

We find ourselves in complete agreement with the reasons given by the M.P. High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the Examination in May, 1973, the respondents had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate or fulfilment of a specified condition, a provisional admission was given by the University to appear at the examination which could be withdrawn at any movement on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute, therefore, would not have stood in the way of the University authorities in cancelling the candidature of the appellant."

In the background of the facts, we are of the considered opinion that after having allowed the appellant to appear in the examination, the respondents No. 1 and 2 are stopped from taking the action of cancelling the examination, apart from our conclusion, the appellant was rightly admitted in 12th Class Examination, the result

of which has not been declared by this time.

No other question was raised by the learned counsel for the parties.

Consequently, this appeal is allowed. The Order of the learned Single Judge dated 18-1-2000 is set aside. It is directed the respondents No. 1 and 2 to declare the result of the appellant of 12th Class Examination within a week. We leave the parties to bear their own costs.