

**(2008) 09 PAT CK 0114****Patna High Court****Case No:** CWJC No. 6150 of 2006

Santosh Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision:** Sept. 19, 2008**Citation:** (2009) 1 PLJR 633**Hon'ble Judges:** J.N. Singh, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

J.N. Singh, J.

In this writ application, petitioner has prayed for a direction to the respondents to publish his result of final year examination of Trade Fitter held in the month of July, 2002. It is stated that the petitioner, after passing Matriculation examination, applied for admission in the Trade of Fitter in the Industrial Training Institute, Muzaffarpur on 8.11.2000 with deposit of requisite fee. A copy of the receipt of deposit of requisite fee is annexed as Annexure-1 to this application. Petitioner was thereafter selected and admitted in the Institute and completed the course of Trade of Fitter. After completing the course, he submitted his application, for registration with requisite fee for appearing in the examination. He was allowed to fill up the form of examination and admit card was issued to him, pursuant to which he appeared in the final examination held in the month of July, 2002. It is stated that when the result of the petitioner was not published, he approached the respondents for the same but to no avail. Hence this writ application.

2. In the writ application, petitioner has referred to orders passed by this court in different writ applications, copies whereof are annexed as Annexures-3, 4 and 5, and claims himself to be similarly situated and therefore prays for a similar order by this Court.

3. A counter affidavit has been filed in this case by the respondents. In the counter affidavit, it is stated that, in the background of large number of irregularities having been committed in the examination held by the Industrial Training Institutes all over the State, an Enquiry Committee was constituted to examine the cases of all the candidates who appeared in the examination. The Enquiry Committee examined the case of the petitioner also and found that the petitioner had in fact applied for and deposited fee for Electrician Trade. However, while making interpolation in the receipt of deposit of fee, as contained in Annexure-1, he got himself admitted in the Fitter Trade and completed the course and appeared in the examination, before the matriculation in the money receipt, as contained in Annexure-1, was detected by the authorities. In support of their stand with regard to interpolation in the money receipt (Annexure-1), respondents have produced carbon copy of the money receipt granted to the petitioner as Annexure-A. It is also stated in the counter affidavit that for Fitter Trade minimum 60% marks was required in the Matriculation examination which the petitioner did not have and thus the petitioner was not eligible for admission in Fitter Trade. A photocopy of the notification prescribing minimum percentage of marks for different Trade has been annexed as Annexure-B and the mark-sheet of the petitioner of Matriculation examination is annexed as Annexure-C to the counter affidavit. It is stated that on the basis of finding of the Enquiry Committee, admission of the petitioner in the Fitter Trade and his result was cancelled vide Annexure-D dated 16.11.2004. Respondents have also relied upon an order of the division Bench passed in the case of one Awadhesh Kumar vs. State of Bihar in L.P.A. No. 450 of 2005 dated 19.5.2005, a copy whereof has been annexed as Annexure-E, to contend that in case of ineligibility for admission in the course, respondents were perfectly justified in cancelling the result of the petitioner.

4. Petitioner has filed rejoinder to the counter affidavit as well as supplementary affidavit. In the rejoinder to the counter affidavit, petitioner has changed his stand claiming that he was selected on the basis of being dependent of an Army Personnel and therefore, petitioner was free to get himself admitted in any Trade. It has also been asserted in the rejoinder that minimum marks prescribed for admission in different Trades stands relaxed in the case of a dependent of an Army Personnel. Certificate with regard to being dependent of an Army Personnel has been annexed as Annexure-6 to the rejoinder and mark-sheet of Matriculation has been annexed as Annexure-7. With the supplementary affidavit, petitioner has enclosed the advertisement published by the respondents in the year 2000 inviting applications for admission in different Trades in different Training Institutes. In the rejoinder, petitioner has also referred to a judgment of this Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, .

5. In the said case, publication of result of a candidate, who had appeared in LL.B. Part-I examination, was under consideration. After allowing the candidate to appear in the examination, respondents sought to withhold his result. Appellant of that case was a Government employee, and therefore, respondents had taken a stand

that he had not obtained due permission from his superior officers for pursuing the course and for appearing in the examination. However, they also took a contradictory Stand that the appellant had shortage of percentage of attendance, and therefore, he could not be allowed to appear in the examination. The Apex Court allowed the appeal of the appellant in the background of the fact that the authorities of the University were all the time in know of the fact that the appellant had not obtained permission from his superiors and had not completed requisite number of attendance to make him eligible for appearing in the examination. Therefore, the Apex Court held that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. The authorities of the University were in a position to detect the fraud or shortfall of requirements making the appellant ineligible for appearing in the examination, it could not be said to be a case of suggestio falsi or suppressio veri.

6. So far as the case of the present petitioner is concerned, from the carbon copy of the money receipt enclosed with the counter affidavit, it is apparent that the petitioner had deposited fee for his admission in the Electrician Trade. From the photocopy of the original receipt enclosed by the petitioner as Annexure-1, it appears that the word "vidyut" has been struck off and in its place "Fitter" has been written which shows that some interpolation was made in the money receipt granted to the petitioner for his admission in Fitter Trade. Moreover, petitioner has claimed himself to be a dependent of an Army Personnel and on the basis of the same he has claimed his admission under 5% quota fixed for the wards of Army Personnel.

7. During the course of hearing, learned counsel for the respondents produced original application of the petitioner also. From the original application, it appears that in column No. 11 in respect of whether the candidate is dependent of an Ex-Army Personnel, petitioner has mentioned "yes (Haan)". But petitioner did not mention details of his dependence and the details of Ex-Army Personnel upon whom he was dependent.

8. However, during the course of hearing, petitioner enclosed a certificate of dependency as Annexure-6 to the rejoinder, which shows that he was dependent of one Deepak Kumar Sharma, an Army Personnel of Bihar Regiment Centre, Danapur Cantt. Petitioner is son of one Ram Nihora Sharma. Upon being asked by the Court, learned counsel for the petitioner said that the said Deepak Kumar Sharma was elder brother of the petitioner and he has claimed himself to be dependent upon him. However, no such statement has been made in the rejoinder of the petitioner to the effect that said Deepak Kumar Sharma was elder brother of the petitioner. Learned counsel for the petitioner has referred to a judgment of Apex Court in the case of State of M.P. and Others Vs. M.P. Ojha and Another, to claim that petitioner could claim himself to be legally dependent on his brother.

9. From perusal of the said judgment of the Apex Court, it is apparent that the ratio laid down in the said judgment is not at all applicable in the case of the petitioner. In the said case, question of medical reimbursement was before the Court and larger definition of family as contained in Fundamental Rule 9 was noticed by the Court which includes minor brother also as being dependent upon the Government servant.

10. In the present case, learned counsel for the petitioner has failed to show any rule, notification or circular of the State Government to demonstrate that a candidate can claim dependence upon his elder brother for his admission in the situation. Moreover, petitioner has also not claimed himself to be minor, and therefore, definition of family as noticed in the said judgment of the Apex Court is not at all relevant for consideration of the case of the petitioner. Learned counsel for the petitioner also could not demonstrate that in case of dependent of an Ex-Army Personnel, marks of Matriculation Examination for admission in the respective Trades was also relaxable.

11. Reliance placed by the petitioner on three orders of this Court, as contained in Annexures-3, 4 and 5 to the writ application is also misconceived. In those cases no case of fraud or misrepresentation committed by the candidates was made out or asserted by the respondents In the circumstances, the respective Benches of this Court allowed the writ applications of the respective petitioners by coming to the conclusion that once respective petitioners had been allowed to appear in the examination, the authorities had no legal right to withhold their result. In the case of the present petitioner, it is apparent that integration was committed facilitating his admission in the Fitter Trade and he also misrepresented himself to be a dependent of an Army Personnel, namely, Deepak Kumar Sharma, whose relationship with the petitioner is not established beyond doubt. In the result, in the background of the peculiar facts and circumstances of the case, I do not find it a fit and proper case to direct for publication of the result of the petitioner, and therefore, this writ application fails and is hereby dismissed.