

(2004) 10 CAL CK 0006

Calcutta High Court

Case No: Writ Petition No. 451 of 1996

Prasanta Roy

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Oct. 6, 2004

Citation: (2004) 2 ILR (Cal) 308

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Dipak Kumar Banerjee, Ram Krishna Bhattacharyya and Ishani Chakravarty, Kallol Bose, for the Appellant;

Judgement

Amitava Lala, J.

The writ Petitioner hereunder appeared in the Madhyamik Examination conducted by the West Bengal Board of Secondary Education, as a private candidate in the year, 1986 and became unsuccessful. Thereafter, he appeared again in 1987 as a private candidate and he was again declared as unsuccessful. However, upon obtaining the mark-sheet, he applied for review of his answer-scripts by depositing the appropriate fees for the review by a bank draft and completing all formalities for such review as per requirement of law. Ultimately, the result of the review was published and the Petitioner was served with the registered letter dated September 4, 1989 with the mark-sheet where-under he Was declared as passed candidate in third division. Copies of the admit card and the mark-sheet declaring him passed candidate are annexed to the writ petition. Thereafter, he got admission in the higher secondary course in the Bangabasbi Evening College and prosecuted studies for class XI and XII therein. Thereafter he appeared in the higher secondary examination conducted by. the appropriate Council for higher secondary examination and declared as passed in 1994. Copies of the necessary documents are also annexed to the writ petition. Thereafter pursuant to an advertisement made by the Staff Selection Commission, Government of India, the Petitioner appeared in the examination conducted by the Staff Selection Commission. He

passed the written test and the department concerned directed him to appear for typewriting test and also to submit the testimonials. The Petitioner complied with all such formalities. After passing higher secondary examination he also got admission in the said evening college under the University of Calcutta, the documents of which are also annexed. Ultimately, he was appointed as Junior Clerk in the office of the Commissioner of Railway Safety, South Eastern Circle by an office order dated June 8, 1993. He also passed examination in Hindi (Probin and Progya) conducted by Griha Mantralaya, Raj Bhasa Bibhag, Government of India in the year 1995 and 1996: The office of the Commissioner of Railway Safety, South Eastern Circle, Calcutta sent him for such studies. The Petitioner was awarded with prize money in cash for getting good results in such examinations. The Petitioner became permanent employee of the Railways. However, he was also allowed for appearance in the examination under the University of Calcutta from the said college where he was prosecuting his studies in the evening college.

2. All on a sudden on January 31, 1996 he was served with notice by the Deputy Inspector General of Police, intelligence Branch, West Bengal for appearing before him on a prescribed date. The Petitioner immediately met with the Officer concerned when the Petitioner was told that he was unsuccessful in Madhyamik Examination conducted by the Board in the year, 1987. The Petitioner produced all the documents in original including the mark-sheet of Madhyamik Examination conducted by the Board, certificate issued by the Board, as well as other relevant documents. The Petitioner repeatedly requested such authority to furnish the memorandum of the Board forwarded to them declaring him unsuccessful but such authorities refused to produce the same. They further stated that he could take the memorandum number and date and inspect the same, but no duplicate will be issued to him. The Petitioner contacted the office of the Board and came to know that under impugned Memorandum No. 36665 dated November 21, 1995 he was stated to be unsuccessful in the examination conducted in the year 1987. According to the Petitioner, issuance of such memorandum in the year; 1995 is not only mala fide and mechanical but also contrary to the statute and also arbitrary in nature. When the Petitioner was declared by them as "a successful candidate in 1987 how he could again be declared as unsuccessful in the year 1995 is not known to him. However, being aggrieved and dissatisfied with the actions of the authorities the Petitioner was constrained to file this writ petition making the State of West Bengal, the concerned Directorate of the School Educations, West Bengal, Board of Secondary. Education, West Bengal. The President, West Bengal Board of Secondary Education, Commissioner of Railways and the Deputy Inspector General of Police as party Respondents therein. It appears to this Court that neither the employer of the Petitioner nor the police authorities contested the proceedings before this Court, Only Respondents No. 3, 4, and 5 being Board of Secondary Education and the concerned President/Secretary filed an affidavit only on August 22, 2003 though the original writ petition had been filed in 1996 and several directions were given to

them to file the affidavits. Two orders of the Writ Court at the time of initiation of the writ petition are very important for the purpose of due consideration of this case. Those orders are dated March 26, 1996 and April 25, 1996 respectively.

3. On March 26, 1996 a Bench of this Court was pleased to direct the Petitioner to produce the necessary certificates issued by the Board and the envelop addressed to the Petitioner under which the mark-sheet was sent by the Board to the Petitioner. Such documents were produced before the Court. Thereafter the Court was pleased to direct the Deputy Secretary (Examination), West Bengal Board of Secondary Education to make a thorough enquiry in the office of the Board with reference to the aforesaid three documents and submit the report to the Court within the time prescribed thereunder. On April 25, 1996 such Bench observed that inspite of specific direction to hold an enquiry and submit a report no report had been filed by the authority. Such Deputy Secretary (Examination) was directed to appear personally before the Court on a particular date. From the record I do not find what happened in respect of such case till 2003. In the year 2003, the matter appeared before this Court and by an order dated July 3, 2003 such authority was again directed to enquire and make appropriate submission or be personally present or explain the position in respect of the result of the secondary examination of the candidate before the Court. No report was filed. A register was produced where-under he was shown as a failed candidate with a note on the left hand side giving the year, 1989. The Petitioner's case is that he was declared as a passed candidate after review. Learned Counsel appearing for the Board submitted a file including the report and the photocopy of the same. Various points were noted thereunder indicating that the certificate and mark-sheet were sent directly from the Board by registered post. Instead of going into the controversy at random Court was pleased to supply three documents being mark-sheet of the West Bengal Board of Secondary Education, Certificate of Madhyamik Examination and an envelop containing mark-sheet for forensic test. However, directions were given for filing affidavits. Forensic Department furnished a report signed by Dr. S.K. Mondal, Senior Scientific Officer, Q.D.E. Section, Forensic Scientific Laboratory, Government of West Bengal, Calcutta 700 037 along with the copies of the documents i.e. the envelop, mark-sheet and certificate of the candidate. The same was directed to be kept in the safe custody of the Registrar, Original Side. From the report of the Forensic Department it appears that no sign of tampering viz. erasing, overwriting, addition and alteration was noticed at the said mark-sheet, certificate and envelop. It was further reported that in absence of corresponding specimen mark-sheet, certificate of the West Bengal Board of Secondary Education no opinion could be. given regarding genuineness of the said mark-sheet and certificate.

4. According to me, the Petitioner is not the custodian of the counter-parts of such documents. It is an admitted position that Board has special knowledge of all such documents and if such authority fails to produce the same or to give an appropriate explanation in this regard the Court .will have no option but to draw a presumption

in favour of the Petitioner. Therefore, the Court was pleased to direct the Board to check up the records carefully before producing the same and to make appropriate submission in this regard. The Court was constrained to ask for the register in connection with the corresponding specimen mark-sheet, certificate and to know any process of keeping the documents in their custody. Board had taken lot of time to produce the documents. Though the documents were produced but no counter-foil of such mark-sheet or certificate were produced before the Court. Leave was granted to the Officers of the Court for inspecting the records. Lastly, the Court also directed the concerned school authority to be present and explain whether the result of review was forwarded to them or not. Further direction was given to the Petitioner for producing the challan or the bank draft to know the extent of application for review. Mr. Kollol Bose, Learned Counsel appearing for the Board, contended that corresponding record is showing application for review in two subjects which was vehemently opposed by Mr. Dipak Kumar Banerjee, Learned Senior Counsel appearing for the Petitioner. According to him amount under challan and receipt clearly show that the Board received requisites for review at least for more than two subjects. Therefore, keeping of the record in respect of only two subjects in such manner clearly indicates that there is no justiciable cause on the part of the Board to decide that the Petitioner as an unsuccessful candidate. Mr. Kollol Bose further contended that there was no scope of forwarding the result directly to the candidate. It is unheard of. Therefore, the same clearly indicates that the abnormal procedure has been adopted in respect of the Petitioner's case of review. From a specimen counter-part of the mark-sheet it reveals that the work "EW is printed wherein in the mark-sheet it is typed. Therefore, there is a possibility of tampering.

5. However, I have gone through the affidavit filed by the Secretary of the Board on behalf of the Respondents No. 3, 4 and 5 and find that he is not aware of the fact as to whether any report was submitted before the Hon'ble Court but it appears that pursuant to the direction each and every possible step was taken. He only reiterated certain facts that the then Deputy Secretary (Examination) put certain questions and ultimately filed a report only on two submissions. Firstly, there is a possibility of doubt about the authenticity of the documents and secondly there is no process of sending mark-sheet directly to the candidates and such practice is how known to the Board. He further submitted that as per the tabulation sheet the Petitioner was shown as unsuccessful candidate in the Madhyamik Examination of the year, 1987.

6. According to me, there is no dispute that, the Petitioner was unsuccessful in the Madhyamik Examination of the year, 1987. Therefore, the same will be reflected from the tabulation sheet. But I am concerned about the result of the review. Admittedly, the review is available only in two subjects when admittedly the application for review was made for more than two subjects. Board is unaware of such fact. Hence, benefit goes in favour of the Petitioner. Moreover, there is no manner of dispute in respect of the authenticity of the documents available with the

candidate as per the report of the Forensic Department. The, relevant counter-foil is not available from the custody of the Board. Other counter-foils cannot give any presumptive value of corroboration. That apart, authenticity of the certificate has not been confronted with full strength. It has to be taken note that such certificate is the outcome of the self-same result. Therefore, merely because "EW is printed or typed it cannot take away the right of the Petitioner in respect of the result.

7. Mr. Banerjee has contended that in such situation the principle that "larger" includes "smaller" will guide the matter. He cited three judgments on that score. In *Suresh Pal and Ors. v. State of Haryana and Ors.* 1987 (4) S.L.R. 119 SC, while considering the case in respect of the recommendation of a certificate course in physical education, was pleased to hold that since at the time of joining the course by the Petitioners it was recognized by the Government and on the basis of this recognition the Petitioners joined the course. Therefore, it would be unjust to tell the Petitioners now that though at the time of their joining in the course it was recognized, yet they cannot be given the benefit of such recognition and the certificates obtained by them will be futile, because during the pendency of the course it was de-recognized by the Government. In *Menino Furtado v. State Bank of India by its Chairman and Ors.* 1999 (2) A.I.S.L.J. 148 a Division Bench of Bombay High Court held that higher qualification implies acquiring of lower qualification. In *Rajpal v. State of Haryana and Anr.* 2002 (2) S.L.R. 338 a situation arose before the Supreme Court that one employee disclosed the identity that he has passed Matriculation examination conducted by an authority in a particular year. Later it was found that such University is a University neither established by law in India nor it has been declared to be Deemed University under the appropriate section of the University Grants Commission Act, 1956 and he was found to possess certified qualification which could not be taken note of and., therefore, the action on the Board was upheld by the High Court in considering his case. The Supreme Court observed as follows:

It is brought to our notice that the Appellant has passed 10+2 examination held by the Haryana Education Board which qualification is not suspected or doubtful. When the Appellant possesses higher qualification from an appropriate board, we do not think it was necessary for the High. Court to examine other aspects of the matter. In that view of the matter, the High Court should have allowed the writ petition rather than to dismiss it.

8. It is crystal clear that the principle that "larger" includes "smaller" is well-established in respect of educational qualification. In the instant case the Petitioner, not only obtained the higher qualification of (10+2) but also proceeded with his B.A. course and both under the recognized Board and/or University. Moreover, he further passed a course under the Government of India. The dispute in respect of the authenticity of the marks in the Madhyamik Examination was raised after a period of long eight years. Although a notice was issued on January 31, 1996

by the Deputy Inspector of Police, Intelligence Branch, West Bengal but till this date no affidavit has been filed by them nor any steps taken honestly or sincerely before this Court of law in this regard inspite of making them party Respondents herein. The appropriate authority of the Government of India where the Petitioner is working, inspite of being party Respondent herein, did not raise any dispute by making their appearance in respect of the authenticity of the mark-sheet of their employee. Madhyamik Board was the sole contender. But from the interim orders passed in the year, 1996 I do not find that true compliance has been made by such authority to comply with the order immediately to investigate such case. Only when the matter appeared before this Court under the heading "old matters" or "old adjourned matters present Secretary of the Board of West Bengal, Secondary Education filed an affidavit annexing earlier documents but did not -take any responsibility in such affidavit to support the conduct of the person who was directed to file the report before this Court. Such report is not available in the record but a copy of the same is annexed, with the affidavit of the present Secretary. This Court directed for a forensic scrutiny about the authenticity of the documents i.e. mark-sheet, certificate and envelop possessed by the Petitioner and those were certified as genuine. The Petitioner is not the custodian of the counterfoils. The counter-foils were; never being produced by the Board. The Board only produced certain similar counter-foils from which Court cannot come to a definite conclusion as regards the well-founded case of the Petitioner factually and legally. Mr. Bose, Learned Counsel, appearing for the Board with the help of the present Officers, tried his level best to oppose the case belatedly. I appreciate his spirit but not the action. The most important factual difference between the cited judgments and this matter is that in those cases authenticity of the institution was under question and here the authenticity of the mark-sheet is under question. Therefore, this case rests on a better footing than those cases.

9. Therefore, I am of the view that the writ petition should succeed and accordingly succeeds. As a result whereof the impugned Memorandum No. 36665 dated November 21, 1995 issued by the West Bengal Board of Secondary Education stands cancelled. No effect or further effect will be given in respect of such impugned memorandum. Consequently, Memorandum No. 3461 underlined G-6345-95-GAVR dated January 31, 1996 being Annex. "J" to the writ petition stands cancelled,

10. Thus, the writ petition stands disposed of.

11. However, no order is passed as to costs.

12. Documents kept with the safe custody of the Registrar, O.S. is directed to be released upon proper verification by the Petitioner and/or his Advocate on-Record.

13. Xeroxed certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up-and completion of the order and certified copy of this judgment.