

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1136 of 2016

In

Civil Writ Jurisdiction Case No.18114 of 2014

Sanjay Kumar, son of Hari Narain Gupta, resident of Village-Chhotki Baliyari, Post Office-Arap, Police Station-Bikram, District- Patna at present working on the post of Teacher, +2 Raghunandan Singh High School, Jamuhari, Block-Kaler, District- Arwal.

.... Appellant

Versus

1. The Magadh University, through Registrar, Bodh Gaya.
2. The Vice Chancellor, Magadh University, Bodh Gaya.
3. The Pro Vice Chancellor, Magadh University, Bodh Gaya.
4. The Controller of Examination, Magadh University, Bodh Gaya.
5. The Principal, Ram Mohan Roy College of Education, Khajanchi Road, Patna.

.... Respondents

Appearance :

For the Appellant	:	Mr. Jitendra Kumar Roy, Advocate Ms. Nikki Singh, Advocate Mr. Sumit Kumar, Advocate
For the Respondents	:	Mr. Girjesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

JUDGMENT & ORDER

CAV

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 02 -08-2016

The present *intra* Court appeal has been preferred against the order, dated 03.05.2016, whereby a learned single Judge has upheld the order, dated 18.02.2014, contained in Resolution No. 4 of the decision of the Examination Board of Magadh University, whereunder respondents have, in gross violation of the principles of natural justice and by cryptic order, cancelled the B.Ed. degree of the



petitioner-appellant. The learned single Judge has further upheld the decision of the respondent issued vide letter ref. No. CED/S/Spl/136/14, dated 09.08.2014, whereby the petitioner-appellant has been informed that his marks sheet and other certificate of B.Ed Examination, Roll-PAT No. 1003, with Registration No. 7581 of 85, issued on 17.10.1997, have been cancelled.

2. The brief facts, which formed the basis of the writ petitioner's case, are as follows:-

I. That the writ petitioner, after passing the B.A. Examination, took admission in the B.Ed course in Ram Mohan Roy College of Education, Khajanchi Road, Patna, in the academic session 1988-89, having College Admission Roll No. 170.

II. The B.Ed examination was held in September, 1994, wherein the petitioner appeared under Roll PAT No. 1003 with Registration No. 7531/85 and the petitioner was declared passed in the said examination in second division. As per practice, the degree of the examination was to be sent from the

University to the College, but there was always delay in sending the same by the University and the degree of the B.Ed Examination was not sent to the college.

III. The College Leaving Certificate of Ram Mohan Roy College of Education, Khajanchi Road, Patna, was issued to the petitioner on 30.06.1995 bearing No. 250.

IV. The petitioner, who had been working as a Teacher in +2 Raghunandan Singh High School, Jamuhari, Block – Kaler, District Arwal, was in need of the degree and, as such, he contacted the Principal of the college, but was informed that the University had not yet sent the degree and that he should contact the University for the same. He was asked to submit a form, forwarded by the School on 25.06.2012, which he duly complied with along with a requisite fee of Rs. 500/- for grant of degree. The petitioner deposited the fee, on 03.07.2012, in the Magadh University Account of the University Examination Cell, Central Bank of India.



V. However, the University Authority did not issue the B.Ed Degree of the petitioner and as such, the petitioner came to this Court, in CWJC No. 17313 of 2012, seeking a direction from the University for issuance of the B.Ed Examination of Session 1988-89 inasmuch as the petitioner had not only been declared successful, but the mark sheet had also been issued in his favour.

3. A counter affidavit was filed in the said writ application, wherein the respondent University made a categorical assertion that, on enquiry made by the University, a large number of discrepancies had been found in the Tabulation Register of B.Ed Examination. The College was asked to provide a copy of the admission register, wherein, on enquiry, it was found that only 168 students had been admitted in the session 1988-89 batch, which was evident from a perusal of the admission register itself. However, in the Tabulation Register, Roll Nos. 901-1062 was present. There were doubtful entries in the Tabulation Register and, hence, it was not considered fit for issuing degree in favour of the petitioner, particularly, because the

petitioner's Class Roll No. 170 was not correct.

4. The University further brought on record that the name of the petitioner, in the Tabulation Register, had been written with ink in handwriting, which was not the common practice and there was no authentication to the same. The name of the petitioner was also not entered in the register of the College and only 168 students had been admitted in the session 1988-89, which did not include the name of the present petitioner. As such, the then Controller of Examination had put a question mark against such doubtful entries in the Tabulation Register and the application of the petitioner for grant of degree was not processed.

5. The petitioner further pointed out that the University Authority did not verify his case from the examination form submitted by the College against, which Roll PAT No. 1003 was issued and the names of other two persons also appeared in the said Tabulation Register. However, in the case of the petitioner, the Authorities, taking a negative view after 18-19 years of the examination, took a decision for non-issuance of the degree to the petitioner. As such, the petitioner was



issued letter No. CEO/72/13, dated 15.06.2013, declaring the result of the petitioner as inoperative. The petitioner was also called upon to submit the details of his admission along with College Leaving Certificate, Admit Card, Identity Card of the College within 15 days, failing which the process of cancellation would be initiated.

6. The petitioner complied with the same, which was forwarded by the College to the University, but no decision was taken thereon. As such, in the said writ application, the petitioner filed a rejoinder to the supplementary counter affidavit. Thereafter, the writ application was disposed of with a direction to the Controller of Examination of Magadh University to take a final decision upon consideration of the various documents submitted by the petitioner within a period of eight weeks.

7. Since the order passed in CWJC No. 17313 of 2012 was not complied with, a contempt proceeding was initiated, at the instance of the petitioner, bearing MJC No. 1554 of 2014. In the said contempt proceeding, the University filed a counter affidavit intimating the Court that in view of the

decision of the Examination Board, dated 18.12.2014, the result of the B.Ed Examination of the petitioner had been cancelled.

8. Since the order had not been communicated to the petitioner, the aforementioned contempt application was adjourned on 03.09.2014. The petitioner was handed over a copy of the Examination Board's decision on the next date, whereupon the contempt application was disposed off.

9. It is submitted, on behalf of the petitioner, that the order, dated 18.02.2014, was a cryptic one without assigning any reason and without affording any opportunity of hearing to the petitioner. There was no consideration of the documents filed by the petitioner, which had been duly forwarded by the College authorities.

10. The contempt application was disposed of and, thus, the petitioner sought to challenge the orders, dated 18.02.2014 and 09.08.2014, in the C.W.J.C. No. 18114 of 2014.

11. A counter affidavit was filed by the respondent University in the aforementioned case indicating that the Rammohun Roy College of



Education was granted permission to hold B.Ed Examination for only two academic years, i.e., 1987-88 and 1988-89 and, thereafter, the same was not continued. Since there was a lot of controversy in the B.Ed examination, even Vigilance Enquiry and internal enquiry were conducted, wherein a lot of irregularities were noticed. The College sent a copy of the Admission Register, which was examined and counter-signed by the University Official and the name of the petitioner was not found in the Admission Register of the College. Further, the name of the petitioner was entered in the Tabulation Register in hand writing by ink, whereas other entries were typed. The then Controller of Examination, thus, put his question mark against the name of the petitioner's entry in the Tabulation Register.

12. The University has further contended that thereafter, the matter was placed before the Examination Board of the University, which is the highest statutory body regarding admission and competent to take decision at any point of time, when such discrepancy comes to its knowledge. As such, the decision of the Examination Board to cancel the result

of the petitioner was fully justified, because of the serious discrepancies noticed at the highest level.

13. It was only after considering such materials that the learned single Judge dismissed the writ application. Hence, the present appeal.

14. We have heard learned counsel appearing for the parties and perused the materials available on record.

15. The submissions, advanced on behalf of the petitioner-appellant, cannot be sustained in view of the patent illegality, which has surfaced on an enquiry conducted by the University. It is wholly impossible to infer that the student, who has not even been admitted in the College rolls, would be permitted to appear in the examination conducted by the University and that a Tabulation Register should contain the name of the petitioner with marks in hand writing by ink, whereas the entries, made with regard to other candidates, would be found typed. At any rate, the writ petition raised disputes question of fact and the dispute could not have, therefore, been resolved without recording the evidence, which is, in the facts and attending circumstances of the present case, neither desirable

nor warranted.

16. Situated thus, we are of the considered view that the dismissal of the writ petition by the order, under appeal, did not suffer from any infirmity, legal or factual. This appeal is, therefore, dismissed, with, however, liberty given to the appellant to establish his rights, if any, by instituting appropriate suit in a civil court of competent jurisdiction.

(Anjana Mishra, J)

I.A. Ansari, CJ: I agree.

(I. A. Ansari, CJ)

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	13/07/2016
Uploading Date	03/08/2016
Transmission Date	