

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9556 of 2013

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1. Uday Shankar Yadav S/O Bindeshwar Pd. Yadav R/O Village- Uchouli, P.O.- Narsara, Police Station- Hayaghat, District- Darbhanga

.... Petitioner/s

Versus

1. Bihar School Examination Council (High School) Through Its Chairman, Budha Marg, Patna, Bihar
2. Chairman, Bihar School Examination Council Budha Marg, Patna, Bihar
3. Secretary Bihar School Examination Council, Budha Marg, Patna, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate

For the Respondent/s : Mr. S.A. Alam, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the parties.

2. This application has been filed seeking quashing of a notice issued by the Bihar School Examination Board (Senior Secondary) (*hereinafter referred to as the Board*), whereby the petitioner's result of having passed Intermediate examination in the year 2004 bearing Roll Code 5109 and Roll No. 10069 has been cancelled.

3. What is not in dispute is that the petitioner had taken admission in Intermediate Arts Courts in C.M. College, Darbhanga for the academic Session 1999-2001. He was enlisted with the Bihar State Intermediate Council (*hereinafter referred to as the Council*) in



the year 1999 itself. He passed the Intermediate examination held by the Council in the year 2001. In the year 2002, he again got himself admitted in Intermediate Science Course in L.C.S. College, Darbhanga, and appeared for the Intermediate Science Examination in the year 2004. He was declared successful and issued mark-sheet and certificate accordingly. The said result of 2004 has been cancelled by the Board, which is the successor Body of the Council on the ground that the petitioner's subsequent enlistment in the year 2002 with the Council for the purpose of pursuing Intermediate Course again was impermissible.

4. The said order is being assailed by the petitioner mainly on two grounds. Firstly, it has been contended that once the Council allowed the petitioner to appear for the examination, it was not within the jurisdiction of the Council or the successor Body, i.e., the Board to cancel the result. It has been submitted with reference to Section 3(10) of the Bihar Intermediate Education Council Act, 1992 that power is there of the Council to grant or refuse permission to a candidate to appear for the examination. The said power cannot be used in any event to cancel the result after candidate has already appeared at the examination and declared passed.

5. He has also relied on Supreme Court's decision in case of *Sri Kirshan Vs. Kurukshetra University* (AIR 1976 SC 376) and



decisions of this Court in case of *Punam Kumari Vs. L.N.M.University, Darbhanga* reported in *1993(1) PLJR 609* and in case of *Sanjay Kumar Singh Vs. B.N.Mandal, University* reported in *2010(1) PLJR 62*, in support of his contention that once the petitioner was allowed to appear for examination, his result should not allowed to be cancelled.

6. A plea has also been taken on behalf of the petitioner that he was not served with any notice of show cause by the Board prior to issuance of the impugned notice in the Newspaper.

7. The Board has filed counter affidavit and supplementary counter affidavit to justify the action taken by the Board. It has been stated with reference to Rule 12(10) of the Bihar Intermediate Education Council Rules, 1994 that enlistment of the petitioner was valid for the Intermediate Course for academic Session 1999-2001, 2000-2002 and 2001-2003. The petitioner got himself enlisted again to pursue I.Sc. Course from a different College for the academic Session 2002-2004, which is not permissible.

8. On the basis of what has been pleaded in the writ application and affidavits filed on behalf of the parties and upon examining the statutory provisions, which have been referred to by the learned counsel appearing on behalf of the Board, I am satisfied that the petitioner could not have been allowed to be admitted in I.Sc.



Course after having passed the Intermediate examination within three years since second enlistment was not permissible under the Rules as has been referred to above since first enlistment was already existing. It seems that the petitioner managed to get himself admitted and enlisted again, contrary to the statutory provisions.

9. Submission made on behalf of the petitioner that the Board does not have the power to cancel the result because it has only power either to allow or refuse a candidate to appear for examination is wholly misconceived. If the Board finds any result or certificate issued in favour of a candidate to have obtained fraudulently contrary to the statutory provisions, the Board will be well within its jurisdiction to cancel the certificate or the result.

10. The judgment of the Supreme Court's decision in case of *Sri Krishna* (supra), has no application in the facts and circumstances of the present case. In the present case the petitioner has managed to obtain certificate of having passed Intermediate examination, which examination he had already passed for the academic Session 1999-2001, contrary to the statutory provisions.

11. The petitioner, as a matter of fact, cannot be allowed to continue with two certificates of having passed Intermediate Examination one for the Session 1999-2001 and other for the Session 2002-2004. This being legally impermissible, the submission



advanced on behalf of the petitioner cannot be accepted. For the same reason, the decisions of this Court in case of *Punam Kumari* (supra) and *Sanjay Kumar Singh* (supra), are also not applicable in the facts and circumstances of the case since the present case involves question of duplicity of obtaining same qualification from the Council/Board, which is impermissible under the statutory provisions.

12. The plea that there has been inordinate delay in cancelling the result is also not acceptable for the purpose of granting relief sought for in the present application since I have held that the petitioner could not possess two certificates of having passed Intermediate examination within the period as indicated above.

13. This application has no merit and it is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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