

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6753 OF 2016

Ashley Anil Rodrigues

...Petitioner

Versus

The Divisional Chairman,
Maharashtra State Board of Secondary
and Higher Secondary & Ors.

...Respondents

Ms. Prabha U. Badadare, for the Petitioner.

Mr. Nirav Shah, a/w Mr. Anuj Jaiswal, i/by M/s. Little & Co., for
the Respondent No. 1.

Mr. B.V. Samant, AGP, for Respondent No. 4.

CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.

DATE : 14 June 2017

ORDER :

1. Rule, returnable forthwith.
2. Heard by consent.

3. The Petitioner has approached this Court being aggrieved by the communication addressed by the Respondent No. 3-College to Respondent No. 1-Board thereby depositing the hall-ticket of the Petitioner and the subsequent action of Respondent No. 1-Board withholding the result of the Petitioner.

4. In spite of being duly served with the notice of this Court, the Respondents No. 2 and 3 choose not to appear.

5. Perusal of the document at page 61 would reveal that the Respondent No. 3 addressed a communication to the Respondent No. 1 that since the Petitioner has misbehaved with the teaching as well as non-teaching staff of the college, his hall-ticket is deposited. However, the Respondent No. 1 is coming with an entirely different story. It is the case of the Respondent No. 1 that since the Petitioner's attendance in the college is not adequate. His result is withheld.

6. We are aware about the limitations of interference in

the matters with regard to academic expertise. However, even in the matters, which are within the domain of academic experts, the authorities are required to address the principle of the fair play, equity and justice.

7. Mr. Shah, the learned Counsel for the Petitioner on a pertinent query, states that the requisite attendance for being eligible to appear for the examination is 75 percent and in special circumstances like illness, etc. it is 50 percent. We have perused the document, which has been brought to our notice by Counsel for Respondent No. 1 himself at page 65 of the paper book. If we peruse the said document, out of 16 candidates, not a single candidate would be eligible for declaration of result inasmuch as nobody has satisfied the requirement of 75 percent of attendance. If the rule of concession of 50 percent is applied, then only 9 of 26 would satisfy the requirement.

8. If Respondent No. 1 has declared the result of 25 ineligible candidates for the list rule of 25 percent attendance is

applied and 16 ineligible candidates, if the concessional rule of 50 percent is applied, then we see no rational behind the action of Respondent No. 1 singling out the Petitioner for not declaring the result.

9. In any case, as we have already pointed out herein above the action of there is totally inconsistent in the ground which is sought to be raised by Respondent No. 3 and Respondent No. 1. It is also not clear as to on what basis the Respondent No. 1 has proceeded against the Petitioner. The learned Counsel for the Petitioner has stated that there are various complaints with regard to malpractices in Respondents No. 2 and 3 institute and the Principal of Respondent No. 3 at present is enjoying the police custody. We do not find it necessary to go into those issues.

10. Least that is required to be stated, is that the Respondent No. 1 which is undisputedly state within the meaning of Article 12 of Constitution, cannot adopt a policy of

pick and choose. We are therefore, of considered view that the Respondent No. 1 has erred in singling out the Petitioner from declaration of the result.

11. Rule is therefore made absolute by directing the Respondent No. 1 to declare the result of the Petitioner of his appearance in Higher Secondary Certificate held in the year 2016.

12. In the facts and circumstances, no order as to costs.

[RIYAZ I. CHAGLA, J.]

[B.R. GAVAI, J.]