

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1122 of 2017

In

Civil Writ Jurisdiction Case No.9556 of 2013

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Uday Shankar Yadav son of Bindeshwar Prasad Yadav, Resident of Village-
Uchouli, P.O.- Narsara, Police Station- Hayaghat, District- Darbhanga.

... .. Appellant/s

Versus

1. The Bihar School Examination Council (High School) through its Chairman,
Budh Marg, Patna.
2. The Chairman, Bihar School Examination Council (High School), Budh
Marg, Patna.
3. The Secretary, Bihar School Examination Council (High School), Budh
Marg, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan
For the Respondent/s : Mr. Manish Kumar

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
And
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 29-11-2019

The instant intra-court appeal under clause 10 of
the Patna High Court Rules, has been filed challenging the
judgment dated 26.07.2017 passed by the learned single Judge
in C.W.J.C. No. 9556 of 2013, whereby the writ petition filed by



the appellant seeking quashing of the notice no. 23 of 2013 issued in Dainik Jagran dated 26.04.2013 by the respondent no. 3, whereby the result of the appellant pertaining to Intermediate examination of the year 2004 was cancelled on the ground that earlier also he had appeared in the Intermediate examination in the year 2001 and passed the said examination.

2. The brief facts necessary for present purposes are that, the appellant after passing out his matriculation examination took admission in C.M. College, Darbhanga, in Intermediate in the year 1999 as an Arts student. He appeared in the said examination in 2001 and passed with 2nd Division. He again got himself enlisted in the year 2002 in the L.C.S. College, Darbhanga, on the basis of matriculation certificate of the year 1999 in science stream as a regular student and appeared in the Intermediate examination held in 2004 and passed in 1st Division. Subsequently, notice no. 23 of 2013, under the signature of Secretary of the Bihar School Examination Board (Senior Secondary) (for short “The Board”) was published in the Hindi newspaper ‘Dainik Jagran’ dated 26.04.2013 stating therein that the marks and certificates of the appellant obtained in 2004 Intermediate examination was cancelled on the ground that he had earlier also appeared in



2002 Intermediate examination in different stream and had passed the exam, and therefore, his appearance in the said exam for the second time in different stream is not in accordance with law and rule and the use of the said marksheet is prohibited.

3. The appellant challenged the aforesaid notice issued by the Board, whereby his result of having passed in Intermediate examination in the year 2004 bearing Roll Code 5109 and Roll No. 10069 stood cancelled before this Court vide C.W.J.C. No. 9556 of 2013.

4. Having heard the parties, the learned single Judge dismissed the writ petition vide impugned judgment dated 26.07.2017.

5. The main contention on behalf of the appellant is that the learned single Judge failed to appreciate that an opportunity for hearing to the appellant was necessary in this case before cancelling his result. He contended that prior to the cancellation of the result in question of the appellant, no notice was served upon him, and thus, in absence of show cause notice, the impugned notice whereby the result has been cancelled is bad in law. The further contention on behalf of the appellant is that the learned single Judge failed to appreciate that the appellant had appeared second time in Intermediate examination



of 2004 on the same date of birth as recorded in his first Intermediate examination of 2001. The learned single Judge also failed to appreciate that the rules and regulations of the Council does not prohibit improvement in marks or pursuing different stream for the purpose of achieving excellence.

6. On the other hand, the contention on behalf of the respondents is that the appellant had been provided with two registration by the erstwhile Bihar Intermediate Education Council. Firstly, in the year 1999 as an Arts student from C.M. College, Darbhanga and secondly, in the year 2002 from L.C.S. College, Darbhanga. As per the Rule 12(1) of Bihar Intermediate Education Council (Establishment of College and Conduct of Examination) Rule 1994, all students admitted to the Intermediate courses shall be required to enlist themselves with the council. Further Rule 12(10) of the said Rule provides that enlistment shall be valid for examinations of three consecutive years only. The course of study for Intermediate examination is of two academic year duration. The enlistment and registration of the appellant was firstly done in the year 1999 as student of Intermediate Arts from C.M. College, Darbhanga and within the period of validity of the first enlistment made in the year 1999, the appellant had managed to get himself enlisted afresh as a



student of Intermediate science from L.C.S. College, Darbhanga in the year 2002. In view of the aforesaid specific provisions, the appellant was disentitled to seek a fresh enlistment in 2002 within three consecutive years of examination as he had firstly been enlisted for Intermediate course of two years academic course in the year 1999.

7. It is further submitted on behalf of the respondents that there is no illegality in the order passed by the learned single Judge, whereby the writ petition filed by the appellant, challenging the notice published in the newspaper cancelling the result of the appellant of the Intermediate examination in the year 2004, has been dismissed. The further contention on behalf of the respondents is that immediately after knowledge, the respondents took cognizance of the matter and sent a letter to the Officer-in-charge of Hayaghat Police Station. The Principal of L.C.S. College, Darbhanga from where the appellant had appeared in the examination was also informed about the factum of the case vide letter dated 16.10.2012 for returning the original certificate of the appellant, so that it may be cancelled, because it was not in accordance with law and also instructing the Principal to inform the student about the same and also provide postal address to the Board so that the



Board may also make correspondence with him.

8. On query, it is admitted by the learned counsel for the respondents that there is nothing on record on the basis of which it can be argued that there was any personal service to the appellant or any show cause was asked from the appellant prior to the cancellation of his Intermediate examination result.

9. However, it is argued on behalf of the respondents that there was no statutory obligation on the respondents to give the appellant an opportunity of being heard. The respondent-Board took the decision on administrative side, and hence, the principle of *ad alteram partem* were not applicable. The principle of *ad alteram partem* could apply only to the judicial or quasi judicial body. In view of these arguments, it has been contended that the present Letters Patent Appeal is fit to be dismissed.

10. Having heard the parties, we are inclined to allow the present appeal on the sole ground that before cancelling the result of Intermediate examination of the year 2004, no opportunity of hearing was afforded to the appellant. It is well settled law that no person shall be condemned unheard. The latin maxim *ad alteram partem* is the principle of natural justice, where every persons get a chance of being heard. Even



if, the respondents were acting administratively, they were bound to call for an explanation and to hear the appellant before cancelling his Intermediate examination result.

11. A constitution Bench of the Supreme Court has decided a similar issue in the matter of ***Board of High School and Intermediate Education, U.P. Vs. Ghanshyam Gupta & Ors.*** In the said case, the three respondents were students of G.S. Hindu Intermediate College at Sikandrarao and appeared at the Intermediate (Commerce) Examination conducted by the appellant in the year 1954. On June 12, 1954, the result of the examination was published in newspapers and the three respondents passed in the second division. Thereafter, they prosecuted further studies. But in December 1954, their fathers and guardians received information from the Principal of the G. S. Hindu Intermediate College that the Examinations' Committee of the appellant (hereinafter referred to as the Committee) had cancelled the result of the respondents for the examination of 1954 and further that they had been debarred from appearing at the examination of 1955. Being aggrieved, the respondents filed a write petition in the High Court contending that the Committee had never afforded any opportunity to them to rebut the allegations made against them



and that they were never informed about the nature of the unfair means used by them in the said examination and the first thing they came to know was the resolution of the Committee cancelling their results and debarring them from appearing in the examination of 1955. They contended that they were entitled to an opportunity being afforded to them to meet the case against them of using unfair means at the examination before the appellant took action against them by cancelling their results and debarring them from appearing at the examination of 1955. They also contended that the committee had violated the provisions of the U. P. Intermediate Education Act. The appellant while admitting that no opportunity had been afforded to the respondents to rebut the allegations against them, contended that the Examination Committee was only an administrative body acting merely administratively and it was not bound to give a hearing to a party who might be affected by its decision. The single Judge who heard the writ petition held that the Committee was not bound to act judicially and there was no statutory obligation on the Committee to give an opportunity to be heard. The respondents appealed to a Division Bench and one of the judges of Bench held that even though the Committee was not bound to act judicially or quasi judicially



and it was acting administratively it ought to have given an opportunity to the respondents of being heard. The other judge was of the opinion that since the committee was acting only administratively it was not bound to give a hearing. The matter then went before a third judge who held that even though the Committee was acting merely administratively, the respondents were entitled to a hearing. The appellant, thereafter, appealed before the Supreme Court. After hearing the parties, the Supreme Court held as under:

We thus see that the Committee can only carry out its duties under r. 1 (1) by judging the Materials, placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under r. 1 (1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under r. 1 (1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness



may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under r. 1 (1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under r. 1 (1). We are therefore of opinion that the Committee when it exercises its powers under r. 1 (1) is acting quasi judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in [Dipa Pul v. University of Calcutta, \(1\)](#) and [B. C. Das Gupta v. Bijoyranjan Rakshit](#), in similar circumstances and is in our opinion correct.

It is urged on behalf of the appellant that there are a large number of cases which come up before the Committee under r. 1 (1), and if the Committee is held to act judicially as a quasijudicial tribunal in the matter it will find it impossible to carry on its task. This in



our opinion is no criterion for deciding whether a duty is cast to act judicially in view of all the circumstances of the case. There is no doubt in our mind that considering the totality of circumstances the Committee has to act judicially when taking action under r. 1 (1). As to the manner in which it should give an opportunity to the examinee concerned to be heard, that is a matter which can be provided by Regulations or Bye-laws if necessary. As was pointed out in Local Government Board v. Alridge, (1) all that is required is that the other party shall have an opportunity of adequately presenting his case. But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chap. VI are of administrative nature; but where quasi-judicial duties are entrusted to administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee. It is not however necessary to pursue this matter further, for it is not in dispute that no opportunity whatsoever was given to the respondents in this case to give an explanation and present their case before the Committee. We are therefore of opinion that though the view of the High Court that the Committee was acting merely administratively when proceeding under r. 1 (1) is not correct, its final decision allowing the writ petition on the ground that no opportunity was given to the respondents to put forward their cases before the Committee is correct. We therefore dismiss the appeal. No order



as to, in the circumstances. Appeal dismissed.

12. The ratio laid down by the Supreme Court in *Board of High School and Intermediate Education, U.P. (supra)* is squarely applicable to the facts of the present case. In the present case also the effect of the decision of the respondents is quite serious. Cancellation of the result of the examination of the appellant will adversely affect his career. It is not a case of impersonation or fraud or cheating or interpolation. Under the circumstances, even though no duty was cast on the respondents in the act or regulations expressly to give an opportunity of hearing to the appellant before cancelling his examination result, it was incumbent upon the respondents to afford an opportunity of hearing to him as the ultimate outcome of such decision is in the nature of punishing the appellant.

13. We are, therefore, of the opinion that even though the respondents were acting administratively, they were required to act judicially and decide the result of the appellant objectively after giving a proper show cause notice to the appellant. Since it was not disputed that no notice was served upon the appellant personally and no show cause was asked from him, the learned single Judge ought to have allowed the writ petition and remanded the matter back to the authorities for



taking proper decision after issuing notice to the appellant, as to why his result of examination in question be not cancelled.

14. In view of the discussions made above, we allow the appeal setting aside the order dated 26.07.2017 passed by learned single Judge in C.W.J.C. No. 9556 of 2013. The impugned notice no. 23 of 2013 issued in the newspaper dated 26.04.2013, whereby the result of the appellant pertaining to Intermediate examination of 2004 was cancelled is modified to the extent that the said notice shall be treated as a show cause notice to the appellant, as to why his result pertaining to the examination year 2004 and the certificate issued by the Board be not cancelled in this regard on the ground that he had appeared in the Intermediate examination in the year 2001 and passed the same. The appellant shall be required to submit his reply to the show cause notice before the Secretary of the Board within four weeks from today giving his cell phone number and postal address. Thereafter, the Secretary of the Board shall fix a date of hearing and communicate the same to the appellant by post as well as by sending message on his cell phone. The appellant shall be required to be present on the date so fixed by the Secretary of the Board for personal hearing. After considering the show cause reply of the appellant and after



giving an opportunity of personal hearing to him, the Secretary shall be required to pass a speaking order in accordance with law.

15. In case, the appellant fails to respond and appear on the date fixed for hearing, the Secretary of the Board shall be at liberty to proceed *ex parte* and pass reasoned order in accordance with law.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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