

**Mukesh Kumar Singh and ors. Vs. State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Apr-02-1999

**Judge :** R.A. Sharma and A.K. Prasad, JJ.

**Appeal No. :** L.P.A. No. 236 of 1997(R)

**Appellant :** Mukesh Kumar Singh and ors.

**Respondent :** State of Bihar and ors.

**Disposition :** Petitions Allowed

**Prior history :** A.K. Prasad, J. 1. In view of the facts and circumstances of this case and with consent of the parties, this appeal is being disposed of at the admission stage itself. 2. This L.P.A. by the writ-petitioners arises out of an order dated 13-3-1997 in C.W.J.C. No. 2380 of 1995(R) passed by the learned Single Judge dismissing the writ petition. 3. The essential facts giving rise to this appeal are these: The appellants pursuant to the notification issued by the State Govt. applied for their admis

**Judgement :**

**A.K. Prasad, J.**

1. In view of the facts and circumstances of this case and with consent of the parties, this appeal is being disposed of at the admission stage itself.

2. This L.P.A. by the writ-petitioners arises out of an order dated 13-3-1997 in C.W.J.C. No. 2380 of 1995(R) passed by the learned Single Judge dismissing the writ petition.

3. The essential facts giving rise to this appeal are these:

The appellants pursuant to the notification issued by the State Govt. applied for their admission in Industrial Training Institute (General), Ranchi (hereinafter to be referred to as 'the Institute' for short) for the trades of their choice for the Sessions 1992-93 and 1992-94. It is also the case of the appellants that for the purpose of admission in the Institute no written examination is held and the merit is adjudged on the basis of the marks obtained in the matriculation examination. This fact has been admitted in the counter-affidavit in the instant appeal filed on behalf of respondents. 2(Principal of the Institute) and 3 (Director, Employment and Training, Department of Labour, Govt. of Bihar, Patna), sworn by respondent No. 2 himself with due authorisation. It is the case of the appellants that they were selected and admitted on the basis of the marks obtained in the matriculation examination on merit and began to attend their classes regularly. It is admitted position that their admission was cancelled by an office order dated 29-12-1992 and against that the appellants moved this Court in C.W.J.C. No. 100 of 1993 (R) which was disposed of by order dated 28-1-1993 with a direction to the respondents to afford due opportunity of hearing before cancellation of their admission. Thereafter, the appellants made a representation dated 29-1-1993 before respondent No. 2 to accord permission for attending their classes, a xerox copy of which is Annexure-1 to the writ petition, in view of the order of the Court in CWJC No. 100 of 1993 (R) which was allowed and they continued to prosecute their studies in the Institute. Appellant No. 1 (Mukesh Kumar Singh) was admitted in one year course, whereas the other appellants were admitted in the years course. Appellant No. 1 on completion of his course was issued admit-card and took his examination and some time in December 1993 (Xerox Copy of the admit-card is Annexure 3 to the writ petition), the result of appellant No. 1 was declared. A show cause was issued to the appellants by respondent No. 3 on 19-1-1994 as to why their admissions be not. cancelled. Annexure 4 to the writ petition is the xerox copy of such notice issued to appellant-Sunil Kumar Singh. The appellants

gave a detailed reply in the matter. Appellants 2 to 7 were allowed to appear in the examination on completion of their two years course in July 1994 and by that time their show cause remained pending and in December 1994, the result was declared, but no marks-sheet was issued because their results were cancelled, whereupon the appellants made a detailed representation for publication of the results which was forwarded by respondent No. 2 to the Controller of Examination, Employment and Training, Industrial Training Institute, Digha Ghat, Patna, for consideration under letter No. 742 dated 26-5-1995 (Annexure-5 to the writ petition) and, ultimately, by office order dated 25-7-1995 the admission of the appellants to the Institute was cancelled by respondent No. 3. Annexure 6 is a copy of the communication made to appellant No. 1 (Mukesh Kumar Singh).

Hence, the appellants brought the writ petition for a direction upon the respondents for publication of their results.

No counter-affidavit, though opportunity had been given, was filed on behalf of the respondents in the writ petition.

4. In the counter-affidavit filed in the instant appeal, the stand of the respondents is that the names of the appellants did not figure in the merit list prepared by respondent No. 2 for admission in the Institute and as such no legal right accrued to the appellants ; that the writ petitioners being wards of employees of the Institute had applied some pressure tactics and on such pressure respondent No. 2 had admitted them provisionally, subject to the approval of respondent No. 3 ; that there is no provision for reservation in the admission for the staff-ward in the Institute and as the names of the appellants were not in the merit list their admissions were cancelled by respondent No. 3 after consideration of the show cause arid as their admissions were illegal, publication of the result has been withheld.

5. The learned Single Judge dismissed the writ petition on the grounds that the admission taken by the writ petitioners was by illegal means and that their names did not appear in the merit list for admission. Hence, the instant L.P.A.

6. Learned Counsel for the parties have already been heard at length.

7. The respondents do not dispute the fact that the petitioners-appellants possessed educational qualification for admission to the courses in different trades of the Institute. The main contention of the respondents is that the names of the appellants were not in the merit list prepared for admission to the courses. But, the fact remains that the Principal of the Institute had taken admission of the appellants, though provisionally, subject to approval by the respondent No. 3. Thus, the Principal was also responsible in giving admission to the appellants. It is admitted that the Principal of the Institute after disposal of C.W.J.C. No. 100 of 1993 (R) on 20-1-1993, on an application made by the appellants, permitted them to continue to attend the classes with effect from 5-2-1993 (vide Annexure-2). Appellant No. 1 (Mukesh Kumar Singh) on completion of course was issued admit-card in July 1993 and he appeared at the examination and his result was declared in December 1993. But, it appears that no action till then was taken for cancellation of his admission by giving an opportunity for hearing in view of the direction of this Court in C.W.J.C. No 100 of 1993(R). It further appears that a show-cause notice dated 19-1-1994 was issued by respondent No. 3 to appellants regarding cancellation of their admission. It is asserted by the appellants, which fact has not been controverted by the respondents in their counter-affidavit, that they had given a detailed reply to the show cause. It also transpires that reply to the show cause remained pending for consideration and in July 1994, appellants 2 to 7 were allowed to appear in the examination after completion of their two years course and the result was published in December 1994, but no marks-sheet was issued to them. It was as late as on 28-7-1995 that the admission of the appellants was cancelled by office order and that too after the 2nd representation of the appellants was forwarded by respondent No. 2 to the Controller of examination, Employment and Training, Industrial Training Institute, Digha Ghat, Patna on 26-5-1995 (vide Annexure- 5).

8. It is the stand of the respondents that the appellants being wards of the employees of the Institute had applied some pressure tactics on the Principal of the Institute and gained admission. What kind of pressure tactics was applied by them is not disclosed in the counter-affidavit. It is not alleged by the respondents that the appellants had made any misrepresentation to gain their admission. Presuming that the appellants were not in the select list for admission, the reality

remains that the Principal of the Institute took their admission, permitted them to attend the classes with effect from 5-2-1993 (vide Annexure-2) and they were issued admit-cards and allowed to take their examination on completion of the courses. The authorities did not choose to promptly decide the validity of their Admission afresh in view of the direction of this Court as early as on 28-1-1993 in C.W.J.C. No. 100 of 1993(R) and chose to issue show cause in the matter as late as on 19-1-1994. It has been noticed above that the authorities for the reasons best known to them permitted the appellants to take the final examination by keeping their reply to the show cause pending and the inaction of the authorities led to this development. The authorities had ample opportunity to examine the matter and to decide it before issuance of admit-cards to the appellants/taking of the final examination.

9. No material has been brought on record by the respondents to show whether any action was taken against the concerned Principal of the Institute for giving admission to the appellants.

10. It is well settled that High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders for complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. The appellants spent valuable time, money and energy in prosecuting the study and in preparation and appearing at the examination. The delay on the part of the concerned authorities to take decision as discussed above has led to a situation which has put the appellants to immense disadvantage and by now they have lost some valuable years of their academic career and their future prospect in life would be ruined if the belated order of cancellation of their admission is allowed to stand.

In the back-ground of the facts and circumstances stated above, equity demands that the order of cancellation of admission of the appellants passed by respondent No. 3 (office order dated 28-7-1995/ Annexure 6) after lapse of about three years be quashed. Hence, for the ends of justice, it is accordingly quashed.

11. In the result, this LPA is allowed. Consequently, the writ petition is also allowed and the impugned order dated 13-3-1997 passed in C.W.J.C. No. 2380 of 1995(R) is set aside. The respondents are directed to publish the results of the appellants forthwith. No costs.

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