

Shri Ramjee Roy and anr. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-26-2002

Judge : R.N. Prasad, J.

Appeal No. : C.W.J.C. Nos. 1594 and 1810 of 2002

Appellant : Shri Ramjee Roy and anr.

Respondent : State of Bihar and ors.

Prior history : R.N. Prasad, J. 1. In both the cases similar questions of law and facts are involved. They have been heard together and are being disposed of by this judgment and order. 2. Petitioners are Incharge Head Master and Head Master of Nationalised school, namely, Nathuni Bhagat High School and Unsar High School respectively. They have filed writ petitions for quashing the order dated 21-1-2002 issued under the signature of District Education Officer, Muzaffarpur, Annexure-1, whereby registration of

Judgement :

R.N. Prasad, J.

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2. Petitioners are Incharge Head Master and Head Master of Nationalised school, namely, Nathuni Bhagat High School and Unsar High School respectively. They have filed writ petitions for quashing the order dated 21-1-2002 issued under the signature of District Education Officer, Muzaffarpur, Annexure-1, whereby registration of some of the students of the schools has been cancelled and also the order dated 19-1-2002 issued under the signature of Secretary of Bihar School Examination Board, hereinafter to be referred as the Board, intimating cancellation of registration of the students and forfeiture of fees deposited for their registration, Annexure-2.

3. The case of the petitioner in C.W.J.C. No. 1594/2002 is that registration fees and forms of 325 regular students, 172 private students and 50 ex-students total 547 were deposited in the office of the Board in time. On 6-1-2002 the Board published a communique in daily newspaper, name, the 'Aaj' informing that the annual Bihar Secondary School Examination, 2002 is likely to be held with effect from 18-3-2002. Registration receipts and examination forms were sent to the District Education Officer, concerned. The Head Master concerned was directed to contact the District Education Officer of his district and get registration receipt and examination form. It was also informed that for annual secondary school examination form will be received in the office of the District Education Officer by 25-1-2002 without fine and with fine by 31-1-2002. The petitioner received the required number of registration slip on 12-2-2002. On 15-1-2002 he filed a petition for supply of 547 examination forms but respondent No. 5 supplied only 257 applications out of which 35 were meant for regular students, 172 for private students and 50 for ex-students. On 16-1-2002 the petitioner filed an application before respondent No. 5 for supply of examination forms with respect to the rest 290 students but nothing was done. On 21-1-2002 again a petition was filed for supply of examination forms before respondent No. 5 but instead of supplying the required number of examination forms, the order, Annexure-1, was issued canceling registration of 265 regular students. In the writ petition action of the respondents has been challenged on the ground that they were regular students of the school. They had studied in the school. They fulfill all eligible criteria for appearing in Bihar Secondary School Examination.

4. In the counter-affidavit filed on behalf of respondent Nos. 1 to 4 stand has been taken that under Rule 267 of Bihar Education Code no students can be admitted to a class higher than Class 7th of recognised High School unless he/she produces transfer certificate from another recognised school or appears at and passes the annual examination of the next lower classes of the school. In the petitioner's school 265 students were admitted merely on the basis of declaration and as such admission of aforesaid students was against the aforesaid provision. A letter dated 2-1-2002 was sent to respondent No. 5 for distribution of registration slip after due verification regarding genuineness of the students. Pursuant to the aforesaid letter, respondent No. 5 submitted a report that admission of 265 students has been found to be doubtful, Annexure-C. On receipt of aforesaid report, registration of 265 students has been cancelled, Annexure-D.

5. In reply to the counter-affidavit it has been stated that respondents have misconstrued Article 267 of Bihar Education Code. The note appended thereto was not considered, which does not prohibit admission of girl students in classes VIII and IX who have not got transfer certificate and could not appear at and pass annual examination of the class next below. In the beginning of the session they may be admitted on special test. Article 267 of Bihar Education Code does not prohibit admission in Class VIII & IX in any recognised school, however, it provides admission on the basis of other than transfer certificate. It has wrongly been stated in the counter-affidavit that admission of 265 students has been taken merely on the basis of declaration, rather the fact is that admission of 265 students has been taken on the basis of annual admission test examination together with declaration of their fathers/guardians, out of them 82 were girls, 18 Muslims and 15 Harijans and in this regard Article 268 of Bihar Education Code is relevant. The letter No. 1494, dated 23-5-1970 issued by the Deputy Director (Secondary) Bihar, Patna, Annexure-12, also says that there is no restriction for admission above class 8th in recognised school.

6. The case of the petitioner in C.W.J.C. No. 1810/2000 is that there were 710 regular students in the school. Their attendance register has also been maintained. There were 149 private, students also. Registration fee and form of 858 students were deposited in the office of the Board and registration was made.

When the petitioner went to deposit fee and examination form to respondent No. 5 he accepted the fee and examination form of only 192 students in view of letter, Annexure-2, 518 students whose registration has been cancelled and fee has been forfeited were regular students of the school their names are in admission register as well as in attendance register and are entitled to appear in Annual Secondary School Examination, 2002. Registration has been cancelled without any enquiry and without allowing opportunity to the petitioner to explain the position.

7. In the counter-affidavit filed on behalf of respondent Nos. 2 to 4 stands has been taken that registrations of only 192 students were found to be valid and registration of the rest of the students was not found valid and as such their registration has been cancelled on the basis submitted by report of respondent No. 5. Annexure-A.

8. From the material available on the record it is manifest that registration fee and form of the students of the schools were submitted in the office of the Board in the month of June 2001, Students were registered by the Board. On 6-1-2002 the Board published a communique informing that Annual Secondary School Examination, 2002 is likely to be held from 18-3-2002. Registration receipt and examination form were sent to the District Education Officer concerned. The Head Masters of the Schools were requested to contact their District Education Officer and get registration slips and examination forms and deposit the same with requisite fees by 25-1-2002 without any fine and with fine by 31-1-2002. Petitioners approached respondent No. 5. They learnt that registration of 265 students and 518 students respectively of their respective school have been cancelled on the basis of report of respondent No. 5. Report of respondent No. 5 has been annexed as Annexure-C & A respectively. Article 267 of the Bihar Education Code deals with first admission to higher class and it says that students may be admitted in classes 6 & 7 if the Head Master of the School is satisfied as to the antecedent of the students. However, it says that no one should be admitted to a class higher than Class 7 of a recognized High School unless he/she produces transfer certificate from another recognized school or appears at and pass annual examination of the next lower class of the school. Therefore, it is evident that admission to a class higher than Class VII is permissible in two cases

i.e. one on transfer certificate and the other if the students appear at and pass annual examination of the next lower class of the school. However, a note has been given to the aforesaid Article which says that admission of girl students in Classes VIII and IX who have not got transfer certificate or could not appear at and pass annual examination of the next lower class, at the beginning of the session may be done after special test within a fortnight of the opening of the school every year and only deserving girls should be admitted. Article 268 deals with admission of aboriginals, Harijans, back-ward and Muslims and it says that admission of the aforesaid categories should be considered sympathetically and some what leniently and fair number of them consistent with the minimum standard of attainment should be admitted.

9. Annexure-1 of C.W.J.C. No. 1594/2002 indicates that 265 students were not admitted on the basis of transfer certificate but they were admitted on declaration of father/guardian. The report, Annexure-C to the counter-affidavit on the basis of which registrations of 265 students were cancelled, says that case of 265 students appears to be doubtful. However, report, Annexure-E to the counter-affidavit, says that students were admitted only on the basis of declaration made by the father/guardian. In reply to the counter-affidavit it has been stated that out of 265 students 82 were general students, 18 Muslims and 15 Harijans but the respondent enquiry authority did not consider Article 268 of Bihar Education Code which deals with admission of students of such category. Moreover, stand has also been taken that 265 students were not admitted only on declaration but also after test. Enquiry report is silent on the aforesaid stand.

10. In C.W.J.C. No. 1810/2002 it appears from Annexure-2 that registrations of students have been cancelled on the basis of report submitted by respondent No. 5 in which it has been stated that names of those students were not in admission register and attendance register. The report of respondent No. 5 is Annexure-A to the counter-affidavit, wherefrom it appears that except admission register no other record was produced. However, learned Counsel for the petitioner vehemently contended that all registers were available and without considering those registers, report has been submitted. Moreover, respondent No. 5 adopted pick and choose method and accordingly submitted report without assigning any reason, which is

illegal. It appears from the material on record that registration fee and examination form were submitted in the month of June 2001. Annexures-2 & 1 i.e. cancellation of registration of students is dated 19-1-2002 and 21-1-2002 respectively i.e., after notifying the date of annual secondary school examination, 2002 vide, communiqu dated 6-1-2002, Annexure-7. Moreover, it appears from the material on record that no detailed enquiry meeting the questions raised by learned Counsel for the petitioners has been made. At this juncture it is necessary to be mentioned that it is a matter with respect to appearance of students in Annual Secondary School Examination, 2002. Such matter should not be taken lightly as it relates to the career of students who are future of the nation and as such entire action in this respect must be taken at the earliest.

11 Accordingly, both writ petitions are disposed of directing the Regional Deputy Director, Third Division, respondent No. 7 to hold a detailed enquiry without any delay considering that the date of examination has already been notified and accordingly allow all the genuine students to appear in Annual Secondary School Examination, 2002. Before parting with the judgment it would be in the interest of justice to say that in future the Board must register the students on whose behalf registration fees and forms are submitted after due enquiry within a period of two months from the date of last date of depositing fee and form for registration so that genuine students may not be taken to surprise that their registration has been cancelled after the date of examination was published and may not be in dilemma whether their registration would be accepted as valid or not.

12. Let a copy of the order be handed over to the Counsel for Bihar School Examination Board for taking immediate steps in the matter.