

Rishabh Raushan and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-01-2002

Judge : Nagendra Rai and R.S. Garg, JJ.

Appeal No. : L.P.A. No. 1168 of 2001

Appellant : Rishabh Raushan and ors.

Respondent : State of Bihar and ors.

Disposition : Appeal Allowed

Judgement :

1. This appeal is directed against the order dated 18.9.2001, passed by a learned single Judge, whereby the writ application being C.W.J.C. No. 12044 of 2001 filed by the appellants, who are regular students of Maya Chhota Government High School, Gopalganj, challenging the order contained in letter dated 9.6.2001 and the letter dated 27.6.2001, issued by the respondent-Bihar School Examination Board (hereinafter referred to as 'the Board') cancelling their registration as well as the result of the secondary examination of 2001, has been dismissed.

2. The question, which falls for consideration in this case, is as to whether a regular student has also to appear in the preliminary test for being sent up before appearing in the final examination conducted by the Board or not?

3. It is an admitted position that the secondary examination is conducted by the Board under the provisions of the Bihar School Examination Board Act, 1952 (hereinafter referred to as 'the Act'). Section 17 of the Act empowers the Board to make regulations with regard to conditions under which students shall be admitted to the examination of the Board. The Board has framed Regulations which was known as Bihar School Examination, 1964 (hereinafter referred to as 'the Regulations') with regard to all matters enumerated in Section 17 of the Act including the conditions under which the students shall be admitted to the examination of the Board. Chapter IV of the said Regulations deals with the aforesaid matter. Clause 2 thereof deals with the eligibility of regular candidates for appearing in the secondary examination and Clause 3 deals with the eligibility of private candidates for appearing in secondary examination. The said clauses of Chapter IV of the Regulations run as follows:

2. Eligibility of candidates.-Subject to conditions prescribed under these regulations, the following class of candidates shall be eligible to be sent up for the examinations of the Board:

(a) The candidate who has attended a regular course of study in the topmost class in one or more high schools for at least one session immediately preceding the examination in which he intends to appear and whose record of work and conduct are assessed to be satisfactory and who has been found fit for being sent up.

(b) The candidate who has failed at the examination of the Board or could not appear therein after having been sent up and has not joined any high school, on the production of a certificate of (i) good conduct and (ii) diligent and regular study from the Headmaster or from the Principal of the school last attended by him.

(c) The candidate who has been duly registered by the Board under Article 22 of Chapter IV of this regulations.

Explanation.-In the case candidate who has once failed at the Board's Examination and is again admitted to a school to attend a regular course of study in the top-most class, the term 'session' means the period between the publication of results of the examination at which he failed and the next annual examination.

3. Eligibility of private candidate for Secondary School Examinations.-(a) A candidate who has not attended any recognised secondary school as pupil at any time during one year immediately preceding the examination in which he wants to appear may be admitted to the Board's Secondary School Examination as a private candidate.

(b) Such private candidates as have not been resident in the State for at least one year immediately prior to the Secondary School Examination will not be permitted to appear at the Board's Examination, unless they are the sons or wards of Government servant transferred from another State within that period.

(c) In order to be eligible for appearing at the Secondary School Examination, such private candidates shall have to pass a preliminary test examination held at any Government Secondary School or other secondary school appointed by the Director of Public Instruction for the purpose.

(d) Such candidates shall also have to produce a certificate of good conduct from respectable person of the locality to the satisfaction of the head of the institution concerned.

(e) The private candidate shall have to register himself in the Board under Article 22 of Chapter IV of the regulation.

4. Learned Counsel appearing for the Board in spite of several adjournments having been granted, could not produce any other provision to show that the preliminary test is required in case of regular students also for being sent up before appearing in the secondary examination. He has drawn our attention to the notings in the office of the Board, wherein provision has been made to keep answer sheets of preliminary test for certain period but, in our view, that does not show that the Board has taken a decision that a pre-test has to be held also in case of regular students for being sent up before appearing in the secondary examination.

5. Thus, the question has to be answered by referring to the provision of the Regulations. A bare reading of Clauses 2 and 3 of the Regulations would show

that the regular students of school and the private students for appearing in the secondary examination have been placed in two different and separate categories. So far as the regular students are concerned, Clause 2(a) does not speak of holding a preliminary test of the students for being sent up before appearing in the secondary examination. It only speaks that the regular student must have attended a regular course of study in a school for at least one session immediately preceding the examination in which he intends to appear and his record of work and conduct have to be assessed to be satisfactory and he has been found fit for being sent up. There is no requirement at all for holding a pre-test of student for being sent before appearing in the secondary examination. It is a different matter that the Principal of the School with a view to assess the conduct and record of work of the student and to find out whether student is fit for being sent up, may prescribe some type of test or he may assess the candidate on the basis of performance and conduct in the school but under the Regulations holding of preliminary test is not prescribed. Clause 3 deals with the private students and they fell in different category. As they are not regular students of the school, the school authorities are not in a position to know whether they are fit for being sent up. To meet such situation, the Regulations provide for holding a preliminary test.

6. The Board has framed regulations, under which it has provided different criteria for the students appearing in the secondary examination as private students and regular students. This Court cannot interpret that thought the Regulation has not provided for the requirement of preliminary test for the regular students before appearing in the secondary examination for being sent up, the said requirement has to be read by taking recourse to the other provision of the Regulations applicable to private students. The said interpretation will run counter to the specific provision contained in Clause 2(a) of the Regulations. If the Board wanted preliminary test as condition precedent for regular student also then there was no difficulty in providing for preliminary test clearly and specifically in the Regulations. The use of different wordings in the two clauses of the Regulations clearly shows that the requirements are different. Thus, we are of the view that the requirement of Clause 3 cannot be put in Clause 2 of the Regulations. Clause 2(a) of the Regulations does not provide for holding a preliminary test for the students for being sent up. This apart, the fact is that the appellants were the regular students

of the school in question and they have appeared in the secondary examination and have been declared successful and in such a situation at this stage cancellation of their registration and examination on the ground which as stated above, is not applicable to their cases, was wholly unjustified.

7. Accordingly, the impugned orders passed by the Board are quashed and the Board is directed to publish the result of the appellants and other regular students of the school in question.

8. In the result, this appeal is allowed and the order passed by the learned single Judge is set aside.

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