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Manjunatha Vs. Director of Pre-university Education

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Court : Karnataka

Decided On : Apr-11-1985

Reported in : ILR1985KAR4220

Judge : Rama Jois, J.

Acts : Rules Relating to Conduct of Pre-University Examinations - Rule 37

Appeal No. : W.P.Nos. 4661 of 1985

Appellant : Manjunatha

Respondent : Director of Pre-university Education

Advocate for Def. : N. Devadas, HCGP

Advocate for Pet/Ap. : G.R. Karisidda Devara, ;G.S. Visweswara, ;B.G. Naik, ;N.Y. Hanumanthappa, ;Shivaraj Patil, ;K. Channabasappa, ;D.N. Nanjunda Reddy, ;K.R.D. Karnanth, ;M.N. Seshagiri, ;V.K. Kulkarni, ;O. Mahesh, ;A. K

Disposition : Petition dismissed

Judgement :
ORDER

Rama Jois, J.

1. In each of these Writ Petitions, the petitioner concerned has questioned the legality of the order of the Board of Pre-University Education of this State ('the Board' for short cancelling the certificate issued to the effect that he/she had passed the Pre-University examination held in April 1982.

2. When the petitions came up for preliminary hearing, in each of these petitions the Government Advocate was directed to take notice and now these petitions have come up for preliminary hearing after notice to the Government Advocate. As the cases involves common questions of law and fact, they are disposed of by this common order.

3. The brief facts of the case, in general, which have given rise to these Writ Petitions are as follows :

(i) The petitioners appeared for the Pre-University examination conducted by the Board in April 1982. The results of the examination were announced in the month of June 1982. Each of the petitioners failed in one or the other subjects and as a result failed in the examination. There has been a provision in Rule 37 of the Rules relating to the conduct of Pre-University Examinations to the effect that under no circumstances the answer scripts of theexamination shall be revalued. However there is a provision under Rule 38 for re totaling of the marks. The Rules read-

'37. Re-valuation of answer scripts.

Under no circumstances, re-valuation of answer scripts will be permitted by the Board. Hence no applications made by the candidate or by any other person in this behalf shall be entertained.

38. Re-totaling of marks/ totals.

(a) Any candidate of the examinations conducted' by the Board who desires to cause re totaling of marks/totals in subject/s may apply within 30 days from the date of publication of the results of the examination in which he appeared as a candidate on payment of Rs. 10 per subject to the Board.

XX XX XXIn accordance with the above provision, each of the petitioners applied for re-totaling in the subject in which he she had failed. On re-totaling it was found that the totalling made by the valuer concerned was correct and the marks entered in the facing sheet of the answer script in the prescribed proforma was also correct.

(iii) However, in the case of each of the petitioners a representation was made to the Director that though the total was correct, some of the answers had not been valued and, therefore, the marks should be given to such of the answers which had remained not valued by the valuer. After such representation was made, the then Director S.P. Satish straightaway awarded additional marks in consultation with a subject expert and entered the same in a separate proforma prepared for the purpose and directed the issue of passcertificate to each of the petitioners by adding the marks so given. But in the letter addressed to each of the petitioners to which the pass certificate was enclosed, it was stated that on re totaling he had secured more marks. Except regarding name and other particulars of the concerned candidate, the contents were identical. The communication issued to the petitioner in W.P. 4719 of 1985 reads :-

'OFFICIAL MEMORANDUM

Sub : re totaling of marks in Sanskrit of Reg. No. 506297 of Bheema Rao, B.R.

Ref ; Indent No. 301 from the re totaling Section.

Consequent upon re totaling of marks in Sanskrit, the marks are raised from 25 to 35, The result has been revised fails to I class.

The certificate of the above candidate is enclosed herewith for being issued to the candidate under acknowledgment.

Sd/. Director, Pre-University, Education.'

(iii) On 8-9-1983, a show cause notice was issued to each of the petitioners. The notice issued to the petitioner in W. P. 4719 of 1985 Annexure-C, reads :-

The notice issued to the other petitioners were similarly worded except to the extent of particulars relating to the candidate's name, register number, the subject and the original marks secured and the marks awarded subsequently.

(v) Except in one or two of the petitions, the petitioner in each of the petitions, submitted a reply refuting the allegation that answers to questions were inserted by him/her subsequently as indicated in the notice and submitted that no malpractice had been committed by him/her and that there was no justification for cancelling the certificate.

(vi) The Board however passed orders on 11-3-1985 cancelling the certificate of pass issued to each of the petitioners. A copy of the order produced as Annexure-F in W.P. No. 4719 of 1985 reads : -

MEMO

'Sub : Malpractices in the Pre-University Examination of April 1982.

Ref : 1. Govt. D.O. Letter No. ED 32 TPU 83 dated 16/18-6-1983

2. Show cause notices issued to 41 candidates dated 8-7-1983

3. Resolution passed by the Board for Pre-University Education at its Meeting held on 26-12-1984.

Preamble :

(1) The Vigilance Commission has conducted enquiry in this regard and in its enquiry report it is stated that these 41 candidates are directly involved in tampering with the answer scripts.

(2) On the basis of this enquiry report, Government have issued instructions in its letter cited under reference No. 1 above, thathow cause notice may be issued to these 41 candidates and the whole issue may be placed before the Board for Pre-University Education for its decision.

(3) Accordingly Show-cause notice was issued instructions in its letter cited under reference No. 1 above, that show cause notices may be issued to those 41 candidates and the whole issue may be placed before the Board for Pre-University Education for its decisions.

(4) Accordingly show-cause notices were issued to all the 41 candidates and the replies received from the candidates were placed before the Board for Pre-University Education. The Board for Pre-University Education at its Meeting examined this issue in detail and sought certain clarification from the Government and finally in its meeting held on 26-12-1984 received in its resolution No. 5 that the certificates issued to the 41 candidates should he withdrawn since they are involved intampering with the answer scripts after valuation by the Assistant Examiners/ Deputy Chief Examiners in the guise of re totaling of marks.

The replies furnished to the Show-Cause Notice by Sri B. R. Bheema Rao is not convincing and acceptable. Therefore, the certificate issued to him is hereby withdrawn as per the resolution of the Board.

Sd/- Director, Pre-University Education.'

The impugned order in all other petitions also is issued on the same date and is similarly worded. Aggrieved by these, orders, each of the petitioners has presented the Writ Petition.

4. The contention urged by the Learned Counsel for the petitioners are as follows:

(i) The impugned orders were violative of Rules of natural justice as no inquiry was held and no adequate opportunity was given to each of the petitioners to resist the serious allegations levelled against each of them.

(ii) The Board was equitably estopped at this distance of time from cancelling the certificate as on the basis of the representation made by the Board through the issue of pass certificate to each of the petitioners that he/she had passed in the Pre-University examination, and was prosecuting either Medical, Engineering or General Degree course and is now in the III Year of the concerned course and as by the cancellation of the pass certificate at this distance of time would result in

irreparable loss and manifest injustice.

5. In support of the first contention, Learned Counsel for the petitioners, submitted as follows: The show-cause notice indicated that it was based upon the inquiry made by the Vigilance Commission. A copy of the Vigilance Commission's report was not furnished. In the notice, it was alleged that the petitioner concerned had inserted certain answers in the answer script subsequently and it was on account of such malpractice committed he/she had secured more marks than given in the statement of marks and when the said allegation was denied, neither the Board proved the charges against the petitioners nor any opportunity was given to them to establish their innocence. Therefore the impugned order was in flagrant violation of rules of natural justice. In support of the above submission, Learned Counsel relied on the following decisions.

(i) Board of High School - v. - Ghanshyam, : AIR 1962 SC1110 , The Board of H.S.I.E. - v. - Chitra, : [1970]3SCR266 , Mohinder singh Gill - v. - Chief Election Commission, : [1978]2SCR272 , Swadeshi Cotton Mills - v. - Union of India, : [1981]2SCR533 , Amiya Kumar - v. - Principal R.E. College, : AIR1982 Ori43 , Sibaram Panda - v. - Collector, Cuttack, : AIR1982 Ori117 , Ramnarayan Keshori - v. -University of Calcutta, : AIR1982 Cal1 , Narendranath - v. - High School & Intermediate Examination Board, : AIR1982 All123 , Durgappa - v. - Basavesh-wara Engineering College, 1982(1) KLJ 120.

6. The substance of the ratio of all the decisions is that any order, even if administrative in character, which has got civil consequences against any individual, should be passed only after complying with the Rules of natural justice, i.e., by giving a reasonable opportunity of refuting the charges, The principle is too well settled. There can also be no doubt that cancellation of pass certificate certainly results in civil consequences to the person concerned.

7. The argument of the Learned Counsel for the petitioners was that in the present cases, except issuing astereotyped show-cause notice, no opportunity worth the name was given to each of the petitioners to meet the allegations levelled against him/her and, therefore theimpugned orders are violative of principles of natural justice.

8. Sri N. Devadas, High Court Government Pleader, appearing for the Board, produced the original records including the concerned original answer scripts of each of the petitioners and on the basis of the said orders submitted as follows:

(1) According to the result declared by the Board each of the petitioners had failed in the examination. According to the rules regulating the Pre-University Examination for all candidates, who fail in the examination only statement of marks has to be given. As each of the petitioners had failed, statement of marks was given. Each of thepetitioners, on coming to know that he/she had failed in a particular subject, each of the petitioners applied forre-totaling. Even after the re totalling, there was no change in the marks of each of these cases. In other words, the total made by the value concerned was found to be correct.

(2) At that stage, knowing full well, there was no provision for revaluation and on the other hand, there was a clear prohibition for revaluation of the answer scripts, each of the petitioners made a representation that the valuer concerned had not given marks to some of the answersfurnished by each of the petitioners. On such a representation, the then Director S. P. Satish on taking the opinion of an expert in the subject concerned awarded marks as requested by each of the petitioners in a cyclostyled proforma. The proforma in which the opinion of an expert in the subject was taken and the order passed by the Director, are similar in all cases. The two sheets relating to the petitioner in W.P. No. 4661 of 1985 read : -

I. Opinion of the Lecturer:

'Reg. No. 510672 - March 1982 Exam. Commerce, question No. 4 B has not been valued. Two marks may be awarded for that answer and two marks for 4 Bb.

Question No. 5 a) answer has not been valued and two marks may be awarded and for 5B b) 3 marks may be awarded.

On account of this the total marks will become 23 to 32.

Sd/- B.N. Satyanarayana Rao,

B. N, Satyanarayana Rao,

Lecturer in Com.

Govt. Central College,

Bangalore.

II. Orders of the then Director :

NOTES AND

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