

Chittra Srivastava Vs. Board of High School and Intermediate Examination, U.P.

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Court : Allahabad

Decided On : May-23-1962

Reported in : AIR1963All41

Judge : A.P. Srivastava and ;S.N. Katju, JJ.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Intermediate Education Act

Appeal No. : Special Appeal No. 592 of 1961

Appellant : Chittra Srivastava

Respondent : Board of High School and Intermediate Examination, U.P.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B.N. Asthana, Adv.

Disposition : Appeal allowed

Judgement :

Katju, J.

1. This is a special appeal against a decision of Mr. Justice Mathur dated the 6th October 1961 dismissing a writ petition filed by the appellant. The appellant was

formerly a student of class XII of the Vasant Girls intermediate College, Varanasi in the 1959-60 session. She appeared at the Intermediate Examination from that institution and failed in 1960. She then joined the Government Intermediate College for Girls at Jaunpur and was admitted to the Intermediate Examination of 1961 from that institution in March/April 1961. Her result for that examination was, however, not declared and by a letter dated the 6th July 1961 her guardian was informed that her examination had been cancelled by the respondent Board. The reason given for the cancellation was that the appellant was not eligible to appear at the examination because she was short of attendance by seven lectures in the subject of Griha Vigyan. It was held that the Principal of the institution could in the case of the appellant condone the absence of five lectures only but had wrongly purported to condone all the seven lectures which she had no jurisdiction to do.

By the writ petition which has given rise to this appeal the appellant challenged the validity of the cancellation of her examination and prayed that the order of cancellation be quashed by writ of certiorari. She also claimed a suitable writ, direction or order, including a writ of mandamus, directing the respondent Board to withdraw its order of cancellation and to declare her result according to law. The grounds urged in support of the petition were that the cancellation was ultra vires the powers of the Board, that the order had been passed in contravention of the principles of natural justice, that the alleged shortage of lectures was not due to any fault of the appellant, that, in fact, there was no shortage and the relevant rules had been misinterpreted and that the appellant could not be penalised for any act or omission of the Principal of the institution.

2. The petition was dismissed in limine on the ground that the appellant's attendance was really short by seven lectures and though five of those lectures could be condoned by the Principal the remaining two could not have been so condoned, the appellant had, therefore, no right to appear in the examination and the Board could refuse to declare her result. The learned Judge took the view that the case was strictly speaking not one of cancellation of the result But was really one of refusal to declare the result of a person not entitled to appear at the examination, and it was not necessary to call for her explanation or to give her an opportunity of being heard before passing an order. It was also held that the

regulation under which the Board had taken action was not unreasonable or contrary to the principles of natural justice as the appellant having applied under the Regulations to be admitted to the examination could not avoid being bound by them.

3. By the present appeal the appellant challenges the correctness of the order dismissing her petition.

4. So far as the facts are concerned they are almost admitted. The appellant being a failed candidate her attendance during only one academic year was to be taken into consideration in each subject and out of the lectures given she was expected to be present in 75 per cent. of the lectures. In the subject of Griha Vigyan there were altogether 113 lectures. The appellant was present in 77 of those lectures only though she ought to have been present in 84. There was thus a shortage to the extent of seven lectures. In the case of the appellant, however, the Principal of the institution had condoned all the seven lectures. There is however nothing to indicate any mala fide motive on the part of the Principal, respondent No. 3, in condoning the appellant's aforesaid shortage.

5. On the 6th July 1961 the Secretary of the respondent Board wrote a letter to the Principal informing her that her action in condoning the shortage of attendance in the case of the appellant was contrary to rules and consequently the appellant's examination- had been cancelled.

6. The explanation which the Principal had offered for condoning the shortage was that altogether 121 lectures in the subject of Griha Vigyan were expected to be given. Because the teacher of that subject had taken leave in February 1961 eight lectures could not be arranged for and only 113 were given. The appellant had been present in 77 out of the 113 lectures given and was also present on all the eight days on which the remaining lectures were expected to be given but could not be given on account of the absence of the teacher concerned. If the eight days on which the appellant was present but the teacher was absent were also taken into account the shortage of the appellant's attendance would be less than five days and the Principal could condone the entire absence. The Board did not accept this explanation of the Principal and being of opinion that the appellant's attendance

was really short of seven lectures of which only five could be condoned and the remaining two could not be condoned held that the appellant was not entitled to appear at the examination and her examination was liable to be cancelled.

7. The plea that the Board had no power to cancel the appellant's examination and the cancellation was on that account ultra vires was not pressed before us and could not be pressed in view of a Division Bench decision of this Court in Board of High School and Intermediate Education U. P. Allahabad v. G. Vishwanath Nayar, 1959 All LJ 149. In that case it has been held that though the Examinations' Committee has no power to cancel an examination or to refuse to declare the result of a candidate on the ground of shortage of attendance the Board has that power and the Chairman can exercise that power in the case of emergency under the provisions of the Intermediate Education Act.

8. The question whether the examination of the appellant had actually been cancelled by the Chairman or not was not raised in the petition or in the appeal but on enquiry we are assured by the Additional Standing Counsel who appeared for the Board that the order in question had in the present case been passed by the Chairman of the Board in the exercise of his emergency powers.

9. The main point which was urged by Mr. Asthana in support of the appeal was that in exercising the power of cancellation of the examination resulting in the refusal to declare the result the Chairman of the Board or the Board were really exercising quasi-judicial functions. They were, therefore, bound to comply with the rules of natural justice. As in the present case the order of cancellation, had been passed without giving the appellant any opportunity of explanation an important rule of natural justice had been contravened. On that account the appellant was entitled to have the order cancelled so that the Board or the Chairman, as the case may be, may consider her case after hearing her.

10. The reply of the learned counsel for the Board is two-fold. He urges in the first place that the Chairman was not performing a quasi-judicial function in this connection. The function he was performing was not even administrative. It was purely ministerial. His argument in the alternative is that in this case even if the appellant had been heard there was nothing she could say and on the admitted

facts the Chairman had no option but to pass the impugned order. No question of breach of any rule of natural justice, therefore, arises.

11. On the question whether the Board or its Examination's Committee while considering whether to cancel an examination or impose any other penalty on a candidate in connection with his or her examination acts judicially or quasi judicially there was a difference of opinion between the High Courts. The view of this Court was that the function performed was an administrative function. The controversy has, however, now been set at rest by a decision of the Supreme Court in *The Board of High School and Intermediate Education. U. P. Allahabad v. Ghanshyam Das Gupta* : AIR 1962 SC1110). Over-ruling the decision of this Court the Supreme Court has held that the function performed is quasi-judicial. In that case three students had been found by the Examinations' Committee to have used unfair means in the examination at which they had appeared and the Examinations' Committee had in exercise of its powers under Rule 2 of Ch. VI of the Regulations framed under the Intermediate Education Act cancelled the results of those candidates and debarred them from appearing at a future examination. The Students had, however, not been heard and had not been given any opportunity of explanation, Rule 2 of Ch. VI of the Regulations empowered the Examinations' Committee *inter alia*

'To consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following;

(1) Withdrawal of certificate of having passed the examination;

(2) cancellation of the examination;

(3) exclusion from the examination;

(4) withdrawal of certificate of having passed or cancellation of or exclusion from subsequent examinations including higher examinations of the Board.'

That was a case in which the examinees concerned had been accused of using unfair means at the examination and the penalty imposed was cancellation of the examination and exclusion from examination. It was held by the Supreme Court that in performing its function under the regulation the Examinations' Committee acted quasi-judicially and was bound to follow the principles of natural justice. It could not therefore pass the orders it had passed without giving the students an opportunity of explanation. It is true that in that case the Examinations' Committee was dealing with a case of using unfair means but under the same clause of the regulation the Examinations' Committee could also be called upon to deal with cases of 'breach of rules and regulations to secure undue admission to an examination', and could in those cases also impose one or more of the penalties mentioned in the section.

If, according to the Supreme Court the Committee was acting quasi-judicially in considering cases where unfair means had been alleged to be used it cannot, in our opinion, be said that the Committee would not have been acting quasi judicially if it was dealing with cases of securing undue admission to an examination by breach of rules and regulations. On a parity of reasoning if instead of the Examinations' Committee the Board itself is considering cases either of using unfair means or securing undue admission to an examination the Board also will be deemed to be acting quasi-judicially and not in a purely administrative or ministerial capacity. If in an emergency the Chairman of the Board performs the functions of the Board he too must be held to be acting in the same capacity. We find it difficult to accept the contention that though the Examinations' Committee Acts in such cases in a quasi-judicial capacity the Board itself or the Chairman does not do so.

12. Whether the action of the respondent is described as 'cancellation of the examination' or as 'refusal to declare the result' makes no difference as the ultimate, result so far as the student is concerned is the same and it is a question of terminology only.

13. Learned Counsel for the respondent Board relied on certain passages in *Province of Bombay v. Khushaldas Section Advani* : [1950]1SCR621 and *Shri*

Radheshyam Khare v. State of Madhya Pradesh : [1959]1SCR1440 . He stressed that in a case like the present the Chairman was not required to form any objective view in respect of any question of law or fact. He was also not required to inflict any penalty or punishment. On these grounds he urged that he could not be held to be acting in a quasi-judicial capacity. Both the cases relied upon by the learned counsel along with some others in which the principles were laid down for deciding when a body acts in a judicial or quasi-judicial capacity were considered in : AIR 1962 SC1110 , and it was after a due consideration of those principles that the Supreme Court came to the conclusion that the Examination's Committee while considering cases of use of unfair means in an examination has a duty to act judicially and does not act in a purely administrative capacity.

It is not correct to say that Board or the Chairman in cases like the present were not required to form any objective opinion on some questions of fact or law. In a case like that of the appellant the requisite regulation had to be correctly interpreted and the fact had to be found in order to be in a position to properly apply the appropriate regulation. Without hearing the students concerned the Chairman or the Board could never be sure of the facts. The mere report of the Principal concerned may not in certain cases be sufficient and there may be circumstances which may be placed before the Board by the student concerned if he or she is allowed to have a say. In some cases questions of construction of some words or phrases in a regulation can also arise and will have to be determined before it is finally decided whether action should be taken or not. In the present case the appellant having been duly permitted to appear did eventually appear and completed her examination. The Board did not take any action at any time prior to the Examination. It was only after the examination was over that the authorities of the board were either apprised of the situation or having been informed earlier decided to take action. All the enquiries that the Board made from the Principal by its letter and telegram referred to earlier was only done after the examination had been concluded and when all that had remained was a declaration of the result of the examination.

14. Under the circumstances we find it impossible to accept the contention that in cancelling an examination or refusing to declare a result the Chairman or the

Board was not inflicting any penalty. Any order which would adversely affect the career of the student and deprive him or her of the fruits of the labour put in must be regarded as a penalty for this purpose. For a student there can be nothing more serious than an order the effect of which is that all the labour and industry put in by him throughout a year is wasted resulting in a break in his educational career and compelling him to waste a year in an important period of his life. In cases where the question relates only to a breach of the rules and regulations for securing undue admission to an examination no stigma may be involved but on that account the order withholding the result or cancelling the examination does not cease to be penal.

Learned counsel for the respondent pointed out that if the action involved related only to a person's eligibility to appear at an examination an order rejecting his application for admission to the examination must be put on the same footing as an order cancelling his examination after he had been admitted to it. He asked the rhetorical question whether while rejecting an application for admission, the authority concerned could be said to be acting quasi-judicially. The implication was that if it could not, it would not be acting quasi-judicially even when cancelling an examination after the student had appeared at it.

We are not at present concerned with a case where an application of a candidate for being admitted to an examination has been rejected and are, therefore, not called upon to pronounce whether while allowing or rejecting the request the authority would be acting in a judicial capacity. We have, however, no doubt that the circumstances will have materially changed if the student is admitted to the examination, prepares for it, takes the examination and then an order is passed cancelling his examination on the ground that he was not originally eligible to appear at it. The ratio of the Supreme Court case C. A. No. 132 of 1959 D/- 6-2-1962 : AIR 1962 SC1110 (supra) will certainly apply to such a case and we have no doubt that the authority concerned will have a duty to act in a judicial capacity while dealing with it. It must, therefore, give an opportunity of explanation to the student concerned otherwise it will be contravening an elementary principle of natural justice.

15. The conclusion that cases of shortage of attendance are not to be determined without giving an opportunity to the student concerned is strengthened by the fact that the Board has issued instructions vide letter No. G. L. No. EH/849 dated the 4th August 1960 with reference to the regulations regarding attendance according to which previous notice and warning is to be given in respect of a possible shortage in attendance and resultant detention to each candidate and his guardian. If that is to be done before the candidate appears at the examination there is no reason why it should not be expected to be done after the examination has been taken and the result is going to be cancelled on the ground of shortage of attendance.

16. We are not prepared to accept the argument that the Board and the Chairman have a duty to see that the regulations are complied with and if a candidate is short of attendance and the shortage cannot under the regulations be condoned if the case is brought to the notice of the Board it has no option but to withhold the result and cancel the examination and in such a case giving an opportunity to the student to explain will not be of any use.

17. Learned counsel for the appellant points out several courses which the appellant if she had been heard could have persuaded the Chairman or the Board to adopt. Some of these courses are :-

(1) To accept the explanation of the Principal as valid.

(2) To condone the shortage of two lectures which the Principal could not condone. The question whether the Board had power to condone shortage was raised in 1959 All LJ 149 (supra), but was not decided and was left open. It is urged on behalf of the appellant that the power to admit a candidate to an examination vests in the Board. The Regulations only provide the extent to which shortage in attendance can be condoned by the heads of institutions. There is nothing in the Regulations to limit the power of the Board itself to admit a candidate to an examination after condoning shortage which could not be condoned by the head of the institution.

(3) After noting that a technical breach of rules had been committed the Board or the Chairman may have decided not to take any action.

(4) The Board may have framed a new regulation. with retrospective effect either permitting the head of the institution to condone a shortage in a case like that of the appellant or permitting the Board itself to make the necessary condonation in such cases.

(5) The Board could have given an authoritative interpretation of the words 'lectures given' in Clause (iii) of Reg. 5 of Ch. XII and decided whether the words covered cases where the students were present to attend the lecture but it could not be arranged for because of some unavoidable reason.

18. It is not possible to anticipate whether if the appellant is heard by the respondent Board she can persuade it to take one or more of the courses above-mentioned or any other course which the board may consider appropriate. It is also not necessary to decide at this stage whether if any of these courses is adopted it will be legal and justified. These questions can arise only after the appellant has been heard and the Board arrives at some decision in regard to her case.

19. We are, therefore, of opinion that the order which the appellant sought to impugn by her writ petition was liable to be quashed because the respondent was expected to act in a quasi-judicial capacity in the matter but had passed the order without giving an opportunity to the appellant to offer her explanation and had thus contravened a well established principle of natural justice.

20. We therefore, allow the appeal and quash the order. It would be open to the respondent Board to reconsider the matter after giving the appellant a chance to offer her explanation. In the circumstances of the case we make no order as to costs.