

Arjun Singh and Others Vs. Additional Secretary, Board of High School and Intermediate Education, Bareilly Division and Another

Arjun Singh and Others Vs. Additional Secretary, Board of High School and Intermediate Education, Bareilly Division and Another

SooperKanoon Citation : sooperkanoon.com/472884

Court : Allahabad

Decided On : Apr-17-1998

Reported in : 1998(2)AWC1290; (1998)3UPLBEC2166

Judge : D.K. Seth, J.

Appeal No. : C.M.W.P. No. 1071 of 1991

Appellant : Arjun Singh and Others

Respondent : Additional Secretary, Board of High School and Intermediate Education, Bareilly Division and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.K. Dwivedi, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner's result was cancelled for using unfair means through spot inquiry. Sri A. K. Dwivedi, learned counsel for the petitioner submits that the ground of cancellation was that the petitioner had answered question No, 2 (Gha) in Mathematics II Paper, without necessary calculation, which is wholly illegal and

cannot be sustained.

2. Sri Upadhyaya, learned standing counsel on the other hand contends that the cancellation was made after giving adequate opportunity to the petitioner and, therefore, there is no illegality in the process for cancellation of the result. The writ court cannot interfere in such a matter unless matter appears to be perverse.

3. Sri Dwivedi, learned counsel for the petitioner, has referred to the decision in the case of Rajendra Kumar v. Regional Officer, Madhyainik Sttiksha Parishad, Bareilly, 1989 (1) UPLBEC 798, in support of his contention that result cannot be cancelled merely on the ground of suspicion, as in the present case that the petitioner had adopted unfair means though he was not found to have adopted unfair means.

4. After having heard Sri A. K. Dwivedi, learned counsel for the petitioner and Sri Upadhyaya, learned standing counsel, it appears that in the present case, the petitioner's result was cancelled on the ground that he had omitted certain steps and did not indicate calculation for arriving at the correct answer to the question in Mathematics II Paper. Nowhere in the counter-affidavit, it has been contended that the petitioner had adopted unfair means or he had been found copying nor it was alleged that any cheat was found in his possession. Thus, the basis of cancellation of the result boils down with the assertion that he had omitted steps and calculation in arriving at the answer of the said question. Thus, the basis appears to be only suspicion and nothing else.

5. Sri Upadhyaya, learned standing counsel on the other hand submitted that the petitioner was given charge-sheet, was heard and was afforded adequate opportunity. The scrutiny committee had submitted its report only after hearing the petitioner on the basis of reply of the petitioner, which is Annexure-S.C.A. 1 to the affidavit and there being no infirmity in the process, namely, decision-making process, this Court cannot interfere with the outcome. Inasmuch as this Court does not sit in appeal. He also contended that this step was taken on the basis of certain complaints made by the Principal of the college and the Examination incharge. Because sufficient opportunity was given and then decision was arrived at, there cannot be a ground for interfering with the said process.

6. Writ court scrutinises decision-making process. If there is any infirmity in the decision-making process then discretion of this Court is exercised. In the present case decision-making process, as discussed above, shows that it has proceeded purely on the basis of suspicion that since the petitioner had omitted certain steps in calculation in arriving at the answer of the question, therefore, he has adopted unfair means. Without any other positive assertion, such conclusion had been arrived at through decision-making process after giving opportunity of hearing, which appears to be an irregular one. It is only subjective opinion that the petitioner had adopted unfair means because he did not indicate certain steps and calculation in the process of answering the said question. Therefore, it is a case where decision-making process does not satisfy the test of scrutiny.

7. The ratio decided in the case of Rqjendra Kumar (supra) was sought to be distinguished by Sri Upadhyaya by pointing out that in the case though the petitioner was not caught using unfair means, but his result was cancelled on the ground that he did not do any rough work and thus it was only suspicion and it was alleged that he had adopted unfair means. But in the present case, the petitioner was not charged for not doing rough work. On the other hand, he had omitted certain steps and calculation. Therefore, the facts of this case is distinguishable from the facts on which the ratio in the case of Rqjendra Kumar (supra) was laid down.

8. Such contention though appears to be presentable but the same is devoid of any substance. Inasmuch as whether suspicion was based on the fact of not doing rough work or on the omission of certain steps and calculation, the basis remained suspicions which has been described in the ratio laid down in the said decision. It may be because of absence of steps and calculation, he may not be given full marks for answering the said question or according to the discretion of the examiner, he may not be given any mark at all on the said question and that is dependent on the examiner. But that does not make a student responsible for adopting unfair means unless he is found to have adopted such unfair means, particularly when no such allegation has at all been levelled against him. In the said judgment, it has been observed that such steps by the Board, which resulted a lot of harassment not only to the petitionerconcerned but to many other persons

who had approached this Court. Therefore, note of caution was sounded with the observation that, 'we hope and trust that the Board shall take care in future that the result of the candidates shall not be cancelled merely on the ground that rough work has not been done, namely suspicion.....'

9, Therefore, in my view, the ratio decided in the case of Rajendra Kumar (supra) is that of suspicion and not on a particular ground on which the suspicion was based. Ultimately, it based the suspicion on the ground of not doing rough work and the omission of certain steps in calculation is the ground of suspicion in this case. Thus, the fact remains the same i.e., suspicion. Therefore, the ratio decided in the said case is attracted with full force, in the facts and circumstances of the case.

10. For the foregoing reasons, the writ petition succeeds and is accordingly allowed. The impugned order cancelling the result of the petitioner on the ground of suspicion is hereby quashed. The result of the petitioner be declared provided the petitioner has not appeared successfully in any of the examination thereafter and is still waiting for the result of that particular examination.

11. There will be, however, no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com