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Court : Rajasthan

Decided On : Sep-25-2003

Reported in : RLW2004(3)Raj1509

Judge : Shiv Kumar Sharma, J.

Appeal No. : S.B. Civil Writ Petition No. 7077 of 2002

Appellant : Bhaskar Dagar

Respondent : Rajasthan Public Service Commission

Advocate for Def. : S.N. Kumawat, Adv.

Advocate for Pet/Ap. : Kamlakar Sharma, Adv.

Disposition : Petition allowed

Judgement :

Shiv Kumar Sharma, J.

1. The matter was taken for final disposal with the consent of learned counsel for the parties.

2. The Rajasthan Public Service Commission (for short 'RPSC') vide order dated September 30, 2002 debarred the petitioner, an Advocate by profession, from participating in all further selections/Examinations held by RPSC for a period of

two years on the allegations that Answer Book of the petitioner for the Rajasthan Judicial Service Examination 2001 were found with torn pages at the time of evaluation. The petitioner thereafter was not allowed to appear in the screening test for APP Examination 2002 which was to be held on October 6, 2002. The petitioner by way of this writ petition sought directions to negate the aforesaid orders.

3. The petitioner appeared in the RJS Examinations 2001 conducted by RPSC on September 16 and 17, 2001. The RPSC vide letter dated November 23, 2002 demanded explanation from the petitioner as to why at the time of evaluation of his Answer- books of Law Paper-I and II few pages were found missing? The petitioner vide letter dated November 26, 2001 informed RPSC that Answer-books submitted by him to the invigilators were absolutely intact. Pursuant to the letter dated December 12, 2001 the petitioner appeared before the RPSC on December 19, 2001 for personal bearing. But RPSC took time to decide the matter and it was only on September 13, 2002 that the impugned decision of debarring the petitioner was arrived at.

4. The respondent RPSC in the reply raised objection as to the maintainability of writ petition. It was averred that opportunity of hearing was provided to the petitioner and it was found that petitioner alone was responsible for the mis-deeds. Therefore the petitioner was rightly debarred for two years.

5. I have pondered over the rival submissions.

6. Fact situation that emerges from the material on record may be summarisedthus:-

(i) At the time of evaluation of Answer-books of the petitioner pages No. 23 of the Answer-book of Law paper-I and page Nos. 11 to 14 of the Answer book of Law Paper-II were found missing.

(ii) Show cause notice was served on the petitioner by RPSC. The petitioner in his reply stated that after writing the answers he had handed over answer-books to the Invigilators in absolute intact position.

(iii) No complaint whatsoever was made by Invigilators against the petitioner.

(iv) Persuant to the notice of personal hearing the petitioner appeared before RPSC on December 19, 2001.

(v) On September 13, 2002 the order for debarring the petitioner from examinations for two years was issued by RPSC.

7. The Courts of India have been acting as vigilant sentinels on the qui vive to see that the principles of natural justice, are not violated by a judicial or quasi judicial authority. One of the broad principles of natural justice is that a quasi judicial authority cannot make any decision against a party without giving him an effective opportunity of meeting the allegations made against him. The judicial or quasi judicial functions must be performed in good faith after listening fairly to both sides. Earl of Selborne in Spackman v. Plushtead Board of Works (1), used the phrases 'the substantial requirements of justice' and at another place 'the essence of justice' to mean natural justice, when he observed:-

'No doubt, in the absence of special provisions as to how person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law.'

8. In De Verteuil v. Knaggs (2), Lord Parmoor reflected 'the particular form of inquiry must depend on the conditions under which the discretion is exercised in any particular case, and no general rule applicable to all conditions can be formulated'.

9. The Division Bench of Calcutta High Court in West Bengal Council of Higher Secondary Education and Ors. v. Roupshanara Momtaz and Anr. (3), indicated that where the malpractice was not detected in the examination hall, but some time later the student could not be punished. In para 15 of the judgment it was

observed as under:-

'It is the case where the examination of a student is sought to be cancelled on the ground that she had adopted malpractice in the examination hall. The word 'malpractice' has a definite connotation. According to Black's Law Dictionary malpractice means 'professional misconduct', or unreasonable lack of skill. This term is usually applied to such conduct by doctors, lawyers and accountants. Failure of one rendering professional service to exercise that degree of skill and bearing commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of those services or to those entitled to rely upon them.....' So it is clear that in all cases of malpractice there should result in some form of injury, loss or damage and/or wrong gain by some persons at the costs of other. In the instant case, admittedly the student concerned wrote her name, roll number and the registration No. correctly and that it was alleged that there had been some interpolations in writing. In such a case, it is quite but natural that the interpolations had to be made on the existing style and pattern of writing and the similarity must be there. The fact alone does not and cannot go to show that it was done by handwriting of the girl student concerned and by no other person. Admittedly, the girl student concerned had not made any wrongful gain whatsoever.'

10. In the instant case the petitioner by tearing the pages from the answer-books, had not made any wrongful gain whatsoever. It was incumbent on the RPSC in the facts situation of the case to have interrogated the Invigilators before arriving at the final decision. How and in what manner, the pages from answer- books could be torn in the presence of Invigilators. Could any one dare to mishandle the answer-books in the examination hall escaping the attention of Invigilators? Had RPSC appointed such Invigilators who were negligent towards their duties? It is a fundamental principle of good administration that Justice not only be done but seem to have been done. Fairness in action and fairness in procedure are equally important principle for any good administration. It is evident that petitioner could not make any wrongful gain out of the alleged act of tearing the pages from answer-books, so that it could be said the act of dishonesty. Unless there is

wrongful gain to one person or wrongful loss to another, an act would not be dishonest. It also cannot be said to be fraudulent inasmuch as a person is said to do a thing fraudulently if he does that thing with an intent to defraud but not otherwise. When the alleged malpractice on the part of the petitioner was not detected in the examination hall, he could not have been held responsible for the act of tearing the pages from the answer-books. The RPSC ought to have initiated effective inquiry in the matter and before arriving at the conclusion, statements of Invigilators ought to have been recorded. In my considered opinion the RPSC in arriving at the conclusion of debarring the petitioner from the examinations for two years, violated the principles of natural justice and acted only on the basis of probabilities. As fair and effective inquiry was not conducted by RPSC the impugned order is not sustainable as it suffers from the vice of arbitrariness.

11. As a result of the above discussion, If allow the writ petition and set aside the impugned order dated September 30, 2002. This court vide interim order dated October 4, 2002 allowed the petitioner to appear in the Screening test for APP Examination, 2002 provisionally. Now the RPSC is directed to declare the result of the petitioner and proceed further as if the petitioner was never debarred from appearing in the examination/section. There shall however be no order as to costs.

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