

Kuldeep Kumar Pathak vs State Of Up And Ors on 5 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 251, 2016 (2) ALJ 137, (2016) 1 SCT 601, (2016) 1 SCALE 116, (2016) 2 SERVLR 141, (2016) 1 CURCC 57, (2016) 1 ADJ 673 (SC), 2016 (3) SCC 521

Author: A.K. Sikri

Bench: Rohinton Fali Nariman, A.K. Sikri

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11 OF 2016
(ARISING OUT OF SLP (C) NO. 2964 OF 2015)

KULDEEP KUMAR PATHAK APPELLANT(S)	
VERSUS		
STATE OF U.P. AND OTHERS RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

Leave granted. Matter is finally heard at this stage itself with the consent of the learned counsel for the parties.

2. The appellant herein appeared in the Intermediate Examination conducted by Madhyamik Shiksha Parishad, U.P., Allahabad in the year 2002 and successfully cleared the said examination. On that basis, he pursued the Graduation and passed Bachelor of Arts (B.A.) in the year 2005. Thereafter, he even successfully completed his Post-Graduation course i.e. Masters of Arts (M.A.) in the year 2007 with a desire to pursue further studies. He even joined LL.B. course and successfully cleared LL.B. examinations also in the year 2011. He had the ambition to get himself enrolled as an Advocate so as to pursue the legal profession. However, before he could do that, respondent-authorities inflicted upon him a big blow in the form of canceling his intermediate results of the year 2002 which examination was conducted by Madhyamik Shiksha Parishad, Allahabad. Order to this effect, without putting the appellant to any notice and without affording any opportunity of hearing, was passed nine years after the said exam with the direction to

confiscate his Certificate. The effect of the aforesaid action of the respondent was not only take away the result of the Intermediate Examination, but it also nullified further courses which he had pursued and passed in the meantime.

3. The reason for canceling the said examination by the Regional Secretary, U.P. Board of High School and Intermediate Examination (hereinafter referred to as the 'U.P. Board'), Varanasi was that the appellant had simultaneously appeared in two examinations, one of the U.P. Board and other of Sanskrit Board with respect to Class X and equivalent examination and it was not permissible for the appellant to appear in two examinations conducted by two different Boards simultaneously.

4. The appellant, aggrieved by the aforesaid orders dated April 20, 2011 passed by the Regional Secretary, Intermediate Education Board, Varanasi (respondent No. 3), preferred a representation dated May 10, 2011 before the Director, Education (Secondary), Lucknow (respondent No. 2). This representation was also addressed to respondent No. 3. Request was made to both respondent Nos. 2 and 3 to allow him to present his case and give him an opportunity of hearing. However, nothing was heard on this representation and instead consequential orders dated May 18, 2011 were passed giving effect to earlier orders dated April 20, 2011, thereby confiscating the Certificates of Award in favour of the appellant.

5. The aforesaid actions of the respondents forced the appellant to challenge the said orders dated April 10, 2011 and May 18, 2011 before the High Court of Judicature at Allahabad by filing a writ petition under Article 226 of the Constitution. The learned Single Judge of the High Court, however, dismissed the writ petition vide orders dated July 08, 2013. Intra-court appeal filed against the said judgment before the Division Bench also met the same fate inasmuch as vide impugned judgment dated January 22, 2014, the appeal of the appellant has been dismissed by the Division Bench of the High Court, thereby affirming the orders of the Single Judge. A perusal of the orders of the Single Judge as well as the Division Bench would reflect that the courts below have gone primarily by the fact that since the appellant admitted that he appeared in two streams in two different Boards in the year 2000, this action on the part of the appellant was contrary to the Regulations and, therefore, the orders canceling the exam were rightly passed by the respondents.

6. Before us, Mr. Pradeep Kant, learned senior counsel for the appellant has made a neat legal argument. He submits that though the impugned judgment proceeds on the basis that appearing in two examinations simultaneously for the same year is violation of the Regulations of the Board, this reason given by the High Court is clearly unsustainable inasmuch as no such Regulation is shown by the Board which prohibited any such candidate to appear in two examinations in the same year. The learned senior counsel further argued that the impugned order passed by the respondents for confiscating his Certificate of Intermediate exam was, otherwise also, contrary to the principles of natural justice inasmuch as no show cause notice and opportunity of hearing was given to the appellant before passing such an order, which was passed belatedly after a period of nine years from the passing of the said examination by the appellant.

7. We are of the opinion that both the submissions of the learned senior counsel are valid in law and have to prevail. The High Court has been influenced by the argument of the respondents that simultaneous appearance in two examinations by the appellant in the same year was 'contrary to the Regulations'. However, no such Regulation has been mentioned either by the learned Single Judge or the Division Bench. Curiously, no such Regulation has been pointed out even by the respondents. On our specific query to the learned counsel for the respondents to this effect, he expressed his inability to show any such Regulation or any other rule or provision contained in the U.P. Intermediate Education Act, 1921 or Supplementary Regulations of 1976 framed under the aforesaid Act or in any other governing Regulations. Therefore, the entire foundation of the impugned judgment of the High Court is erroneous.

8. It is also pertinent to note that the appellant's intermediate examination and result thereof was not in question before the U.P. Board. No illegality in the admission in that class has been pointed out by the respondents. The alleged charge of simultaneously appearing in two examinations, one of the U.P. Board and other of the Sanskrit Board, was with respect to Class X and equivalent examination which did not relate to admission in intermediate course. The only provision for canceling the said admission is contained in Regulation (1) of Chapter VI-B. It details the procedure for passing the order of punishment canceling intermediate results and, inter alia, prescribes that a committee consisting of three different members is to be constituted and entrusted with the responsibility of looking into and disposing of cases relating to unfair means and award appropriate penalty as specified in the Regulations itself. However, there is no allegation of any unfair means adopted by the appellant in the instant case and, therefore, that Regulation has no applicability. Even otherwise, no such committee was constituted. Therefore, having taken admission in Intermediate on the basis of past certificate issued by a separate Board, which was recognised, and not on the basis of the result of Class X of the U.P. Board, the appellant derived no advantage from his examination of the U.P. Board while seeking admission in Intermediate course. Thus, from any angle the matter is to be looked into, the impugned orders dated April 20, 2011 and May 10, 2011 passed by the respondents are null and void, apart from the fact that they are in violation of the principles of natural justice.

9. The appeal is, accordingly, allowed with costs by quashing the aforesaid impugned orders and reversing the impugned judgment of the High Court. The appellant shall, accordingly, be entitled to all consequential benefits.

.....J. (A.K. SIKRI)J. (ROHINTON FALI
NARIMAN) NEW DELHI;

JANUARY 05, 2016.