Board Of High School & Intermediate ... vs Kumari Chittra Srivastava & Others on 20 November, 1969

Equivalent citations: 1970 AIR 1039, 1970 SCR (3) 266, AIR 1970 SUPREME COURT 1039

Author: K.S. Hegde

Bench: K.S. Hegde, S.M. Sikri, G.K. Mitter, J.C. Shah, A.N. Grover

PETITIONER:
BOARD OF HIGH SCHOOL & INTERMEDIATE EDUCATION, U.P. & OTHERS

Vs.

RESPONDENT:
KUMARI CHITTRA SRIVASTAVA & OTHERS

DATE OF JUDGMENT:
20/11/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SIKRI, S.M.
SIKRI, S.M.
MITTER, G.K.
SHAH, J.C.
GROVER, A.N.

CITATION:
1970 AIR 1039 1970 SCR (3) 266

ACT:
Natural Justice-Board of examination cancelling result without of opportunity to candidate-Notice if necessary.

HEADNOTE:
The respondent appeared in the Intermediate examination and passed, but the appellant, instead of declaring her result, addressed a letter on May 24, 1961, to the Principal of the college in which the Respondent was studying, making enquiries regarding the respondent's attendance. According to the regulations, a candidate must attend 75% of the lectures given in each subject. The Principal, by her

letter dated June 14, 1961, replied that the respondent was at one time short of attendance, that she made good the 'shortage in all subjects except one, but the shortage in that subject was due to the fact that lectures Were not given in that subject the lecturer having been on leave. By its letter dated July 6, 1961, the appellant cancelled the respondent's result and no reference was made to the Principal's letter in the appellant's letter.

The respondent thereupon filed a writ petition challenging the appellant's order cancelling the result, and the High Court allowed the petition.

In appeal to this Court,

HELD : The appellant should have given an opportunity to the respondent to present her case and pursuade the appellant not to cancel her result. [269 C]

Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but On the nature of the order proposed to be passed. In the present case, the impugned order imposed a penalty on the respondent as she was denied the fruits of her labour, and when passing it, the appellant was exercising quasi-judicial functions. [269 D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1191 of 1967. Appeal by special leave from the judgment and order dated May 23, 1962 of the Allahabad High Court in Special Appeal No. 592 of 1961.

C. B. Agarwala and 0. P. Rana, for the appellants. The respondent did not appear.

The Judgment of the Court as delivered by Sikri, J. This appeal by special leave is directed against the judgment of the Allahabad High Court whereby it allowed the writ petition file by the respondent, Kumari Chittra Srivastava, hereinafter referred to as the petitioner, and quashed the impugned order but left it open to the Board of High School and Intermediate Education, hereinafter referred to as the Board, to reconsider the case after giving the petitioner a chance to offer her explanation. The facts are not in dispute and the only question which arises is whether in the circumstances the petitioner was entitled to an opportunity to represent her case before the Board prior to the passing of the impugned order. The relevant facts in brief are these. The petitioner was in 1959-60 session a student of Basant Girls Intermediate College, Varanasi. She appeared at the Intermediate examination in 1960 but failed. She then joined the Government Inter College for Girls at Jaunpur. Her name

-was sent up for Intermediate examination to be held in 1961 by the Principal. She appeared in the examination but her result was not declared by the Board. On May 24, 1961, the Board addressed a letter to the Principal making enquiries regarding the attendance of the petitioner. According to the

regulations framed by the Board no candidate can be presented for the Intermediate examination unless he/she has attended during two academical years 75% of lectures given in each subject in which the candidate is to be examined. In the case of a failed candidate, like the petitioner, the percentage shall be calculated for one academical year, but Regulation 5(xiii) enables the head of a recognised institution to condone the deficiency in certain cases. This regulation reads "(xiii) The rule regarding minimum attendance shall be strictly enforced. The head of the recognised institution may condone a deficiency in attendance of not more than

(a) ten days in the case of a candidate for the High School Examination; and

(b) ten lectures (including periods -of practical work, if any) given in each subject in the case of a candidate for the Intermediate Examination.

All cases in which this privilege is exercised shall be reported to the Director of Education as the Chairman of the Board.

In the cases of failed or detained candidates whose attendance of one year will be taken into account, the shortage to be condoned shall be reduced to half."

The Principal received the letter when on vacation outside Jaunpur. The Principal replied on June 14, 1961, saying that a proper reply to paragraphs 1 and 2 of the letter will be sent after July 8, 1961. She, however, stated "When Km. Chitra Srivastava absented herself for a pretty long period on account of her illness, the position :was explained to her, besides informing her guardian also who was even called to the office and acquainted with the circumstances. At that time, it was possible for her to make good this shortage by her regular attendance. The teacher in Home Science took leave in February, 1961. Chitra was short in attendance in other subjects also, but she made good the shortage by her regular attendance. When, during the days the classes were held, lectures in other subjects were held and the girl attended there, it was, not considered proper to detain her from appearing at the examination on account of her absence from lectures in a subject in which the required lectures were not held. I got the student admitted to the examination as I was confident that the officers of the Board will agree with my view."

The substance of the letter was that the shortage in lectures was due to the lecturer taking leave. The Board was, however, impatient. It is not clear whether this letter was received by the Board because no reference to it is made in the letter dated July 6, 1961. The Board wrote:

> "In continuation of this office letter No. E.I./617, dated 24th May, 1961 and telegram dated 24th May, 1961 1 have the honour to inform that you have not furnished the desired information about the student Km. Chitra Srivastava, roll no. 50452. From your previous letter No. 143/E dated 6th May, 1961,' it is learnt that the admission of the student by you to the examination. by condoning her absence from seven lectures on the subject of Home Science was contrary to rules. Hence the student's Inter Examination of 1961 is cancelled. Kindly communicate this to the student under intimation to this office."

The Principal replied on July 11, 1961, giving details of the lectures attended and requested that the order be cancelled and the severe punishment be not awarded to the petitioner.

On October 6, 1961, the petitioner filed a petition under Art. 226 of the Constitution challenging the impugned order dated July 6, 1961. Mathur, J., dismissed it summarily. On appeal, Srivastava and Katju, JJ., allowed the petition, as mentioned earlier. They were of the view that the Board, while cancelling the examination, acted in a quasi-judicial capacity. The Board was "by cancelling the examination inflicting a penalty" and if opportunity had been given to the petitioner to present her case she might have persuaded the Board not to cancel the examination.

The learned counsel for the appellant, Mr. C. B. Aggarwal. contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show-cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show-cause notice-. We are unable to accept this contention. Whether a duty arises in--a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.

We agree with the High Court that the impugned order imposed a penalty. The petitioner has appeared in the examination and answered all the question papers. According to her she had passed. To deny her the fruits of her labour cannot but to be called a penalty. We are unable to appreciate the contention that the Board, in "cancelling her examination"

> was not exercising quasijudicial functions. The learned counsel urges that this would be, casting a heavy burden on the Board. Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law. We should not be taken to have decided that this rule will also apply when a candidate is refused admission to an examination. We are not concerned with this question and say nothing about it.
>
> The learned counsel invites us to hold that the decision of the Board was on the facts correct and that the Board had no power to condone the shortage of 2 lectures. But we decline to into these questions. We are not sitting as a court of appeal and it is for the Board to decide after giving an opportunity to the petitioner and pass such orders as it thinks fit. Whether it has the power to condone the shortage of lectures is for it, at least in the first instance, to decide.
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> The learned counsel further invites us to say that the possible courses which the petitioner's counsel had outlined before the High Court will not be legal or justified. The petitioner's counsel had pointed out that the Board could have been persuaded to adopt -some of the following courses "(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 the Board of High School and Intermediate Education Uttar Pradesh Allahabad

and others versus G. Vishwanath Nayar 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 regulation 5 of chapter XII and decided whether the words covered such cases where the students were present to attend the lecture but it could not be arranged because of some unavoidable reason."

But, like the High Court, we are not called upon to pronounce on their legality or appropriateness at this stage.

In the result the appeal fails and is dismissed. As the petitioner (now respondent) is not represented there will be no order as to costs.

V.P.S. Appeal dismissed.