

# PUNJAB AND HARYANA HIGH COURT

Harinder Kaur Chandok

Vs

The Punjab School Education Board

Civil Writ Petition No. 4751 of 1987

(M.R. Agnihotri, J.)

01.09.1987

## JUDGMENT

### **M.R. Agnihotri, J.**

1. Miss Harinder Kaur (Minor) has approached this Court by way of writ petition filed by her father Sat Pal Singh, under Article 226 of the Constitution of India, for the issuance of a writ of *mandamus* for directing the respondent Punjab School Education Board, SAS Nagar, Mohali, to declare the result of the petitioner for "Plus One" Examination held in April, 1987, and for the quashing of the decision of the respondent-Board conveyed to the petitioner on 8th June, 1987 (vide Annexure P-2), by which her candidature has been cancelled.

2. Briefly stated, the petitioner was a student of St. Francis School, Amritsar, and after completing her studies for the Matriculation, she appeared in the Matric Examination held in March, 1986, by the respondent Board. As the petitioner had not been declared successful, she appeared in the Supplementary Examination held in September, 1986, and was declared successful. After declaration of the result of Matriculation Examination, the petitioner submitted the Admission Form for 'Plus One' Examination and deposited the requisite fee with the Board. This Admission Form was found to be in order by the Board's authorities, but the fee deposited by the petitioner was found deficient. So, she was required, vide communication sent by the Board on 1st April, 1987 (Annexure P-1), to remit the balance amount of Rs. 145/-. The same was deposited by the petitioner within the stipulated period. Thereafter, the petitioner was allowed to take the examination which commenced on 3rd April, 1987, in which examination, according to the petitioner, she fared very well.

3. However, on 8th June, 1987, the Board addressed a communication (Annexure P-2) to the petitioner intimating to her that as she had passed the Matriculation Examination only in September, 1986, and had appeared in the 'Plus One' Examination in April, 1987, the condition of one year's gap in between the two examinations was not complied with. Hence, the candidature of the petitioner was cancelled. Later on, when the result of 'Plus One' Examination was declared on 24th July, 1987, in the Gazette, the petitioner found that her candidature stood cancelled. The petitioner, through her father approached the Board authorities and informed them

that it was not such a condition which went to the root of the matter and there were hundreds of other candidates who too had appeared in the 'Plus One' Examination in April, 1987, after having passed the Matriculation Examination in September, 1986, like the petitioner. According to the petitioner, if the result of those candidates could be declared on the basis of their performance in the examination, there was no reason for not treating the petitioner alike. However, when nothing was done to redress the grievance of the petitioner, she approached this Court by filing the present writ petition.

4. In reply to the writ petition, the Board had filed the return in which the only stand taken is that since the period of one year between the two examinations, that is, Matriculation Examination held in September, 1986, and the 'Plus One' Examination held in April, 1987, had not elapsed, the petitioner was ineligible to appear in the 'Plus One' Examination. According to the Board, it was due to the negligence and over-sight that the mistake was not detected earlier as the number of candidates was in thousands and, as such, a lapse by virtue of human error was bound to occur. It is further pleaded that the petitioner had made a misrepresentation and practised deception on the Board in obtaining attestation on her Admission Form and that she did not fulfil all the conditions of eligibility, therefore, cancellation of the result by the Board was in accordance with Regulation 8 of the 'Punjab School Education Board Senior Secondary Certificate Examination Part 1 Regulations 1986', regarding cancellation of result. Supplementing the averments made in its written statement, the Board's learned counsel, Mr. Aftab Singh Bakhshi, has invoked in aid the provisions of the Indian Contract Act, in order to absolve the Board from the remissness or lapse on the part of the Board authorities in detecting the mistake in time. Reliance has also been placed by the learned counsel on *Lewis Pugh Evans Pugh v. Ashutosh Sen*<sup>1</sup>, *Niaz Ahmad Khan v. Parsottam Chandra*<sup>2</sup>, *John Minas Apar v. Louis Caird Malchus*<sup>3</sup>, *Ganpat Ranglal Mahajan v. Mangilal Hiralal*<sup>4</sup>, and *Rakesh Kumari minor daughter of Shri Panna Lal v. Punjab School Education Board, SAS Nagar*<sup>5</sup>, by M.M. Punchhi, J. to plead that in the case of active misrepresentation, the party defrauded is neither at fault nor is estopped by their conduct.

5. Having heard the learned counsel for the parties and after examining their pleadings and the material on record, I find that the impugned action of the respondent-Board is wholly arbitrary and it has been unfair to the candidate in cancelling her result. For arriving at this conclusion, the following factors are relevant :-

(1) It cannot be expected that a minor student who has just passed the Matriculation Examination must have known the condition imposed by the Board that a period of one year must elapse between his passing the Matriculation Examination and his appearing in 'Plus One' Examination;

(2) When a student has passed the Matric in Supplementary Examination, that is, in September, instead of April, if for full one year the candidate cannot appear in the context examination, the utility of qualifying the Matriculation Examination by appearing in Supplementary Examination is completely lost. for example, if a candidate appears in April, 1986, in Matriculation Examination and fails, but he clears the same in September, 1986, if that candidate cannot appear in 'Plus One' Examination in April, 1987, because one year has not elapsed between September, 1986 and April 1987, he also cannot appear

in the Supplementary Examination of 1987 as that examination is only meant for failed students, that is, students who have failed in April, 1987, exam. This means that student will have to appear in April 1988, and not earlier thereto. The net result would be that even if a student has qualified Matriculation in September, 1986 (Supplementary Examination), his passing the Supplementary Examination is of no utility to him as he could have otherwise also appeared in April, 1987, annual examination, after having wasted full one year. This would render the exercise of holding the Supplementary Examination by the Board totally meaningless.

(3) If a candidate passing the Matriculation Examination can be expected to possess full knowledge with regard to the conditions of eligibility for the next examination, the Principals/Headmasters of the educational institutions, who are authorised by the Punjab School Education Board to attest the Admission Forms, are also expected to possess the same knowledge, if not more. The Admission Forms are invariably and infact essentially required to be attested by the Heads of the institutions before they are accepted by the Punjab School Education Board. In the present case also, the petitioner's Admission Form was duly attested by the Head of the institutions, certifying that the petitioner fulfilled the conditions of eligibility.

(4) The Admission forms filled in by the students are required to be scrutinised by three officials, that is, Clerk, Assistant and Superintendent, in the column provided for this purpose towards the end of the form, and a certificate has to be appended to the following effect :-

"For official use

Checked. Eligible.

If ineligible, then reasons.

Clerk. Assistant. Superintendent."

In the present case, this certificate has been appended by all the three officials and it has been certified that the petitioner was eligible and there was no reason for ineligibility.

(5) It is understandable that by merely submitting the Admission Form, the Punjab School Education Board is not obliged to permit a candidate to appear in the examination, as due to rush of work and the number of candidates being in thousands the foolproof scrutiny of the Admission Forms is not possible for which the Board may not be accused for remissness or lapse on the part of their officials. But, if after thorough scrutiny of the Admission Forms, the Board detects that the only deficiency in the Admission Form, with regards to eligibility of the candidate for appearing in the examination, is the deficiency in admission fee and the Board calls upon the candidate to make up the deficiency, the candidate can certainly contend later on that with the making up the deficiency in the

admission fee, the eligibility stood acquired and the lapse, if any was there, the same stood condoned, relaxed or ignored by the Board.

6. In view of the aforesaid circumstances, I strongly feel that the cancellation of result of the petitioner at this stage would be wholly arbitrary, unfair and unjust on the part of the Punjab School Education Board. For coming to this conclusion, firm reliance is being placed on the latest judgment of their Lordships of the Supreme Court in *Rajendra Prasad Mathur v. Karnataka University*<sup>6</sup>, in which P.N. Bhagwati, C.J. and R.S. Pathak, J., as his Lordship then was have been pleased to hold as under :-

"....Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan, they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges."

The judgment of M.M. Punchhi, J. in Rakesh Kumari's case (supra) is obviously distinguishable as the aforesaid authoritative judgment of the Supreme Court was not brought to the notice of his Lordships.

7. Consequently, this writ petition is allowed and the impugned communication dated 8th June, 1987 (Annexure P-2) is quashed and by issuing a writ of *mandamus* the Punjab School Education Board, SAS Nagar, Mohali, is directed to declare the result of the petitioner within a week from today. The petitioner shall be entitled to the costs of this petition which are quantified at Rs. 500/-.

Petition allowed.

Cases Referred.

1AIR 1929 PC 69

2AIR 1931 All 154

3AIR 1939 Cal 473

4AIR 1962 Mad Pra 144

5C.W.P. 6068 of 1986 decided on 7.5.1987

6AIR 1986 SC 1448