

# RAJASTHAN HIGH COURT

Shikha Sharma

Vs.

Board of Secondary Education, Ajmer

S.B.C.W.P. No. 1188 of 1999

(R.R. Yadav, J.)

12.01.2001

## ORDER

**R.R. Yadav, J.**

1. The present writ petition is filed by the petitioner, claiming merit scholarship, on the ground that her position on the merit list among Arts and Fine Arts Groups, stood at Serial No. 7, on the basis of result, declared by Board of Secondary Education, Rajasthan, Ajmer (hereinafter referred as "Board"), on 11-6-1996, and published on 12-6-1996, and as such, she is eligible for merit scholarship.

2. The respondents Nos. 1 and 2, after service of notices, have filed two separate returns, denying the averments made in the writ petition, on the ground *inter alia*, that in Arts Group, about 1,80,000 students took examination, whereas, in Fine Arts Group, only 303 students were registered. According to the averments made in the returns, filed on behalf of the respondents Nos. 1 and 2, the petitioner does not fall within the tenth position, in the merit list, in view of the decision, taken by Board on 13-6-1996, a copy whereof, is filed and marked as Annexure R/1 to the reply, filed by the respondent No. 1.

3. The regulations for awarding medals, scholarships and prizes, formulated in exercise of power of Board under Sections 36, 37 and 38 of the Rajasthan Secondary Education Act, 1957 (hereinafter referred as "the Act of 1957"), are quoted hereinabove :-

"36. Powers of the Board to make Regulations, - (1) The Board may make regulations for the purposes of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Board may make regulations provided for all or any of the following matters, namely :-

(a) to (m) . . . . .

(n) the institution of scholarships and prizes;

(o) to (q) . . . . .

37. First regulations of the Board, - The first regulations shall be made by the State Government after previous publication, and they shall be deemed to have been made by the Board and shall continue in force until altered by the Board :  
Provided that the first regulations, if any, made under Section 35 of the Rajasthan Secondary Education Ordinance, 1957 (Rajasthan Ordinance 5 of 1957) shall be deemed to be the first regulations of the Board made by the State Government under this section.

38. Copies of regulations and alterations thereof, - A copy of every regulation made by the Board under Section 36 and of every modification or recession thereof or of each of the first regulations of the Board made or deemed to have been made under Section 37 shall be submitted without undue delay to the State Government for information."

4. It is evident from the perusal of the returns, filed by the respondents Nos. 1 and 2 that the validly framed regulations, mentioned hereinabove, have been superseded by the decision of the Board, dated 13-6-1996, Annexure-R/1 to the reply, filed on behalf of the respondent No. 1. In the decision dated 13-6-1996, Annexure R/1, it is resolved by Board that in Senior Secondary Examination, in Science, Home Science and Agriculture Groups, separate merit lists are issued and prepared on the basis of marks obtained by students, in practical as well as theoretical examinations. Similarly, a separate list of Commerce Group is issued. There is no practical examination for Commerce Group. Earlier, when a combined list of Arts and Fine Arts Group, used to be prepared, then, in Arts there used to be 100-200 students. In Fine Arts, for theoretical papers, full marks are 250 for practical examination, full marks are 400, whereas, no such benefit of practical examination is, available to students, taking examination in Arts Group. Joint merit list of students securing position up to tenth, in Arts and Fine Arts used to be prepared earlier. In these circumstances, it was decided by Board that different merit lists for Arts and Fine Arts Groups, be issued , and for Fine Arts Group, names of only first three students be included. Consequently, final merit lists of Arts and Fine Arts Groups were prepared, wherein, the name of the

petitioner does not find place.

5. The controversy in the present case, between the petitioner and the answering respondents, gravitates and centers round the decision taken by Board, on 13-6-1996.

6. It is true that if merit scholarship is awarded according to Chapter XXIII of the Regulations, legally framed, then, the petitioner can be said to be eligible for merit scholarship, but if merit scholarship is awarded in accordance with the decision taken by Board on 13-6-1996, then, the petitioner would not be entitled for merit scholarship. The basic question is as to whether the decision dated 13-6-1996, taken by Board, can be allowed to supersede the legally framed Regulations, under Chapter XXIII. The second question would be as to whether the Regulation 3 (aa), making provision for merit scholarship for Arts and Fine Arts Groups, up to tenth position, in order of merit, providing merit scholarship only to ten students, is ambiguous and requires interpretation of this Court. The third question, raised by the learned counsel for the respondent No. 1, Sri Ajay Rastogi, is that even if the decision taken by Board on 13-6-1996, Annexure-R/1 is ignored, even then, in view of the statutory regulations under Chapter XXIII, the petitioner is not eligible for merit scholarship, inasmuch as only ten students are entitled to get merit scholarship, whereas the name of the petitioner finds place at Serial No. 12.

7. Looking into the intricate question, which this Court is called upon to decide in the present writ petition, I would like to refer to the relevant provisions of the Act of 1957 and the regulations framed there under. Section 3 of the Act of 1957, speaks about constitution of Board, whereas, Section 9 defines the powers and functions of Board. Under sub-section (13) of Section 9 of the Act, it is envisaged that subject to the provisions of the aforesaid Act, Board shall institute and award scholarships, medals and prizes, under conditions that may be prescribed. It goes without saying that the connotation "prescribed" means prescribed under the regulations framed, in exercise of the powers under Sections 36, 37 and 38 of the said Act. It is to be noticed that under clause (n) of sub-section (2) of Section 36, Board is authorized to make Regulations regarding scholarships and prizes. It is further to be noticed that Section 37 of the Act of 1957, envisages that first regulations shall be made by the State Government, after previous publication, and they shall be deemed to have been made by the Board and shall continue in force, until altered by the Board; Provided that the first regulations, if any, made under Section 35 of the Rajasthan Secondary Education

Ordinance, 1957, shall be deemed to be the first regulations of the Board, made by the State Government. Section 38 of the Act of 1957 further provides that a copy of every regulation made by Board, under Section 36 and of every modification or recession thereof or of each of the first regulations of the Board , made or deemed to have been made under Section 37 shall be submitted without undue delay to the State Government, for information.

8. It is urged by the learned Additional Advocate General , Sri M. Rafiq, at the first instance that in view of the decision taken by Board, on 13-6-1996, Annexure-R/1 to the reply, by the respondent No.1, the petitioner is not eligible for merit scholarship. The learned Additional Advocate General invited my attention to the Resolution No. 7, of Board, taken on 13-6-1996, which has been discussed in detail, in the preceding paragraph of this judgment. It is urged by the learned Additional Advocate General, Sri M. Rafiq that only a copy of the decision taken by Board on 13-6-1996, was required to be submitted, without undue delay, to the State Government, for information. According to the learned Additional Advocate General, the aforesaid decision, taken by the Board on 13-6-1996, Annexure-R/1 does not require publication, as envisaged under Section 37 of the Act of 1957.

9. The learned counsel for the respondent No. 1, Sri Ajay Rastogi, has adopted the aforesaid argument, raised by the learned Additional Advocate General, Sri M. Rafiq, and in his alternative suggestion, it is urged by Sri Rastogi that even if the decision, taken by Board, on 13-6-1996, is ignored , still, the petitioner is not eligible for merit scholarship, inasmuch as only 10 students in all, in Arts and Fine Arts Groups, are entitled to receive merit scholarships, under the Regulations.

10. Looking into the intricate question involved in the present writ petition, I have appointed Sri Narendra Jain, as amicus curiae, in order to assist the Court.

11. The learned amicus curiae, Sri Narendra Jain, meticulously urged before me, in reply to the aforesaid argument, raised by Sri M. Rafiq and Sri Ajay Rastogi, appearing on behalf of the respondent No. 1, that in a democratic polity like ours, where there is a presumption, that everyone understands law, the publication of decisions taken by Board, is essential. It is true that the decision, taken by Board, on 13-6-1996, was not required to be published in Official Gazette, within the meaning of Section 25 of the Rajasthan General Clauses Act, 1955, read with the Rajasthan

Gazette (Raj Patra) Act, 1956, still, it is required to be published in any other mode, as is to be prescribed by State Government. Without publication of the aforesaid decision dated 13-6-1996, taken by Board, it cannot be made applicable. There is substance in the argument of the learned amicus curiae. I am satisfied that in a democratic country like ours, where there is presumption that everyone understands law, publication of law is required to be made, so that, every citizen may be aware, where they actually stand. Without publication, decision taken by Board, on 13-6-1996 on Resolution No.7, vide R/1 to the writ petition is not enforceable. It is further to be noticed that under sub-section (13) of Section 9, it is one of the powers and functions of Board, to award merit scholarships, medals and prizes, under conditions that may be prescribed. It is urged by Sri Jain that the expression, used under sub-section (13) of Section 9 "under conditions that may be prescribed", means conditions, prescribed by regulations, as envisaged under Sections 36, 37 and 38 of the Act of 1957, and a decision, which is not in conformity with the aforesaid provisions, is not enforceable in the present case. As a matter of fact, according to Sri Jain, the petitioner is eligible for merit scholarship, provided, she is found to be eligible under Chapter-XXIII of the statutory regulations.

12. There is substance in the aforesaid argument of Sri Jain. It is held that the decision, taken by Board, on 13-6-1996, Annexure R/1, superseding the statutory regulations, for awarding medals, scholarships and prizes, is a nullity and its enforcement can be opposed whenever and wherever it is sought to be enforced without its publication. Mere sending of a copy of information, to state Government is not sufficient, although, no compliance of even sending information to State Government is proved to the satisfaction of the Court. It is further held that the respondents are not entitled to place reliance on the decision, taken by Board, on 13-6-1996, Annexure-R/1, which is neither published, nor taken, according to the provisions of the Act of 1957. The aforesaid decision, taken by Board, on 13-6-1996, on Resolution No. 7, is hereby held to be null and void, to the extent of affecting the right of awarding merit scholarship.

13. Coming to the second limb of submission, made by the learned counsel for the respondent No. 1, to the effect that under the regulations, since Board is to award merit scholarships only to first ten students, therefore, the petitioner is not eligible for merit scholarship, even under existing regulations. In reply to the aforesaid argument, raised by the learned counsel for the respondent No. 1, the learned amicus curiae, Sri

Narendra Jain, invited my attention to paragraph 3 of the writ petition. From the averments made in paragraph 3 of the writ petition, which is not seriously disputed by the answering respondents, it is urged by Sri Jain that a close scrutiny of the merit list indicates that the name of the petitioner found place at position No. 7, in the merit list, whereas, her name is shown at S. No. 12. It is submitted by Sri Jain that from a close scrutiny of the merit list of Arts and Fine Arts Groups, it is revealed that four candidates stand at fourth position, two candidates stand fifth position; two candidates stand at sixth position; and the petitioner stands at seventh position, in the merit list. According to the learned amicus curiae, there is ambiguity in Chapter-XXIII of the Regulations, which deals with awarding merit scholarships up to ten students. In Regulation 3(a), it prescribes two conditions, one, that ten students are entitled to receive merit scholarships, whereas, in subsequent second condition, it is said that in Arts and Fine Arts Groups, students achieving position up to tenth, should be eligible for merit scholarship. According to Sri Jain, the anomaly is to be resolved by this Court. According to Sri Jain, if harmonious interpretation is given to the rules of eligibility for awarding merit scholarships, then, all those students, whose names find place up to tenth position in the merit list, they are eligible for merit scholarships, even if number of students may increase more than ten, as in the present case.

14. I have given my conscious thoughtful consideration to the aforesaid argument, advanced at the Bar. It is settled principle of law that if under any statutory provisions or regulations, two interpretations are possible, one, favorable to the State, and the other, favorable to the subject, then, in such a situation, the interpretation in favor of the subject, would prevail over the interpretation in favor of the State.

15. Keeping in view the aforesaid proposition of law, it is held that since the petitioner's name finds place at seventh position in the merit list, therefore, she is entitled to receive merit scholarship, under the statutory regulation relating to awarding of merit scholarships. It is further held that under the existing Regulations, all students are eligible for merit scholarships, whose names find place within tenth position, even if number increases more than ten students, due to more than one student obtaining any one position, within tenth position. This is the only harmonious interpretation, which may solve the anomaly, created by Regulation 3(aa), which is quoted herein below:-

16. I am of the view that whenever and wherever any statutory Act, Rules and

Regulations are framed, all the contingencies are not possible to comprehend. The State Government, while preparing the First Regulations, could not be able to comprehend the contingency that there may be more than ten students in Arts and Fine Arts Groups, within tenth position, as has arisen in the case on hand. Since this contingency was not comprehended, therefore, the gap deserves to be filled in by harmonious interpretation of the Regulation. To make the statutory Regulation 3(aa) workable, this Court cannot afford to sit idle, leaving the anomaly to perpetuate for all time to come. As a result of the aforementioned discussion, the instant writ petition is hereby allowed, with a direction to the respondent No. 1, to recommend the name of the petitioner, to the State Government, to award her merit scholarship, at the rate of Rs. 200/- per month, for a period of three years. Such recommendation is to be made within two months from the date of receipt of certified copy of this order. The State Government is hereby directed to make lump sum payment of the entire amount of merit scholarship, to the petitioner, at the rate of Rs. 200/- per month, for a period of three years, within three months thereafter.

I record my appreciation for assistance, rendered by the learned amicus curiae, Sri Narendra Jain.

Petition allowed.