

to the benefits under the Act because of the death of their breadwinner Gian Singh who died in the course of his employment and whose death had arisen out of that employment. The costs are assessed at Rs. 500, which shall be paid by the respondent-Corporation to the appellants. The appellants shall also be entitled to interest at the rate of 12 per cent per annum on the outstanding dues admissible to them under the provisions of the Act from the date of their claim application till the date of payment of the same. The award of this interest is justified for the reason that the respondent-Corporation is entitled to recover amounts of arrears of contributions under the Act along with damages/interest under section 85-B and Regulation No. 31-A of the Regulations made under the Act. It should have, therefore a corresponding obligation to pay interest on the outstanding dues payable by it to the insured employees and their dependants.

S.C.K.

Before M. M. Punchhi, J.

RAKESH KUMARI,—*Petitioner.*

versus

PUNJAB SCHOOL EDUCATION BOARD,—*Respondent.*

Civil Writ Petition No. 6068 of 1986.

May 7, 1987.

Punjab School Education Board (Higher Secondary Examination) Regulation, 1982—Regulation 14(1)—Regulation providing one year gap between two examinations—Candidate filing admission form—Date of passing examination mentioned in the form correctly—One year period not expired—Candidate not eligible—Form accepted—Candidate appeared in the examination—Result of candidate withheld—Regulation giving power to Board to cancel the result of the candidate not eligible—Effect of—Candidate whether entitled to declaration of result.

Held. that she was ineligible to appear in the examination. She filled the admission form clearly declaring that she had fully understood the syllabus, rules and regulations as also the instructions concerned with the examination. Such a declaration cannot be allowed to be treated as casual. She is presumed to have known

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that she was ineligible to appear in the examination. Her minority cannot come to her rescue. The mistake she committed in filling her admission form is partly forgivable for she never made a false declaration therein with regard to the particulars of her matriculation examination as is clear from the entries in column 7 of the form. Yet there was a larger responsibility on the certifying authority, which happened to be no other than a responsible officer of the Board not below the rank of an Assistant Secretary. It is he who seems to have taken the matter casually and without properly scrutinising the form certified that there was 'one year gap' between the two examinations, holding her eligible. The Board in these circumstances, relying on the certification given by one of its own senior officers, released candidature to the petitioner, for at that stage the Board was not required to go into the particulars given in the admission form by the petitioner as her candidature had been certified by one of its own officers. So the fault more lay with the Officer of the Board and derivably with the Board itself. So both the parties are guilty contributorily to the mess in which the petitioner finds herself in. The conduct of each party is a relevant factor to be seen in the matter of moulding relief in such a petition. (Para 5).

Held, that even if the result of the candidate is declared the same is capable of being quashed on the ground that she was ineligible to appear in the examination. If her result can be quashed after its declaration, I fail to see the reason why it cannot be withheld on the that ground and the result cancelled. This seems to be the power innate in the regulations. The Board can certainly take recourse to that method. The Regulations of eligibility must tilt in this case in favour of the Board and the petitioner is not entitled to have her result declared. (Para 7).

Shri Krishan vs. The Kurukshetra University, Kurukshetra A.I.R. 1976 S.C. 3766. (Distinguished from).

Writ Petition under Articles 226 and 227 of the Constitution of India praying that :—

- (a) *a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the impugned order, annexure P-2, be issued and further issuing writ of Mandamus directing the respondent—Board to declare the result of the petitioner immediately.*
- (b) *any other relief to which the petitioner is found entitled to in the facts and circumstances of the case may kindly be granted to the petitioner.*

(c) *Filing of certified copies of the annexures may kindly be dispensed with ; and*

(d) *the writ petition may kindly be allowed with costs.*

R. L. Sharma, Advocate, for the Petitioner.

A. S. Bakhshi, Advocate, for the respondent.

JUDGMENT

M. M. Punchhi, J.—(oral) The petitioner, approaching this Court under Article 226 of the Constitution of India, is a minor. She claims two reliefs : (i) quashing of orders Annexure P-2, whereby the Punjab School Education Board-respondent, has held her ineligible for the examination held in March, 1986; and (ii) requiring the said Board to declare her result for the examination held in March, 1986.

(2) The facts giving rise to this petition are not in dispute. The petitioner passed her matriculation examination in September, 1985, as a private candidate. According to the Regulations applicable on the subject, she did not qualify to appear in the Higher Secondary examination before September, 1986, for there had to be a year's gap between the two examinations. However, there was an examination which was being conducted in March, 1986. She accordingly filled her admission form on January 20, 1986 (as seen from the original admission form), requesting the Board to permit her candidature in the Higher Secondary examination to be conducted in March, 1986. In column 7 of the said admission form, she pointedly stated that she had passed her matriculation examination in September, 1985 as held by the Board and had obtained 810 marks. In column 19 of the form, she made a declaration that she had examined the syllabus, rules and regulations applicable to the examination as also the instructions relating to the admission form. In accordance with regulation 14(1) of Punjab School Education Board (Higher Secondary) Examination Regulations, 1982, the admission form is to be countersigned by the authorities mentioned in the Regulations, and then required to be submitted to the Secretary of the Board. For private candidates one of the authorities concerned which could countersign the form was an officer of the Board not below the rank of an Assistant Secretary. The petitioner's form thus was scrutinised by the Subject Expert, Academic Planning Branch, Punjab School Education Board, and

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under his seal and signatures he certified that the petitioner had passed the matriculation examination from a recognised institution of the Board at least one year before the examination under the Regulations. The Board on the receipt of such admission form granted candidature to the petitioner, and charged its examination fee. Thereafter the petitioner sat in the examination. Her result was withheld. Her father then wrote a letter Annexure P-1, dated 15th July, 1986, invoking the Board to declare the result of the petitioner. The Board replied back,—vide letter Annexure P-2, that because of the non-completion of one year's gap, the petitioner was held to be ineligible for the examination held in March 1986 and, therefore, the matter regarding cancellation of her result was under consideration. Simultaneously, the petitioner was advised to send her admission form for sitting in the examination to be held in September, 1986 so that her chance for passing the Higher Secondary examination may not be wasted. It is in these circumstances that the petitioner has approached this Court for the reliefs spelled out earlier.

(3) It has been strongly urged by Mr. Sharma, learned counsel for the petitioner, that the petitioner had supplied full information to the Board and when an Officer of the Board had certified her candidature to be correct and on the strength thereof she had been permitted to appear in the examination, it was too late in the day for the Board to cancel her candidature on the ground of any ineligibility. Reliance was placed by him on *Shri Krishan v. The Kurukshetra University, Kurukshetra*, (1) to contend that if the Board had acquiesced in the infirmities which the admission form contained and allowed her to appear in the examination, then by force of the Regulations re-eligibility, the Board had no power to withdraw her candidature. Further, it has been contended that there was ample time and opportunity for the Board authorities to have found out the defect and it having not done so, it amounted to acquiescence. Reliance was also placed by him on a decision of this Court in *Gurchain Singh and others v. The State of Punjab and others*, (2), in which, on the application of the aforesaid Supreme Court judgment, the principle was applied reiteratingly to hold that once a candidate is allowed to take the examination rightly or wrongly, then the Statute which empowers the University to withdraw the candidature of the applicant, has worked itself out and

(1) AIR 1976 SC. 376.

(2) C.W.P. No. 5710 of 1983, decided on January 19, 1984.

the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. This was a case where some candidates had applied for a course and had made use of qualifying certificates of an institution which was not recognised by the University, but all the same were accepted by the Selection Committee and the applications submitted by the petitioners were allowed holding them eligible for admission in all respects, which was later attempted to be cancelled. This Court stepped in to forestall that action paving way for the petitioners to continue and complete their course.

(4) On the other hand, learned counsel appearing for the Board has contended that the petitioner committed a fraud, for she obtained a certification from an officer of the Board about the one year gap between the two examinations and used that wrong certificate as part of the admission form submitted to the Board. Emphasis has been laid on two factors: (i) the petitioner cannot be allowed to take advantage of her own fraud; and (ii) the ratio of the Supreme Court judgment in *Shri Krishan's case* (supra) is not applicable to the facts of the present case because in that case, no deception had been practised. But here, as suggested, the petitioner was guilty of having practised deception. It has also been additionally asserted that under the regulations applicable at the time (there is no need to trace their history) the result of a candidate after it has been declared, can be quashed if he is found to be ineligible to appear in the examination. And what can be done after the declaration of the result is innately said to be available without the declaration of the result by cancellation of the result on account of ineligibility.

(5) It is at the cost of repetition being emphasized that the petitioner concedes that she was ineligible to appear in the examination. She filled the admission form clearly declaring that she had fully understood the syllabus, rules and regulations as also the instructions concerned with the examination. Such a declaration cannot be allowed to be treated as casual. She is presumed to have known that she was ineligible to appear in the examination. Her minority cannot come to her rescue. The mistake she committed in filling her admission form is partly forgivable, for she never made a false declaration therein with regard to the particulars of her matriculation examination as is clear from the entries in column 7 of the form. Yet there was a larger responsibility on the certifying

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authority, which happened to be no other than a responsible officer of the Board not below the rank of an Assistant Secretary. It is he who seems to have taken the matter casually and without properly scrutinising the form certified that there was 'one year gap' between the two examinations, holding her eligible. The Board in these circumstances, relying on the certification given by one of its own senior officers, released candidature to the petitioner, for at that stage the Board was not required to go into the particulars given in the admission form by the petitioner as her candidature had been certified by one of its own officers. So the fault more lay with the Officer of the Board and derivably with the Board itself. So both the parties are guilty contributorily to the mess in which the petitioner finds herself in. The conduct of each party is a relevant factor to be seen in the matter of moulding relief in such a petition.

(6) Now, what is to be done with regard to the result which the Board intends to cancel? On the one hand, the petitioner's counsel is at pains to invoke equities in favour of the petitioner by contending that she is a minor, has paid the admission fee and has undergone the ordeal of the examination, which justify the prayer to have her result declared. On the other hand, it is contended by the Board's learned counsel that when it stands conceded that the petitioner was ineligible to the examination, no equities shall come to her rescue and the regulations' compulsion must hold its way.

(7) In *Siri Krishan's case* (supra), the Supreme Court on the conduct of the parties, found it as a fact that it was neither a case of *suggestio falsi* or *suppressio veri*, for the petitioner had never written to the University authorities that he had attended the prescribed number of lectures, though his candidature was capable of being withdrawn at any time before the examination if he had failed to attend the prescribed course of lectures before the end of the term. The University without verifying the attendance of lectures, which later were found to be short, released candidature in favour of the petitioner. On the language of the University Calendar, the Supreme Court took the view that there was ample time and opportunity for the University authorities to find out the defect and thus the University authorities had acquiesced in the infirmities which the admission form contained and allowed him to appear in the examination. It is in these circumstances that the Court came to observe that once a candidate is allowed to take the examination rightly or wrongly, then the statute which empowers

the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. Now, there was a specific regulation permitting withholding of the candidature which had exhausted itself out by the inaction of the University. Here, there is no such regulation. What is being confronted against the petitioner is that even if her result is declared, her result is capable of being quashed on the ground that she was ineligible to appear in the examination. If her result can be quashed after its declaration, I fail to see the reason why it cannot be withheld on that ground and the result cancelled. This seems to be the power innate in the regulations. The Board can certainly take recourse to that method. The regulations of eligibility must tilt in this case in favour of the Board and accordingly I hold that the petitioner is not entitled to have her result declared or any other relief.

(8) For the foregoing discussion, this petition fails and is hereby dismissed. Since both the parties are responsible for their mistakes, there shall be no order as to costs.

S.C.K.

Before Ujagar Singh, J.

SUMER CHAND,—*Petitioner.*

versus

SANDHURAN RANI and another,—*Respondents.*

Criminal Misc. No. 2500-M of 1987

May 11, 1987.

Code of Criminal Procedure (II of 1974)—Sections 125 and 397—Petition for maintenance under Section 125—Application for grant of interim maintenance—Order granting interim maintenance—Such order—Whether an interlocutory order—Revision against such order—Whether competent.

Held, that under the Code of Criminal Procedure there is no provision for filing an application for granting interim maintenance during the pendency of main application under Section 125