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RAM PREETI YADAV

v.

U.P. BOARD OF HIGH SCHOOL AND INTERMEDIATE
EDUCATION AND ORS.

SEPTEMBER 3, 2003

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[V.N. KHARE, CJ. AND S.B. SINHA, J.]

Education:

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Intermediate Examinations—Candidate using unfair means—Provisional mark-sheet—Effect of—Result of a private candidate withheld as being a suspected case of using unfair means—Provisional mark sheet issued without showing "W.B." (i.e. result withheld)—Admission to B.A. course obtained by candidate—Board of High School and Intermediate Examinations cancelled examination of candidate—Thereafter another

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provisional mark sheet issued by the Principal of the College to the candidate showing the words "W.B." therein—Later, Principal of the College informing the candidate that his result was cancelled—Writ petition of candidate allowed by High Court—Held, when the Principal of the College was made known by the Board about cancelling the examination

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of the candidate, issuance of another mark sheet in his favour with the words "W.B." is a matter of great suspicion—It is evident that a fraud was committed—The candidate is the sole beneficiary to the said fraud and it, as such, must be presumed that he was a party thereto—The letter issued by Principal of the College at a belated stage informing the candidate

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about cancellation of his examination, in the circumstances, is stated to have given rise to a fresh cause of action as earlier writ petition of the candidate seeking declaration of his result had been dismissed—The plea of the candidate that the Board be directed to give an opportunity of hearing to him at this stage cannot be acceded to—There is no equity in favour of the candidate inasmuch as he knew that his result had been

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withheld because of the allegation of having used unfair means in the examination—Suppressing this fact he took admission and studied further—Fraud—Presumption as regards party thereto—Equity.

Derry v. Peek, [1889] 14 AC 337 and Lazarus Estate v. Berly, [1956]

H 1 All ER 341, referred to.

S.P. Chengalvaraya Naidu v. Jagannath, [1994] 1 SCC 1, referred to. A

Administrative Law:

Natural justice—Opportunity of hearing—Intermediate examination—Mass copying—Result of the candidate withheld and later his examination cancelled—Candidate obtained provisional mark sheet without any indication of withholding result—Obtained admission to B.A. course on the basis thereof and studied further—Later challenged the order of cancellation of his examination on the ground that he was not communicated the order and that he was not given an opportunity of hearing—Held, it is the positive case of the Board that an opportunity of hearing had been given to him—Besides, in a case of mass copying the principles of natural justice need not be strictly complied with—Furthermore, it is the admitted case of the parties that the records have been weeded out—High Court was not correct in proceeding on the basis that candidate was not communicated with the result—It is expected that a student who has taken admission on the basis of a provisional mark-sheet would keep a watch over the entire situation and would make repeated enquiries as to what actions have been taken by the authority concerned in the matter and why final mark-sheet has not been issued—A presumption against him must be raised particularly having regard to the fact that he had not been able to produce any material to show as to why no attempt was made by him to obtain a final marks sheet and/or certificate for passing the examination. B C D E

Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti and Ors., [1998] 9 SCC 236, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4034 of 2001. F

From the Judgment and Order dated 7.12.99 of the Allahabad High Court in S.A. No. 450 of 1998.

Y.P. Singh, Chatanya Siddharth, Mukesh K. Sharma and Debasis Misra for the Appellant. G

Dinesh Dwivedi, S. Bhatnagar, Navin Prakash and Kamendra Mishra for the Respondents.

The following Order of the Court was delivered :

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A In the year 1984, respondent No. 3 herein Mahendra Pratap Yadav appeared as a private candidate in the Intermediate Examination conducted by U.P. Board of High School & Intermediate Education from Janta Inter College, Azamgarh (U.P.). When the results of Intermediate Examination of the year 1984 were declared, the result of respondent No. 3 was shown as withheld as a suspected case of using unfair means. He was issued a provisional mark-sheet without showing that his result for Intermediate Examination has been withheld. It is really surprising that such a mark-sheet was issued to the respondent No. 3 by the Principal of the College inasmuch as his result was admittedly directed to be withheld by respondent No. 1. Curiously enough, in another provisional marks-sheet which was issued on or about 1.9.1986 by the Principal of the College the word "W.B." i.e. result withheld finds place. It also stands admitted that the respondent No. 3 did not apply for nor was given any final marks-sheet nor any certificate of passing the examination. It appears that on the basis of the provisional marks-sheet respondent No. 3 took his admission in B.A. without disclosing the fact that his result has been withheld and passed the B.A. Examination as well as M.A. Examination. Subsequently, he also got employment as a Teacher in Mathura Inter College, Naharpur, Distt. Azamgarh. It appears that in the year 1993 some inquiry was made as regards the passing of the Intermediate Examination by respondent No. 3. The inquiry continued for some time and it is under such circumstances the Principal of Janata Inter College informed respondent No. 3 on 16.10.1996 that his result of Intermediate Examination of the year 1984 was cancelled.

F It is at this stage respondent No. 3 filed a petition under Article 226 of the Constitution challenging cancellation of his result of Intermediate Examination of the year 1984, *inter alia*, on the ground (i) that he was not afforded any opportunity of hearing before cancellation of his Examination; (ii) that the cancellation after more than 10 years was wholly arbitrary and illegal; and (iii) that he having passed the B.A. and M.A. Examinations had secured appointment as a Teacher in the College and as such equity demands that the order cancelling the result of his Intermediate Examination of the year 1984 be set aside. A learned Single Judge of the Allahabad High Court was of the view that in the instant case if the result of respondent No. 3 herein of Intermediate Examination is allowed to be shown as cancelled his career would be ruined and since he had passed the High

School Examination in First Division, B.A. Examination in Second Division and M.A. examination in First Division and by and large his academic career is brilliant, the cancellation of his result is unreasonable. Consequently, the writ petition was allowed and order of cancellation of result of Intermediate Examination was set aside. Aggrieved, the appellant who is a colleague of respondent No. 3 and is working in the same Institution wherein respondent No. 3 is working as well as the Board of High School and Intermediate Education filed special appeals before a Division Bench of the High Court. The Division Bench summarily dismissed the appeals. It is against the said judgment and order, the appellant is in appeal before us.

The learned counsel appearing on behalf of the appellant would submit that having regard to the admitted fact that the respondent No. 3 did not pass his Intermediate Examination, he could not have been appointed and consequently the question of considering his case for promotion does not arise. The learned counsel would submit that in a case of mass copying, it may not be possible to comply with the principles of natural justice.

Mr. Dinesh Dwivedi, the learned senior counsel appearing on behalf of the first respondent, supported the case of the appellant and would further draw our attention to the statements made in the counter-affidavit filed by the Board of High School & Intermediate Education to the effect that result of respondent No. 3 of Intermediate Examination of the year 1984 was cancelled on 6.1.1985 after giving an opportunity of hearing to him.

It was urged that the said information was given as per practice to the Centre for its communication to respondent No. 3 and further the Board was not required to inform each candidate individually about the cancellation of the result.

The learned counsel appearing on behalf of respondent No. 3, however, on the other hand, would submit that keeping in view the peculiar facts and circumstances of this case, the ends of justice will be met if the first respondent is hereby directed to give a post-decisional. The learned counsel would contend that it is a fit case wherein equities should be adjusted keeping in view the fact that respondent No. 3 has now passed

A his B.A. and M.A. Examinations. In the alternative, it was urged, this Court may direct the first respondent to allow the respondent No. 3 to appear at the Intermediate Examination afresh.

B Having heard the learned counsel for the parties, we are of the opinion that the impugned judgment cannot be sustained.

Respondent No. 3 himself in his counter-affidavit has drawn this Court's attention to a judgment of the Allahabad High Court dated 19th September, 1983 relating to withholding of result by the first respondent, wherein it was directed :

C "In cases of mass copying the Board will pass the final order within 15 days from today and where the charge is of being caught red-handed the Board will pass final orders within six weeks from the date of the candidate give his explanation. *In any case, in which the Board is unable to pass final orders within the aforesaid period, it will forth with give to the respective candidates their marks sheets provisionally. In each case where the marks sheet is given provisionally, the Board may make the requisite endorsement.*"

(emphasis supplied)

E Not only respondent No. 3 was aware of the said judgment, it is also implicit that the provisional mark-sheet was given to him on the basis thereof. We, therefore, in this situation fail to understand as to how a mark-sheet without the words "W.B." could be handed over to respondent F No. 3 by the Principal of the College. Respondent No. 3 presumably was aware of the entire fact situation. In that view of the matter, he now cannot, in our opinion, plead his ignorance about the entire fact. It is expected that a student who has taken admission on the basis of a provisional mark-sheet would keep a watch over the entire situation and would make repeated G enquiries as to what actions have been taken by the first respondent herein in the matter and why final marks-sheet has not been issued.

H It is also a matter of great suspicion as to how another marks-sheet was issued in his favour on 1.9.1986 with the words "W.B." particularly when the Principal of the College admittedly was made known about the order dated 1.9.1985 passed by the first respondent cancelling the

examination of respondent No. 3. Thus, it is evident that a fraud was committed. Respondent No. 3 is the sole beneficiary to the said fraud and it, as such, must be presumed that he was a party thereto. A

In its counter-affidavit, the first respondent *inter alia* stated :

“It is stated that the respondent No. 3 i.e. Sri Mahendra Pratap Singh appeared in intermediate examination of the year 1984 bearing Roll No. 575203, the result of the respondent No. 3 was withheld on account of mass copying under W.B. Category. The inquiry was made and the charges were framed against him. On hearing the matter and given opportunity to explain the respondent, and Nistarani Samiti duly constituted by the Board took decision dated 6.1.1985 to cancel the result of Intermediate for the year 1984. It was duly served to the principal concerned to convey with the decision taken by the Board. It was expected of the respondent No. 3 to get aware the decision dated 6.1.1985 of mass copying at that time. He did not care to know the decision and he further studied and got through the higher education. He obtained service appointment fraudulently with Sri Mathura Inter College, Naharpur, Azamgarh ignoring the decision dated 6.1.1985. After a lapse of 12 years with collusion of the principal Janta Inter Higher Secondary School, Mahul Azamgarh, he received a letter dated 16.10.1996 in which cancellation of the Intermediate examination of the year 1984 of the respondent No. 3 was informed.” B C D E

Apart from the fact that the marks-sheets issued by the Principal in the years 1984 and 1986 speak differently, by no stretch of imagination it can be presumed that even when the second marks-sheet in the year 1986 was issued, respondent No. 3 was not aware of the order dated 6.1.1985 passed by the first respondent. F

Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. See *Derry v. Peek*, [1889] 14 AC 337. G H

A In *Lazarus Estate v. Berly*, (1956) 1 All ER 341 the Court of Appeal stated the law thus :

B “I cannot accede to this argument for a moment “no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything”. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.”

C In *S.P. Chengalvaraya Naidu v. Jagannath*, [1994] 1 SCC 1, this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal.

D Furthermore, it is surprising as to why the Principal of the College issued the letter dated 16-10-1996 in favour of Respondent No. 3 stating :

E “Your intermediate result which was W.B. and withheld. On your request several time I also write to the U.P. Board of Intermediate Education, Allahabad. When no reply was received then I sent the person to know the position.

F I am sorry to inform you on the basis of information received from the U.P. Board of Intermediate Educational Allahabad that your W.B. result of intermediate examination withheld for year 1984 with roll No. 575203 has been cancelled. Make note of it that the temporary posting by me is hereby cancelled.”

G The said letter was considered to have given rise to a fresh cause of action in favour of the respondent No. 3 in order to enable him to file the writ petition. Prior thereto, he admittedly had filed another writ petition before the Allahabad High Court being Writ Petition No. 35336 of 1995 wherein he *inter alia* prayed for the following reliefs :

H “(i) issue a writ, order or direction in the nature of *mandamus* directing the respondents to declare the result of the petitioner who has appeared in Intermediate Examination - 1984 bearing Roll No. 575203.

(ii) issue and other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances existing in the present case.

(iii) award costs of this petition in favour of the petitioner."

The said writ petition was dismissed.

Having found that he did not get any relief in the said writ petition No. 35336 of 1995 he filed the Writ Petition No. 39905 of 1996 questioning the aforementioned order dated 16.10.1996. It is stated that the said letter dated 16.10.1996 gave rise to a fresh cause of action.

It is relevant to note that the Principal of the College even in its letter dated 16.10.1996 does not state that an order dated 6.1.1985 was issued against him by the first respondent cancelling his examination. Even in the said letter dated 16.10.1996 the copy of the said order has not been annexed. It is also pertinent to note that the Principal of the College not only had issued the aforementioned mark-sheets in the year 1984 and 1986 and also the said letter dated 16.10.1996 but from the tenor of the letter it appears that he also made temporary posting of respondent No. 3. Curiously enough, respondent No. 3 in his counter-affidavit states that the Principal, Janta Inter College, Mahul has nothing to do with his appointment. Under what circumstances therefore the third respondent's posting was cancelled is anybody's guess.

As regard the submission of the learned counsel to the effect that the first respondent should be directed to give an opportunity of hearing to the respondent No. 3 at this stage cannot be acceded to. As noticed hereinbefore, it is the positive case of the first respondent that an opportunity of hearing had been given to him by the first respondent. Secondly, in a case of mass copying the principles of natural justice need not be strictly complied with.

In *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samity and Others*, [1998] 9 SCC 236 this Court observed :

"In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board

A to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices.”

E Furthermore, it is the admitted case of the parties that the records have been weeded out. The first respondent in its counter-affidavit before the High Court not only stated so but also filed weeding schedules with a supplementary counter-affidavit.

F In that view of the matter, affording an opportunity of hearing to respondent No. 3 at this stage would end in a futile exercise.

G The learned Single Judge in the aforementioned situation was not correct in proceeding on the basis that the respondent No. 3 was not communicated with the result. A presumption against him must be raised particularly having regard to the fact that he had not been able to produce any material to show as to why no attempt was made by him to obtain a final marks-sheet and/or certificate for passing the examination.

H We are also unable to issue any direction to the first respondent to

allow the third respondent to sit at the Intermediate Examination at this stage; having regard to the fact that the relevant rules in this regard have not been placed. We may, however, observe that if he is entitled to take the said Examination in law, he may be permitted. A

Further, we find that there is no equity in favour of respondent No. 3, inasmuch as he knew that his result has been withheld because of the allegation of having used unfair means in the Examination. Suppressing this fact, he took admission in B.A. and studied further. B

We are, therefore, of the view that the High Court committed error in allowing the writ petition filed by respondent. No. 3. Consequently, the order under challenge and that of the learned Single Judge, are set aside. C
The appeal is allowed. There shall be no order as to costs.

R.P.

Appeal allowed.