

that the contention of the Government Pleader is adequate for declining to interfere in this case. When the witnesses were produced and their depositions in the former trial were read out and verified, no objection was taken to the procedure on behalf of the accused, but on the other hand the witnesses were cross-examined on those depositions on behalf of the accused. The points which have thus been elicited in cross-examination are sufficient to sustain the conviction, and the irregularity is cured by the provisions of s. 537 of the Criminal Procedure Code. Mr. *Dillon*, has not shown that there has been any failure of justice in the case in consequence of the procedure adopted by the Magistrate, or that the accused have been substantially prejudiced thereby. I therefore refuse the application and direct that the record be returned.

Application rejected.

FULL BENCH.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Staught, Mr. Justice Brodhurst, Mr. Justice Tyrrell, and Mr. Justice Mahmood.

IN THE PETITION OF DWARKA PRASAD AND OTHERS.

Pledership Examination—Board of Examiners raising standard of marks required for pass certificate without notice to candidates—Petition to High Court by unsuccessful candidates.

The Board of Examiners having, without giving any notice to the candidates at the annual examination for pleaderships of the Upper Subordinate Grade, raised the minimum number of marks qualifying for a pass certificate, some of the unsuccessful candidates petitioned the High Court that the result of the examination might be reconsidered and the former standard reverted to.

Held that the Court having delegated its powers in connection with the examination to the Board of Examiners, and the Board having exercised its powers legally, properly, and for the benefit of the public, there was no cause for interference.

THIS was a petition on behalf of certain persons who were unsuccessful candidates at the examination for pleaderships of the Upper Subordinate Grade which was held in January, 1887. The petition set forth that, out of 499 candidates, 44 only had been successful; that the percentage of successful candidates had fallen this year to 8·8 from 29 per cent. in 1883, 53 per cent. in 1884, 23 per cent. in 1885, and 28 per cent. in 1886; that the questions set this year were unusually difficult, and that the Board of Examiners had,

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without giving any notice to the candidates, raised the minimum number of marks qualifying for a pass certificate (1). It was also pointed out that, in consequence of the new rules framed by the Board, and taking effect from 1888, requiring that the examinations are in future to be held in the English language (2), and that candidates, to be eligible, must have matriculated for the F. A. degree of any Indian University (3), the majority of the unsuccessful candidates of this year would be precluded from again competing, as they would next year be too old to be eligible as candidates for the F. A. Examination. The prayer of the petitioners was "that the present year is the Jubilee year of Her Gracious Majesty's reign, and a year of rejoicing for all the subjects of the Queen-Empress; and although your humble petitioners do not venture to pray for any special leniency to individuals, they have strong hopes that the result of the last examination may be reconsidered, and the recognized old percentage for obtaining a pass certificate be reverted to."

The petition was, by order of the Chief Justice, laid before the Full Bench for disposal.

Mr. M. Hameedullah, for the petitioners.

[STRAIGHT, J.—What do you want us to do?]

To direct the revision of the list of successful candidates, and the admission of those who have qualified themselves for a pass certificate according to the old standard.

[MAHMOOD, J.—How can we do anything of the kind? As I understand, this Court has delegated many of its powers in reference to the admission and qualification of pleaders to the Board of Examiners. See s. 8 of the Letters Patent and ss. 6 and 7 of the Legal Practitioners Act (XVIII of 1879). (4)]

(1) By rule 37 of the High Court's Circular Order No. 7 of 1882, it was provided that "no candidate will be passed as a vakil or pleader unless he obtain at least thirty-three per cent. of the marks assigned by the Examination Board under rule 36 in the papers set in each of the Procedure Codes." Under Circular Order No. 5 of 1886 (by which the Order of 1882 is superseded) no standard is prescribed, but the matter is left to the discretion of the Board.

(2) Circular Order No. 5 of 1886, rule 35, modifying rule 36 of Circular Order No. 7 of 1882.

(3) Circular Order No. 5 of 1886, rule 30, clause (2). Other and alternative conditions of eligibility are specified in clauses (1), (3), and (4) of the same rule.

(4) See also Circular Order No. 5 of 1886, rules 27—41 (inclusive), and in particular rules 28, 29, 34, 35, 36—40.

[EDGE, C. J.—Do you contend that this Court could not delegate these powers to the Board of Examiners?]

No.

[EDGE, C. J.—Then do you say that the Board, in the exercise of the powers so delegated, has acted illegally?]

Not illegally, but irregularly and improperly, in raising the standard in the way that it did. It was unfair to raise the standard without giving notice. If such notice had been given, many of the candidates would not have incurred the expense and trouble of preparing themselves and competing. The case of *Sukhmandan Lal* (1) seems to imply that the Court has jurisdiction to interfere if it thinks proper.

[EDGE, C. J.—If the Board should act illegally, the Court might have power to interfere. But you admit that it has not so acted, and ask us to interfere with the legal exercise of its discretion.]

EDGE, C. J., BRODHURST, TYRRELL and MAHMOOD, JJ.—This is an application to the Judges of the High Court to interfere with the discretion which was exercised by the Examination Board in the late examination of the candidates of the Upper Subordinate Grade. The High Court had delegated its power to the Board of Examiners, which the Court was authorized by law to do, and it appears to us that the Board has exercised its discretion properly, legally, and for the benefit of the public. In our opinion there is no cause for the Court to interfere in the matter.

STRAIGHT, J.—I prefer to express no opinion one way or the other, being the President of the Examination Board.

Application rejected.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, Mr. Justice Tyrrell, and Mr. Justice Mahmood.

MATADIN AND OTHERS (DEFENDANTS) v. GANGA BAI (PLAINTIFF).*

Practice—Pleader—Vakalatnama—Pleader handing over his brief to another—Civil Procedure Code, ss. 36, 37, 39, 635—Rule of Court of 22nd May, 1883.

The Rule of Court dated the 22nd May, 1883, and authorising legal practitioners in certain cases to appoint other legal practitioners to hold their briefs and appear

* Second Appeal No. 732 of 1886 from a decree of G. E. Ward, Esq., Commissioner of Jhānsi, dated the 27th January, 1886.

(1) I. L. R., 6 All. 163.

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