

(2009) 02 MP CK 0070

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5629 of 2008

Aradhana Singh (Ku.)

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Citation : (2009) ILR (MP) 785 : (2009) 1 JLJ 298 : (2009) 3 MPLJ 451

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Sharma, J.

The Petitioner before this Court who is a young girl student has filed this present writ petition for issuance of an appropriate writ, order or direction directing the Respondent Board to correct the mark-sheet issued by the Board in respect of 10+2 (12th standard examination) for the academic session 2007-08 and has also prayed for compensation to the tune of Rs. 2,00,000/- for losing two academic years on account of mistake committed by the Respondent Board. It has been stated that she is a bright young student having excellent academic record and in support of this averments she has enclosed mark-sheet of 10th standard issued by the Board of Secondary Education, M.P. Bhopal. In the aforesaid mark-sheet, the Petitioner has received 409 marks out of 500 marks and she has received distinction in 5 subjects out of 6 subjects. The only subject in which she has not received distinction is Sanskrit (General). The contention of the Petitioner is that in the year 2007 as a regular student she appeared in the 12th standard examination conducted by the Respondent Board. A copy of the admit card issued by the Respondents Board is enclosed as Annexure P-3. The Petitioner has appeared in the examination which started from 10.3.2007 and concluded on 26.3.2007. The results of all other candidates were declared except the Petitioner and the Petitioner started representing before the authorities for declaration of the result. The Principal, Government School of Excellence, Morena

vide his letter dated 14.9.2007 requested the Board of Secondary Education, MP. Bhopal to declare the result of the Petitioner. The Petitioner has stated that institution was informed about the result only vide letter dated 3.9.2008 Annexure P-6 and mark-sheet was also issued to the Petitioner declaring her unsuccessful in one of the subject and he has awarded supplementary in subject of Physics. The contention of the Petitioner is that she has lost two full academic years i.e. 2007-08 and 2008-09 as her result was not declared by the Respondents in time and now she will appear in the subject of Physics only in the year 2009 and shall be admitted to other graduate courses in the academic session 2009-2010. The Petitioner has prayed for issuance of an appropriate writ, order or direction, directing the Respondents to declare her as pass in the Physics subject of 12th standard and also prays for award of compensation of Rs. 2,00,000/-.

The Respondent Board has filed a reply and it has been admitted by the Respondent Board that there was a delay in declaring the result of the Petitioner. The Respondent Board has categorically stated that because of mistake committed by one firm M/s. Data Machine Consultant Pvt. Ltd., New Delhi who was engaged by the Board to prepare the admission card and result for the examination 2007, the result of the Petitioner was not declared. There was a mistake on the part of the said computer firm and the Petitioner's result was withheld for inquiry. Later on the result of the Petitioner was declared and the Petitioner has been permitted vide order dated 6.1.2009 to appear in the special supplementary examination which is scheduled in the month of March, 2009. The Respondents have also stated that as the mistake is not on their part and it is genuine mistake, the question of granting compensation does not arise. The Respondents have also stated that in case, the Petitioner is claiming compensation from the Respondents, she is having an alternative remedy for preferring a civil suit before the Court of competent jurisdiction.

Heard learned Counsel for the parties at length and perused the record.

In the present case it is not in dispute that the Petitioner is a bright young student having excellent academic record as reflected from the mark-sheet of 10th Board examination (Annexure P-2). She has received distinction in all main subjects and it is only the subject of Sanskrit (General) where she has not received distinction but she has received first division marks. The Petitioner appeared in the 12th Board examination which was scheduled in the month of March 2007 i.e. from 10.3.2007 to 26.3.2007 from Government Multipurpose School of Excellence, Morena and the results of all students were declared except the Petitioner. The Petitioner submitted various representations to the authorities and the Principal of Government School of Excellence, Morena has also requested the Board vide its letter dated 14.9.2007 to declare the result of the Petitioner. The result of the Petitioner has been declared by the Respondent Board only on 23.8.2008 and communicated to the School vide letter dated 3.9.2008. The Respondent Board in all fairness has admitted that the result of the Petitioner

was not declared on account of mistake committed by a firm M/s. Data Machine Consultant Pvt. Ltd., New Delhi engaged by the Board for preparing the admission card and result for the academic year 2007-08. The fact remains that on account of mistake, the result of the Petitioner was not declared by the Respondent Board in time and she lost two academic year i.e. 2007-08 and 2008-09. The Petitioner is now being permitted only by an order dated 6.1.2009 to appear in the special supplementary examination to be scheduled in the month of March 2009, thus the Petitioner shall be appearing in the examination to be held in the month of March, 2009 and in case she is successful, she will be admitted to any other graduate course for the academic session 2009-2010. The Petitioner before this Court is young girl student whose career at the initial stage has been crushed on account of mistake committed by the Respondent Board. The Respondent Board could have been more vigilant and could have pursued the matter with M/s. Data Machine Consultant Pvt. Ltd., New Delhi in the year 2007 itself when the result of the Petitioner was not declared and the matter was pointed out to the Respondent Board by the Principal of the School from where the Petitioner appeared in the 12th standard, however, knowing fully well that the result of the Petitioner was not declared, the Respondent Board took two years time for declaring the result of the Petitioner and the same has been declared on 13.9.2008. In the present case a contention has been raised by the learned Counsel for the Respondent Board that for claiming compensation, the Petitioner has to avail the remedy of filing a civil suit. It is not in dispute that the Petitioner can certainly claim compensation by filing a civil suit, however, in the light of the various judgments passed by this Court and other Courts granting compensation in identical facts and circumstances of the case, the petition is not being disposed of on the ground of availability of alternative remedy i.e. for filing of a civil suit. This Court in the case of Harishankar Vishwakarma Vs. Board of Secondary Education and Others, , has granted a compensation of Rs. 25,000/- to the Petitioner therein with costs quantifying the same at Rs. 1,500/-. In the aforesaid case this Court has directed for declaration of result even though answer book of Biology subject was lost by the Respondents by awarding average marks in Biology subject on the basis of marks obtained there in other papers of the group i.e. Physics, Chemistry, Hindi and English. In the present case as the answer books were valued, however, the mistake is on the part of the Board in not declaring the result of the Petitioner in time. It is not a case where the answer book was not valued, the question of declaring the Petitioner as pass in the subject of Physics does not arise. In the aforesaid case for loss of one academic year the compensation to the tune of Rs. 25,000/- was awarded. Paragraph 14 of the order passed by this Court reads as under:

In Prem Ratan Agrawal v. Board of Secondary Education, Bhopal (supra), compensation of Rs. 25,000/- for waste of one year was awarded. Rs. 10,000/- were to be paid by the Board and Rs. 15,000/- by the valuer. In the instant, case in my opinion, the Petitioner is entitled for compensation for waste of full one year for no fault on his part. Compensation is quantified at Rs. 25,000/-. The

Board is directed to pay Rs. 5,000/- Rs. 10,000/- are saddled on each of Respondents No. 2 and 3. The Board is directed to award the marks within 15 days from today and also to declare the result of the Petitioner in accordance with the regulations by addition of permissible grace marks in English (General) within the same period. Cost of this petition is quantified at Rs. 1,500/-. Each of Respondent to pay Rs. 500/-.

Similarly, this Court in the case of Santosh Kumar Rimjha v. Rani Durgavati University 2001(1) MPWN 187, where revaluation was not done in time and result was not declared, a cost of Rs. 10,000/- was imposed upon the University. In the aforesaid case this Court has held as under:

On perusal of the return, I do not perceive any perceptible reason for causation of delay for revaluation as far as Petitioner is concerned. It is expected from the University to conduct the examination fairly and get the papers valued impartially and objectively and publish the result expeditiously. The issue of revaluation and publication of result thereof are the integral part of publication of result. The functionaries of the University cannot be allowed to remain in slumber and act in a perfunctory manner to aggravate the tabulation in an aspirant student who deposits the fee and seeks for revaluation. The callousness at the instance of the University is not to be tolerated for the simple reason that it is dealing with young generation who is expected to carry the flag of this century. If their hopes are trammelled at the level of the University in this manner it can be regarded as mental cruelty. It is expected that the University shall forget, its past, give a decent burial to the incapacity which has come to light in this case, rise to the occasion and act in quite promptitude and the result of revaluation to the students who seek for the same within a period of sixty days from the date of receipt of the application. Such an act of the University would be commendable and usher in a state that alleviates the anguish of the students who carry the torch of posterity.

The said story has to come to an end. Mr. Pareek has submitted that the facts and circumstances warrant for grant of compensation. In absence of any explanation from the University, in view of the uncontradicted facts, in the backdrop of feeling of the Petitioner which have the effect of corroding, I am inclined to accept the contention of the learned Counsel that the Petitioner is entitled to compensation. Considering the facts and circumstances of the case the compensation is quantified at Rs. 10,000/- which shall be paid by the University to the Petitioner within a period of six weeks from today.

In the case of Prem Ratan Agrawal Vs. Board of Secondary Education and Others, , wherein the Board took four months time to rectify mistake and declaring Petitioner as "passed" in first division with distinction in all subjects, this Court has awarded a sum of Rs. 10,000/- towards compensation. This Court in paras 11,12 and 13 has held as under:

11. As has been indicated before the facts are beyond the pale of controversy. In

absence of any kind of dissension or disputation the core issue that arises for consideration is whether this Court should grant compensation as prayed for by the Petitioner. Mr. Shukla, learned counsel for the Petitioner has raised two prong attack, namely, the Board being languorous having caused delay in scrutiny is liable to pay compensation and secondly, the Respondent No. 4 who enjoys the status of a teacher and put on a high pedestal, has evinced lackadaisical proclivity and therefore, is also accountable and susceptible to pay the damages. The salience facet of the case is whether this Court should ignore and brush aside the mistake occurred and totally shut its eye to the harrowing and searing experience experienced by the Petitioner. There is no doubt that the Petitioner was appalled and dismayed when he received the original mark-sheet. It is manifest that he applied for revaluation on 3.6.1999. It is also not in dispute that the Board issued the corrected mark-sheet on 25.10.1999 as is evident from the Annexure P-9. The Board has taken a stand, it is the mistake of the valuer. The Board has not disputed in regard to the time spent in rechecking/scrutiny/retotalling. It does not require Solomon's wisdom to arrive at the conclusion that there has been delay at the level of the Board. It was a pure, simple and straightforward case of rechecking of the answer scripts. It was absolutely elementary and uncomplicated. The Act did not require any kind of adroit effort. The Board may take a stand that it has enormous task to do but it cannot be forgotten that more the duty, more the altness. Any institution which has to perform a sanguine duty of conducting examination has to conduct itself in an astute and perspicacious manner and cannot afford to put forth a stand which would appear sanctimonious though it does not have basic or fundamental sacrosanctity at its base. The Board has consumed four months to rectify the mistake. The delay caused by the Board, in my considered opinion is inexplicable and unjustified. Not for nothing it has been said he who causes delay runs the risks because delay is dangerous and belated action does not easily get effused. Delay is ordinarily regarded as dangerous. The Board would have done well to expedite the matter of rechecking and in that event, the agony of the Petitioner would irrefragably be diminished and possibly his one academic year would not have been lost. The loss caused to the Petitioner cannot be made good by grant of compensation, but the Board has to be put to task. A statutory body has to remain awake and act with alacrity and should not take an ambivalent stance. It is its duty to ameliorate itself and conceive of positive paradigm. The Board cannot afford to pave the path of anfractous and create a maze. It must understand the marrow of feelings and sensitivity of a young man. In the case at hand, as the Board has failed to do so, I am inclined to direct that it shall pay a compensation of Rs. 10,000/- (Rupees Ten thousand only) to the Petitioner within a period of two months from today.

Now to the second spectrum. The Respondent No. 4 has prayed for exoneration. She has clearly admitted that mistake had taken place. The question that falls for consideration is whether such a mistake is a pardonable one. It cannot be forgotten that the Respondent was chosen to evaluate the answer scripts of the

students. The duty of a teacher by no stretch of imagination, can be marginalised. The teacher is given respect because he performs a noble duty. Fate of students is dependent upon the action of the teachers. While evaluating an answer paper a teacher has to be extremely alert, absolutely astute, totally conceited, thoroughly involved and perfectly poised. He cannot afford to forget that he is deciding the fate and future of younger generation and at that juncture, he cannot afford to behave in an asinine manner which will make the entire evaluation process a farce. His action must demonstrate concentration and display application of a focused mind. The Respondent No. 4, it does not seem as adhered to any of these qualities. She has not been careful while entering the marks in the tabulation sheet and by such an act an aspirant young man has suffered. True, it is, she has felt the feeling of contrition and given assurance to amend herself. But should it be given weightage to give her total exoneration? I do not think so. The feeling of repentance has to be given its due weightage but the grievance of the Petitioner has to be vindicated.

Considering the totality of the circumstances I am inclined to direct that the Respondent No. 4 shall pay compensation of Rs. 15,000/- (Rupees Fifteen thousand only) to the Petitioner within a period of two months from today. The amount shall be sent by her by way of bank draft in the address of the Petitioner. If she fails to pay, it will be the duty of the Secretary, School Education Department to deduct the aforesaid amount from the salary of the Respondent No. 4 and send it to the Petitioner. That apart, the Respondent No. 4 shall not be given the duty of valuation of answer scripts for a period of three years from today. It is hereby made clear, in view of the aforesaid action being directed, no disciplinary action shall be taken against her.

In another case decided by this Court i.e. Raj Lal Patel Vs. State of M.P. and Others, , wherein for loss of one academic year on the mistake of the Board this Court has awarded a sum of Rs. 25,000/- towards compensation. Paragraphs 10 and 11 read as under:

10. The next plank of submission which requires to be dealt with is that whether because of large of scale activities of the Board relating to conducting of examination, such an act of negligence should be overlooked and condoned. Submission of Mr. Naman Nagrath, learned counsel is that when such enormous work is done mistakes are bound to occur. True it is, there cannot be a system which would have the perfection in entirety. True, it cannot have the pinkness of perfection. It cannot be in an apple pie order. But it cannot be forgotten-higher the responsibility, more the accountability. The Board is conducting examination for young students. For a student, his studies, the career prospects and above all the time factor matters. It is trite to say that no one has the power or prowess to arrest time. The Petitioner could not undertake the examination of mathematics because of the fault of the Board as the Board sent the admit card not in accordance with the subjects mentioned in the nominal roll sent by the Principal of the concerned school. The same being brought to the notice of the Board by

the Principal, there was no immediate awakening and the correction was sent for permitting the Petitioner to appear in an supplementary examination in the erroneous address. What has been urged by Mr. Naman Nagrath is that the Board examination in the next academic year. It cannot be treated to be an absolute mitigating action. This might have saved the career of the Petitioner. Indubitably, it has not put the clock back, it could not have. The time passed and lost is irredeemable. Submission of Mr. Naman Nagrath, learned Counsel is that there has been redemption does not impress this Court. Be it stated with certitude and without any hesitation that the Petitioner has lost his one year for the fault of the Board. The authorities who conduct examinations have to be more careful of the responsible and there has to be real check in many matters within the time frame so that the mistake of this nature cannot occur. All mistakes cannot be put into one compartment. Mistakes may occur but the degree, gravity and the nature of the mistake are to be seen. If it is absolutely fundamental mistake by which a student's time and career is affected and he is deprived of appearing in any other entrance examination it cannot be regarded as a minor mistake. Mistakes which are rectifiable and are rectified in the proper time frame, no fault can be found with the Board. But in the case at hand the mistake committed by the Board made the student sit in the time machine for a period of one year. This is not exonerable. A public authority is required to act with care, promptness and with definite positive prospective. It is expected to act within legal, lawful and acceptable parameters. A responsible officer of the Board cannot act like a truant and behave as if he is in a state of fancy. Neither fancy nor humour have any roll in a serious matter like this where the career growth of a student is the subject-matter. A student is the future hope of the nation. It has been said hope has hope and in my considered opinion that hope was marred in the case of the Petitioner. When the nominal roll was sent by a student who has a legitimate expectation that his admit card would come incorporating the subjects which he has studied. Such legitimate expectation is a lawful one. By the negligence and careless act of the Respondent-Board the Petitioner was deprived and denied of the opportunity to appear in the said subject as a consequence of which he was denuded of his legitimate expectation to appear in the examination and his time of one year was destroyed and paralyzed. The money cannot put the Petitioner back in the situation in which he could have been in the Academic Session 2001-02. But in the adjudicatory system though the principle of relegation in time cannot be always applied because of the efflux of time but irrefragably the grant of compensation can be the mode to usher in a situation of mitigation. In the case of Dr. Sandeep Singh v. State of Madhya Pradesh Writ Petition No. 3940/2005. this Court in paragraph 23 taking into consideration the loss of opportunity granted compensation. Paragraph 23 of the said decision reads as under:

23. Another facet which is really worth considering is that the candidates who could have been called for counselling because they were in the waiting list after 269, have not been called. They are the Petitioners in Writ Petitions No. 404(),

4313/2005 and 3981/2005. They could have been selected in respect of certain stream. They have lost the opportunity. As they have suffered they are to be granted compensation. I am inclined to fix compensation at the rate of Rs. 25,000/- for each of the Petitioner in writ petitions as they have approached this Court subject to the condition that they are not selected after the selection process is undertaken on merits inter se the Petitioners before this Court. I may hereby clarify that does not necessarily mean that the candidates who have not approached before the counselling was done would be entitled of the said relief.

Keeping in view the facts and circumstances of the case, I am disposed to think that the Petitioner should be awarded a sum of Rs. 25,000/- towards compensation to be paid by Respondent No. 2, Board of Secondary Education, Madhya Pradesh, Bhopal within a period of three months and it is so directed.

This Court in the case of Amit Kumar Dubey v. Board of Secondary Education and Ors. 2002(3) MPLJ 295, has awarded compensation of Rs. 5,000/- in not publishing the result of the Petitioner in time and in not forwarding the mark-sheet with promptness. Keeping in view the aforesaid judgments delivered from time to time as it is an admitted fact that the Petitioner has lost two valuable academic years. She is certainly entitled for compensation, the Board has conducted the examination for a young student who is studying with career prospects which are based upon time factors. It is trite to say that no one has the power to waste time of any student, the Petitioner could have appeared in the examination of Physics in case her result was declared in lime, however, the result has been declared only on 13.9,2008 and now she is being permitted to special supplementary examination which is scheduled in the month of March, 2009. In the present case there was no immediate awakening on the part of the Board and the Board has rectified its mistake only after a lapse of 2 years and therefore, the compensation in the facts and circumstances of the case is quantified as Rs. 50,000/-. The aforesaid amount shall be paid to the Petitioner within a period of 30 days from the date of receipt of certified copy of this order. Costs of this writ petition of Rs. 5,000/- shall also be paid by the Respondent Board, in the facts and circumstances of the case, the present writ petition stands allowed. At this stage learned Counsel for the Respondent Board has argued before this Court that the delay in declaration of result cannot be attributed to the Board and it was M/s. Data Machine Consultant Pvt. Ltd., New Delhi appointed by the Board who is at fault in not declaring the result of the Petitioner. The results of 12th standard of all other candidates were declared in the year 2007 except the Petitioner and the Principal of the Government School of Excellence, Morena has requested the Board vide letter dated 14.9.2007 to look into the matter and to declare the result of the Petitioner. The result of the Petitioner has been declared on 3.9.2008 and therefore, the Chairman of the Board is directed to inquire into the matter about the delay which has taken place in declaration of the result as the mistake was noticed in time and the Principal, Government School of Excellence, Morena has requested the Board in time to declare the result of the Petitioner then also why the authorities have

kept quite over the matter for such a long time. The Respondent Board shall be free to take action against its own officers as well as other agencies involved in the matter.

With the aforesaid observation, the present writ petition stands allowed and disposed of. No order as to costs.