

(2011) 01 MP CK 0007
In the Madhya Pradesh High Court
Case No : Writ Petition No. 13465 of 2010

Astham Agrawal

APPELLANT

Vs

Madhya Pradesh Board of Secondary Education, Bhopal and
another

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 JLJ 219 : (2011) 3 MPHT 60

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—By this petition under Article 226 of the Constitution of India the petitioner is seeking the following reliefs :

(i) To call for the relevant records and original answer sheets of Hindi (Special) and Sanskrit (General) subjects of class 10th (High School Certificate Examination 2010) conducted by the Board of Secondary Education.

(ii) To direct the respondents to award the petitioner 20 more marks in Hindi (Special) Sanskrit (General) subjects and to revise the mark-sheet by issuing a fresh mark-sheet.

(iii) To direct the respondents to revise the merit list of class 10th of High School Certificate Examination 2010 of Satna District and to place the petitioner in the merit list at Sr.No. 1.

(iv) To direct the respondents to hold an enquiry in the matter of tempering of answer sheet of the petitioner and to debar the those valuers who had valued the answer sheets and had conducted re-totalling of the marks.

(v) To direct the respondents to pay heavy compensation to the petitioner for mental agony suffered by him and his family.

(vi) To grant any other relief, which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case including cost of the litigation in favour of the petitioner.

2. The petitioner who is a minor, has filed this petition under the guardianship of his grandfather.

3. The facts shorn of unnecessary details lie in narrow compass. The petitioner is a student of XI Class in C.M.A. Higher Secondary School, Satna. He passed his X Class Examination in the year 2010 conducted by the respondent (hereinafter shall be referred to as "Board"). According to the averments made in the petition, petitioner is a brilliant and meritorious student from beginning and he had been topper in the School. In IX class he secured 87.5% marks. He appeared in X class examination conducted by the Board as a regular student having roll No. 103134366. According to the mark-sheet provided by the Board (Annexure P-1) he secured 574 marks out of grand total 600 which comes to 91.11 % and he got distinction in all the subjects. But according to petitioner the marks were not as per his expectation particularly in Hindi and Sanskrit subjects, as a result of which he submitted an application for re-totalling of marks on line. Eventually the Board vide its letter dated 21.7.2010 (Annexure P-3) intimated that there is no change in re-totalling/scrutiny of marks. Thereafter, the petitioner submitted an application to supply answer scripts for Hindi (Special) and Sanskrit (General) subjects. Copy of the acknowledgment issued by the Board has been filed as Annexure P-4. In pursuance to Annexure P-4 the Board supplied the copy of answer scripts of aforesaid subjects and they are filed as Annexure P-5 and P-6 in the petition. Question papers of respective subjects are Annexure P-7 and P-8.

4. According to the averments made in the petition, the petitioner was shocked to see the answer sheets that even the totalling of marks in Hindi subject is not correct and there is manipulation in the answer sheet. The valuation of answers in Hindi and Sanskrit subjects are not correct. His correct answers have also been rounded or crossed (which would mean incorrect answers according to the valuer) and the marks have not been given in both the subjects. According to petitioner in Hindi subject 7 marks and in Sanskrit subject 13 marks have been given less to him and thus in total 20 less marks have been awarded.

5. Learned counsel for the petitioner submits that a clear case is made out for revaluation because there is tampering in the first page of the answer book in which details of marks given for different questions are mentioned and deliberately, although the petitioner scored marks in answer to question No. 1 to 5 and 11 of Hindi subject, but, the marks he had obtained were not shown correctly of the first page and not only this, tampering was also made on the first page of the answer book of Hindi subject. Similarly several illegalities have been pointed out in Sanskrit subject. Hence, it has been contended by learned counsel that since tampering has been done with an utter most mala fide object to deprive the petitioner from obtaining suitable merit in merit list of District Satna.

Hence, it has been submitted that by exercising extraordinary powers conferred under Article 226 of the Constitution of India, the Board be directed to get the answer sheets of the petitioner re-valued. In support of his contention learned counsel placed heavy reliance on Division Bench decision of this Court in Pranshu Indurkha Vs. State of M.P. and Others, and submitted that although the order of learned writ Court, dismissed the writ petition of the student praying for revaluation has been affirmed by the Division Bench, but in para 7 specifically the principles have been laid down that in what facts and circumstances revaluation should be ordered. Learned counsel submits that case of the petitioner has proven to be true on the touchstone and anvil of para 7 of said decision and therefore the reliefs which are claimed by the petitioner may be granted.

6. On the other hand, learned counsel Shri Mahendra Pateriya and Brijesh Choubey submit that no case is made out of tampering and mala fide and therefore there is no substance in the petition and same deserves to be dismissed.

7. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed.

8. In compliance to order passed by this Court on 20.1.2011 the answer books of Hindi and Sanskrit subjects of the petitioner have been produced in original before this Court for perusal, which after going through them have been returned in original to learned counsel for the Board.

9. On bare perusal of first page of answer script of Hindi subject, the following alarming features are seen :

(i) Firstly the total marks given were 86 but lateron they have been scored by replacing the figure 6 into 2, making the figure 86 to

82;

(ii) on running page No. 3 of answer script the marks awarded to questions No. 1 to 5 have been shown respectively $5+2+4+4+5=20$ and thus 20 marks have been awarded, but, on the top of the page 3 incorrect figure 16 has been shown and indeed it should have been 20;

(iii) in answer to question No. 16 which starts from running page 11 and continued upto middle page of 12, 4 marks were given to question No. 16, but, in the first page of answer sheet firstly correct figure 4 was written but lateron it was scored out without any initials who made it.

10. On perusal of answer script of Sanskrit subject, the following alarming features are seen :

(i) On running page No. 3 answer to question No. 1 (Ka) which is divided in two parts ((i) and (ii)) tick mark is made which would mean the answer is correct, but, no marks are given and two marks should have been awarded.

(ii) for question No. 7 maximum marks 10 were fixed and this question is in three sections ((Ka), (Kha) and (Ga)). The petitioner had attempted (Ka) and (Ga) in section 7(Ka) all five answers appear to be correct because the mark of cross against any answer has not been shown, but still out of 5 only 4 marks have been awarded. Similarly in 7(Kha) all the answers appear to be correct since no cross was made and even then three marks were awarded;

(iii) question No. 9 is divided into three parts ((Ka), (Kha) and (Ga)). Petitioner attempted part (Ka) and (Ga). In answer to question No. 9 (Ka) which is divided into five parts there is no cross which would mean the answer is correct and instead of 5 marks only 4 marks were given, although each line carries one mark;

(iv) question 9 (Ga) is divided into five parts and each part carries one mark and there is no cross against any line which would mean that answer is correct but instead of giving 5 marks only 4 marks have been awarded.

11. The purpose of quoting the details of marks is that as per own showing of the Board some more marks should have been given to the petitioner. Thus, according to me a clear case of revaluation has been made out. Apart from this, on bare perusal of first page of Hindi script against question No. 16 firstly 4 marks were awarded but later on it was scored by adding 0 figure without any initials and similarly in total it was written 86 but figure 6 was scored into figure 2 so as to make it 82 without any initials. Thus, a clear case of tampering is made out.

12. A bare perusal of mark-sheet of petitioner (Annexure P-1) this Court finds that in each and every subject distinction has been awarded to him and therefore, according to me the petitioner may not be placed at suitable place in the merit list of Satna District, appears that malafidely tampering has been made. Hence, according to me, petitioner has made out a case on the touchstone and a anvil of principles in regard to revaluation as laid down by the Division Bench in para 7 of Pranshu Indurkha (supra), which reads, thus :

7. The principles in regard to revaluation may therefore be summarised thus :

(a) A student has no right to seek revaluation of an answer script unless the rules governing the examination specifically provide for revaluation. A provision for "scrutiny" or "retotalling" of marks or "rechecking the results" in the Rules does not entitle a student to seek revaluation.

(b) where the rules do not provide for revaluation, the High Court will not normally direct the production of the answer scripts for its scrutiny or order revaluations. But in rare and exceptional cases where mala fides or tampering is made out, or where injustice has been caused on account of gross negligence, the Court may direct revaluation in exercise of its jurisdiction under Article 226 of the Constitution.

(c) Ascertainment of mala fides and tampering depends on facts of the case and for that purpose, if necessary, the answer script may be summoned.

(d) Ascertainment of "gross negligence resulting in injustice" is a more difficult exercise. A student who has consistently secured very high marks in a subject in the last few years examinations, is shown to have failed in such subject, the Court may, consider it to be prima facie evidence of such negligence and call for the answer scripts. (The mere fact that a student feels that he deserved more marks or alleges negligence, cannot be a ground to call for answer scripts). On securing the answer script, the Court may examine it or take the assistance of a qualified teacher to examine it. If the Court finds any gross negligence resulting in injustice which shocks its judicial conscience, it may direct revaluation.

(Emphasis supplied)

13. On applying the aforesaid principles, I am of the view that petitioner in this case is entitled to get the answer books of Hindi and Sanskrit revalued and accordingly this Court directs the respondents/Board to get the answer books of these subjects revalued by examiner/valuer, who had not earlier valued and checked the answer-scripts of the petitioner. Since there is not only miscalculation of totalling but tampering of answer book of Hindi subject is also prima facie made out, according to me, if the marks are enhanced, petitioner is entitled to further relief that merit list may be revised after revaluation of the marks of Hindi and Sanskrit subjects is done and accordingly petitioner may be placed at a suitable place in the merit list of Satna. The respondents shall be free to take action against the erring valuers who have checked the copies of the petitioner of the aforesaid subjects.

14. This petition is accordingly allowed with cost. Counsel fee Rs. 1,000/-if certified.