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**(2009) 08 AHC CK 0284**  
**In the Allahabad High Court**

Deep Kamal Savita

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 28-08-2009

**Acts Referred:**

**Citation :** (2010) 1 AWC 281

**Hon'ble Judges :** Ran Vijai Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Ran Vijai Singh, J.—This writ petition has been filed for issuance of a writ of mandamus directing the respondents to award correct marks in drawing subject of High School Examination, 2009.

2. The facts of this case are that the petitioner has appeared in High School Examination, 2009 with Roll No. 1819417 conducted by Madhyamik Shiksha Parishad, U.P. The petitioner's subjects were Hindi, English, Maths, Social Science, Science and Drawing. The petitioner has been awarded following marks in the above-mentioned subjects:

Subjects Max. Marks Obtained Total marks Grand Marks obtained Total Hindi 100 1/41 2/41 082 411 English 100 1/42 2/37 079 Failed Maths 100 1/44 2/46 090 Science 100 1/26 2/19, 076 3/31 So. Science 100 1/29 2/43 072 Cat M.S.P.E.-A Drawing 100 1/12 012 F

3. Aggrieved by the marks of Drawing paper, the petitioner has filed the present writ petition on the allegation that her answer-book of Drawing paper has been changed somewhere and that is why less marks have been awarded. This Court on 28.7.2009 directed the Secretary, Board to hold an enquiry and submit a report on 18.8.2009. The case was listed thereafter on 18.8.2009 and learned standing counsel had sought time to submit the enquiry report. Thereafter, the case was put up for next date, i.e., on 19.8.2009. The order passed on 19.8.2009 is reproduced below:

Pursuant to the order of this Court dated 27.7.2009 learned Counsel for the petitioner submits that the inquiry has not been completed.

Put up on 27th August, 2009 to enable the respondents to comply the order of this Court. If the enquiry is not completed by that time Sri Guru Dayal, Sri Anand Kumar Pandey, and Shri Ayodhya Prasad Pandey, Deputy Secretaries posted at Headquarter of Madhyamik Shiksha Parishad, U.P., Allahabad shall appear before the Court on the date fixed.

4. It is thereafter the enquiry has been completed and learned standing counsel has produced the enquiry report before the Court. From a perusal of enquiry report, it transpires that the answer copy of Drawing paper of the petitioner has been changed somewhere. It may be during transit of the copy from the centre or at the Examination Centre itself or otherwise. This is further subject matter of enquiry.

5. Shri Sandeep Kumar learned Counsel for the petitioner submits that the last date of registration of students in Class 11th is 31st August, 2009. The Board has yet not come to the conclusion that what action the Board is going to take in the cases where the copies have been changed, in which there is no involvement of the petitioner.

6. Learned Chief Standing Counsel who is present in the Court has submitted that future course of action in such type of cases will be taken in future meetings of the Board. This Court in a very short span of sitting in this jurisdiction has experienced that the cases related to the change of answer books are not limited to one or two but number of writ petitions have been filed on this allegation. In few writ petitions, this Court has earlier directed to hold an enquiry with regard to the allegation made in writ petition and the enquiry has been done and in enquiry report, allegations with regard to the change of answer sheets have been found true. It is noticeable that about 36 lakhs students appeared in Board examination and most of them belong to the remote villages and only few are in a position to approach this Court for redressal of their grievances and in most of the writ petitions, the grievances are found to be true and are being redressed through the Court's order. But the process of approaching the Court is not very simple as it consume time and there is also involvement of finance, i.e., payment of Court fee, counsel fee, fare of journey etc. Further the mechanics of the Board's working is also complicated and it also consume time and in the meantime those students who have qualified All India Engineering Entrance Examination, Joint Entrance Examination conducted by U.P. Technical University, Pre-Medical Test Course etc. are deprived of their admission because of the late decision of the Board or inaction of the Board.

7. In this case the allegation is that 31.8.2009 is the last date for registration in Class 11th. The petitioner has secured distinction marks in four subjects and by a hair difference, he could not obtain distinction marks in Social Science, and it is something unimaginable that such a bright student will get zero mark in the

paper of Drawing. The result of the petitioner has been declared as failed because of the marks awarded in Drawing therefore, considering the facts and circumstances of the case, and looking into the future of the petitioner, it is provided that petitioner be granted average marks of the total marks obtained in other subjects in Drawing and marks-sheet be issued to the petitioner within a period of one week from the date of receipt of certified copy of the order passed by this Court. It is further provided that District Inspector of Schools, Fatehpur shall inform the Principal, Chaudhary, Shiv Sahay Singh Intermediate College, Jairampur, District Fatehpur to take the petitioner's admission in Class 11th.

8. The writ petition succeeds and is allowed subject to above observation.

9. The learned Chief Standing Counsel is directed to inform the order passed today to the Secretary, Secondary Education Board U.P., Allahabad and the concerned District Inspector of Schools for future actions.

10. The Court wants to put a note that as has been observed the change of answer books is not limited in one or two cases but in most of the cases the students who have secured very good marks in theory papers have been awarded zero mark in drawing paper. The Court has summoned the original copies and found that sheets were blank. This is something unimaginable and unbelievable that the students securing good marks in theory papers will not be able to make a sketch on a blank sheet and will get zero mark.

11. I have been informed that in those cases where answer sheets are missing the decision has been taken by the Committee of the Board to award average marks. In other cases also where re-examination was to be conducted by the Board but it could not be conducted because of the busy schedule of the Board for conducting future exam the decision has been taken for awarding average marks. In my opinion these types of cases where the answer sheets have been changed without there being any involvement of the petitioner also stand on the similar footing. In view of that it is expected that the Committee, empowered under the U.P. Intermediate Education Act and Regulations framed thereunder for taking such decision may take appropriate decision in these type of cases irrespective of the fact whether the petitioners have approached this Court or not expeditiously preferably within a period of three weeks from the date of receipt of certified copy of the order of this Court, so that future of the students may not be jeopardized. It is also expected that in case students are the examinee of Class X and after the decision of the Board they are declared successful they be given admission in Class XI irrespective of the expiry of last date of registration in class XI.