
(2001) 09 AHC CK 0049
In the Allahabad High Court
Case No : Special Appeal No. 213 of 2000

Farah Mustafa

APPELLANT

Vs

Secretary, Board of High School and Intermediate Education,
Allahabad and Another

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Constitution of India, 1950 — Article 51A

Citation : AIR 2002 All 68 : (2001) 4 AWC 2948 : (2001) 3 UPLBEC 2497

Hon'ble Judges : U.S. Tripathi, J;G.P. Mathur, J

Bench : Division Bench

Advocate : S.M.A. Kazmi, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This special appeal is directed against the judgment and order dated 11.2.2000 of a learned single Judge by which the writ petition filed by the appellant was dismissed.

2. The appellant (writ petitioner) appeared in the Intermediate Examination, 1999, as a private candidate but she was declared to have failed. She applied for scrutiny in three subjects, namely, Hindi, English and Civics but she was informed that there was no change in the marks secured by her and, consequently, her result remained the same. Thereafter, she filed the writ petition for quashing the decision of the Board of High School and Intermediate Education, U. P. (hereinafter referred to as the Board) which had declared her fail and also for some other reliefs. The writ petition was summarily dismissed by the learned single Judge on 11.2.2000.

3. The Board has framed regulations regarding scrutiny of answer-books and the relevant provisions dealing with the subject of scrutiny, namely. Regulation 21 is being reproduced below :

^^lafujh{kk& mldh dk;Zfof/k

21- mu ijh{kkfFkZ;ksa dh m?kj&iqfLrldk;s] tk eq[; ijh{kk esa dsoy ,d fo"k; esa ml fo"k; ds fy, fu/kkZfjr 5 izfr"kr vadksa ls vf/kd ls vuq?kh.kZ ugha gSa] fcuk "kqYd vFkok vkosnu&i= ds lafujhf{kr dh tk;sasxh A vU; ijh{kkFkhZ tks viuh m?kj&iqfLrds lafujhf{kr djuk pgrs gSa] fuEufyf[kr fu;eksa ds vuqlkj djklrs gSa %

?d? dksbZ ijh{kkFkhZ] ifj"kn }kjk lapkfyr ijh{kk esa izfo"V gqv k gS] fo"k;ksa ds vius vadksa dh lafujh{kk }kjk iqu% tk?p djkus ds fy, vkosnu&i= ns ldrk gS A

?[k? ,sls leLr vkosnu&i=ksa ds lkFk dks"k pyku dh ,d izfrfyfi ;g fn[kkrs gq, fd chl :i;k izfr fo"k; dh nj ls fu/kkZfjr "kqYd ns fn;k x;k gS] vo"; gksuh pkfg, A m?kj izns"k ds ckgj ds LFkku ls vkosnu&i= Hkstus okys ijh{kkfFkZ;ksa ds lEcU/k esa ;g "kqYd lfpo ds dk;kZy; esa jsf[kr iksLVy vkMZj vFkok LVsV cSad vkQ bf.M;k dh bykgkcn "kk[kk ij jsf[kr cSad M?k?V }kjk Hkstk tkuk pkfg, A

?x? ,sls leLr vkosnu&i= ijh{kkQy ?kks"k.kk dh frfFk ls rhl fnukas dh vof/k ds vUnj vo"; fn;s tkus pkfg, A

??k? fo[kf.Mr A

?M+? lafujh{kk ds ijh{kkFkhZ] }kjk vkosfnr leLr ekeyksa dk rFkk Lor% lafujh{kk ds leLr ekeyksa dk ijh{kkQy] tgk? mldk izHkko ijh{kkQy ij iM+uk gS ?vad vFkok Js.kh vFkok vuqrh.kZ vFkok m?k.kZ?] lafujh{kk dh lekfIr ij ijh{kkFkhZ dks rFkk vU; lEcU/k O;fDr;ksa dks lwfpr dj fn;k tk;sxk A vU; ekeyksa esa dksbZ lwpu ugha nh tk;sxh vkSj dksbZ i=&O;ogkj ugha fd;k tkosxk A ;g Hkh izfrcU/k gS fd lafujh{kk dk ijh{kkQy tgk? ijh{kkFkhZ }kjk "kqYd fn;k x;k gS] izR;sd n"kk esa lwfpr fd;k tkosxk Hkys gh dksbZ ifjorZu u gks A

?p? lafujh{kk ds dk;Z esa lk/kkj.kr;k ijh{kkfFkZ;ksa dh m?kj iqLrdksa dh iqu% tk?p lEefyr ugha gS A mlesa ;g ns[kk tkrk gS fd D;k vyx&vyx iz"ukas esa fn;s x;s vadksa dk ;ksx djus] mUgsa vxzsuhr djus vFkok fdlh iz"u vFkok mlds Hkkx ij vad nsuk NwVus dh dksbZ =qfV rks ugha gq;h gS A**

4. The regulations only permit examining the answer-books again in order to see whether any answer given by a student has remained unmarked and whether there has been any arithmetical mistake in the addition of the marks secured in each question which may ultimately effect the total marks secured by the student in that particular paper. The regulations do not permit re-evaluation of any answer given by the student.

5. When the special appeal was filed, a prayer was made by the learned counsel for the appellant that the Board may be directed to produce the answer-books of the writ petitioner and a Division Bench accordingly passed an order dated 27.3.2000 directing the Board to produce her answer-books in Court. The answer-books of English Paper I and II were produced on 4.4.2000 and the learned counsel for the appellant was also permitted to peruse them. No mistake was found in the marks secured by the appellant in the aforesaid papers. However, on the said date the answer-books of Civics subject were not produced. As the learned counsel for the appellant pressed that the answer-books of the said

subject be also produced in the Court, and keeping in view the earlier order of the Division Bench dated 27.3.2000, another direction was issued to produce the answer-books of Civics papers. It appears that the case was not listed for a long time and, ultimately, the answer-books of Civics papers were produced in Court on 30.8.2001 and the matter was heard on merits.

6. When the copy was sent for scrutiny, the examiner found that several answers given by the writ petitioner have remained unmarked. However, he noticed a very strange thing. The answer-book showed that the roll No. which is required to be written after completing the answers was scored out by scribbling over it by a pen and, thereafter, answers to several questions had been written. The ink of the subsequent writing was different, so was the handwriting. There was absolutely no similarity between the earlier writing, which appeared to be badly written in great hurry while the subsequent answers appeared to have been written at ease and leisure, with very little cuttings etc. The examiner accordingly wrote on the answer-book that as there was change in the colour of the ink. In the hand-writing and also the manner of writing, it snowed that the unmarked answers had been written subsequently and the whole thing was very suspicious which required thorough enquiry.

7. We have carefully examined the answer-book of the writ petitioner and we have absolutely no manner of doubt that the answers which remained unmarked have, in fact, been written subsequently. There is a world of difference between the handwriting in the two sets of the answers (viz., the marked one and the unmarked). The marked portion contains a very large number of cuttings, appears to have been written in hurry and the hand-writing is also very bad. The unmarked portion shows to have been written in a steady and good hand, at leisure with hardly any cuttings and is of an entirely different standard. Few specimens of the manner in which the answers have been written in the marked portion are given below :

"(1) The term of the Legislative Council is permanent house it 1/3 member after every 2 years.

(2) The head of the districk police administration is Districk Magistrate."

The examination of Civics Paper I and II was on different dates and on both the days while mentioning the name of the institution, she wrote college as "colleage".

8. However, in the portion not marked by the examiner, answers to very difficult questions have been given absolutely correctly. The fundamental duties of citizens as provided in the Constitution have not only been correctly answered but have also been written in exactly the same order as is provided in clauses (a) to (j) of Article 51A. The powers and functions of the Speaker of the Legislative Assembly have also been correctly answered in considerable detail in good and correct English without a single spelling mistake. It is possible that a student may get zero in one question and full marks in another but it is just not possible

that his language may undergo a sea change in the very next answer. A student who has no idea of grammar or spelling cannot write good English with no spelling mistake in the very next answer.

9. Learned standing counsel has submitted that when a candidate applies for scrutiny, his answer-books are taken out of the bundles and are sent to another examiner for the said purpose. During the course of transit of the copy, this kind of interpolation or subsequent writing of answers can be managed with the connivance of the subordinate staff of the Board or any one else as the number of the candidates who apply for scrutiny is very big. We do not want to go into the question as to how the writ petitioner got the opportunity to write again on the answer-books. However, we have not the slightest doubt on our mind that the answers which have not been marked were not in existence at the time when the copy of the writ petitioner was examined by the examiner but they have been written subsequently. Consequently, there is no mistake in the marks awarded to the appellant which could be corrected in scrutiny and the Board rightly took a decision that her marks remained the same.

10. Before parting with the case, we must observe that looking to the functions being performed by the Board, the Court should not normally pass an order for production of answer-books in Court. The Board conducts the examination of over 30 lakhs students who appear in the High School and the intermediate examinations every year. There are five subjects in each class and each subject has two papers and thus a student gives examination in at least 10 papers. This means that there are over three crores answer-books of the students. The examinations are held in March/April and the results are declared in June. The Board has to perform a gigantic task which it is doing admirably. If the High Court starts entertaining request for production of answer-sheets in Court, it will not only cast an onerous duty upon the Board but would also give rise to spate of litigation in this Court as many disgruntled or dissatisfied students may like to take a chance by filing a writ petition and getting an order for production of answer-books in Court with the object of manipulating the affairs as in the present case. We are, therefore, of the opinion that except in very rare cases where the petitioner makes out a very strong and foolproof case, no order for production of answer-books in Court should be passed.

11. For the reasons mentioned above, there is no merit in this special appeal which is hereby dismissed with costs. The amount of Rs. 1,000 deposited by the appellant in pursuance of the order passed by this Court on 10.8.2001 shall be paid to the State by way of cost.