

(2003) 03 MP CK 0068

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5329 of 2002

Harishankar Vishwakarma

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Citation : AIR 2004 MP 132 : (2003) 3 MPHT 519 : (2003) 4 MPLJ 252

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Harish Agnihotri, for the Appellant; Naman Nagrath, for Respondent No. 1, Atulanand Awasthi and Seema Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner in the instant writ petition appeared in Class 12th Examination conducted by Board of Secondary Education, M.P. Petitioner appeared at the Centre Nalanda Public School, Satna. In the subject of Biology petitioner submits that though he appeared but was wrongly shown as absent in the mark-sheet supplied by the Board. Petitioner has attempted the question paper and has answered the questions on the day on which examination of Biology was held, i.e., 8-3-2002 from 8 a.m. to 11 a.m. Petitioner appeared with Roll No. 23122291. It is a case of mistake of the Board. Petitioner has not been awarded the supplementary also due to fault of the Board, thus, his entire year has been wasted.

Petitioner prays for the relief that respondents be directed to trace the answer book of the petitioner and to declare the result after valuation and to make the payment of compensation. Petitioner submitted various representations which have been annexed but without any redressal of her grievance.

A return has been filed by the Board of Secondary Education, M.P. contending

that petitioner has failed in another subject, i.e., English. Even if the petitioner is found to have appeared in Biology subject, he still would remain failed in one subject, i.e., English. Thus, in the circumstances, eventually, the petitioner may not be entitled for any relief, having failed in one of the subject. The Board admits that in the attendance sheet (R-1/1), dated 8-3-2002 on which date the examination of Biology was held, petitioner is shown to be present. His signature appears on the attendance sheet. As per procedure, a student who appears in an examination on a particular date, has to sign on the attendance sheet in examination hall. Thereafter, the answer books are packed in lots of 20 answer books each by the Centre Superintendent. The Centre Superintendent is required to give details of specific roll numbers whose answer books are put in lots of 20 answer books each. These answer books are then sent to the valuation centre for checking answer books. The answer books of the petitioner was not sent to the valuation centre as apparent from the letter (R-1/2). Petitioner was shown as absent. Only 19 answer books were sent for checking and valuation. Thereafter the report of valuation centre also shows Roll Number 23122291 as "absent" The report of the valuation centre also supports the case that petitioner's answer book was not received by the valuation centre. Letters of valuation centre are R-1/3 and R-1/4. However, the Board called for the relevant information from Principal Govt. Boys Higher Secondary School, Satna, as per letter (R-1/5), dated 25-9-2002. Telegram (R-1/6) was also sent on 29-10-2002. Reminder (R-1/7) was also sent on 18-10-2002 to respondent No. 3 informing him that there was no reply from him with respect to information sought by the Board. The Board has received a letter (R-1/8), dated 7-11-2002 from the office of Principal, Govt. Boys Higher Secondary School, Satna informing the Board that the relevant information can be obtained from Centre Superintendent concerned. Thereafter the Board wrote a letter (R-1/9) to Shri N.D. Khatri, Principal, Govt. Higher Secondary School, Birha, wherein it has been informed that the matter is pending before the High Court and the information as to whether the petitioner appeared or not is required to be urgently sent to the Board, Reply is still awaited by the Board. As the Board did not receive the answer-sheet, petitioner has been shown as "absent", Board is making all efforts to gather information from respondent No. 3 and the Centre Superintendent, who were responsible for sending petitioner's answer books of Biology subject for valuation. In spite of reminders, it is clear that aforesaid respondents are not co-operating with the Board and the required information is not being sent.

A return has also been filed by respondent No. 2. It is admitted in the return that petitioner had signed the attendance sheet on 8-3-2002 as apparent from attendance sheet (R-2). The invigilators have also noted that 36 students were present. Only 10 students whose roll numbers are given, were absent in which the roll number of the petitioner was not included, thus, petitioner was shown to be present by the invigilators. As such on the strength of these documents, the respondent No. 2 inferred that petitioner was present in the examination of Biology (theory) subject. Collection centre has also given receipt (R-3) of the

answer books where the answer books were stored. Receipt (R-3) was given by the receiving authority of Govt. Girls Higher Secondary School, "Dhawari, Satna. It is further contended that 359 answer books of Biology subject of those students, who have opted for the group of subjects as Physics, Chemistry and Biology, were handed over to the collection centre. However, in the final check list as prepared by the Asstt. Superintendent, the petitioner's roll number appears encircled to mean that he was absent. The responsibility is tried to be fastened on the Govt. Girls Higher Secondary School, Dhawari / respondent No. 3, by respondent No. 2.

No return has been filed by respondent No. 3 though served.

Shri N.D. Khatri, Centre Superintendent, was directed to be kept present. He submitted that his signatures are there on the attendance sheet.

I have heard the learned Counsel for the parties and perused the various documents. There is overwhelming material on record to show that petitioner was present on 8-3-2002, the date on which the examination of biology was held. The attendance sheet (R-1/1) filed by the Board of Secondary Education on which the petitioner has signed on the day when examination of Biology was held in the examination hall, supports the case of the petitioner. In addition there is a report (R-1) of Invigilators filed by respondent No. 2 in which the petitioner's roll number has not been encircled and the petitioner has been shown to be present. R-2 is another report sent by the invigilators in which the students who were absent, their roll numbers have been specifically mentioned. The roll number of petitioner is not mentioned in P-2 as an absentee. Thus, it is clear from the attendance sheet signed by the petitioner as well as the invigilators' reports (R-1 and R-2) that petitioner appeared in the examination of Biology on 8-3-20.02.

It appears that Board is trying to fasten the liability on respondent Nos. 2 and 3 and submits that as the valuation centre has not received the answer sheet, Board is not at fault. Respondent No. 2, the examination centre, has submitted that the copies were deposited with the valuation centre. The fact remains that petitioner has been made to suffer for no fault on his part. It is a clear case of gross negligence due to which the answer sheet of the petitioner has been lost. The Board has submitted that respondent Nos. 2 and 3 have not co-operated with the Board in spite of the letters and several reminders sent to trace out answer sheet of the petitioner. Matter does not rest at that. Full one academic year of the petitioner has been lost owing to the negligence in conduct of the examination.

In order to settle the equities between the parties, learned Counsel for the petitioner has placed reliance on the decision of the Apex Court in C. Tulasi Priya Vs. A.P. State Council of Higher Education and Others, , wherein C. Tulasi Priya appeared in the examination. She was supplied the answer-sheet. She answered 170 out of 200 questions and obtained 94.555% of 170 marks. Her answer-sheet was changed after 20 minutes. For about 20 minutes she wrote her answers on

the wrong answer books. In order to do complete justice between the parties, the Apex Court directed that appellant should be considered for admission to a Medical College in the quota of the State concerned. Crux of the matter is that an examinee can not be made to suffer due to fault on the part of the invigilator. The Apex Court held thus :--

"10. It is unrealistic to expect a young and, no doubt, nervous student in the midst of an important examination to think of submitting written protests there and then. The refusal of the High Court to interfere on this ground has, regrettably, compounded the injustice done to the appellant. As for the ground of disputed questions of fact, all that the High Court needed to see was the wrong answer paper first given to the appellant. The number of questions that she had marked thereon would have indicated whether she was right when she said that she had worked on it for about 20 minutes. If this answer paper could not be produced even at that stage, the High Court should have drawn the appropriate adverse inference against the authorities.

In the circumstances and to do complete justice, it is necessary to grant the relief that is sought in the appellant's writ petition and to direct that the appellant shall be considered for admission to a medical college in the State of Andhra Pradesh in a seat from the quota of the State of Andhra Pradesh for the Academic Year 1998-99 session upon the basis that she has secured 94.555% marks at the EAMCET."

Reliance is also placed on a decision of *Prem Ratan Agrawal v. Board of Secondary Education, Bhopal and Ors.*, 2002(2) M.P.H.T. 570 = 2002(2) MPLJ 588, wherein esteemed brother Shri Dipak Misra, J., has laid down that where the Board took four months to rectify the mistake and declaring petitioner as "passed" in first division with distinction in all subjects. Petitioner lost one academic year and suffered intolerable distress and mental shock, was ordered to be compensated by the Board and valuer.

It is settled law that even for the mistake of valuer, examinee can not be made to suffer as held by the Supreme Court in *Kanpur University and Others Vs. Samir Gupta and Others*, , and by this Court in *Archana Vinayak Rao Varde Vs. Dr. Hari Singh Gour Vishwavidhyalaya*, It is clear in the instant case that answer sheet of Biology subject of the petitioner has been lost by the respondents; since it is not traceable and the Board has clearly pointed that attitude of respondent Nos. 2 and 3 is not of that of co-operation. Several letters were sent to them but still they have not responded, startling, shocking and surprising state of affairs is reflected. Academic career of a student is at stake. Right to education is a fundamental right cannot be allowed to be dealt with arbitrarily. In the circumstances, in order to do the complete justice between the parties, it is appropriate to direct that the average marks be awarded to the petitioner which he has obtained in other papers of the group, i.e., Physics, Chemistry, Hindi and English.

The submission of the Board is that even if answer sheet is traced as on today, petitioner is not going to pass as he has failed in English (General) having obtained 10 marks. In case petitioner would have cleared in Biology on valuation of answer sheet, petitioner was entitled for grace marks as 14% marks are permissible to be given for passing as per the Board Regulation as conceded at bar. Thus, petitioner would have passed in English by addition of grace marks in case his answer sheet had not been lost in the subject of Biology in which petitioner is held entitled to average of marks.

As full one year of the petitioner has been lost, it is clear that the main fault lies is on the part of respondent Nos. 2 and 3. There is also failure on the part of the Board to take the appropriate action to trace and answer sheet. The Board can not escape the liability by simply submitting that the Board had written the letter to respondent Nos. 2 and 3 and they had not co-operated; when Board conducts the examination, it is the equal responsibility of the Board to see that examinee is not made to suffer for no fault on his part.

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 respondent Nos. 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. 1500/-. Each of respondent to pay Rs. 500/-.