

(2002) 07 BOM CK 0115

In the Bombay High Court

Case No : Writ Petition No. 2149 of 2002

Hemant Marotrao Sahare

APPELLANT

Vs

Maharashtra State Board of Secondary and Higher Secondary
Education and Another

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 ALLMR 708 : (2003) 2 BomCR 230

Hon'ble Judges : R.S. Mohite, J;J.N. Patel, J

Bench : Division Bench

**Advocate : M.M. Sudame, for the Appellant; A. Parchure and A.G.P. for
respondent No. 2., for the Respondent**

Final Decision : Allowed

Judgement

R.S. Mohite, J.—Rule. By consent of parties rule made returnable forthwith.

2. Heard learned Counsel for the parties.

3. The petitioner has filed this writ petition for quashing and setting aside the notification dated 10-6-2002, wherein it has been notified by the respondent No. 1 Board, that the performance of the petitioner in March, 2002 examination has been cancelled and the petitioner has been further debarred from appearing in October, 2002 examination. We have heard the parties and perused the written submission made on behalf of the respondent No. 1 Board. It is the case of the respondent that on 14-3-2002, the date on which the examination of Marathi paper was held, the petitioner has carried a chit from guide of Marathi subject at the examination centre, and the said chit was lying below the desk of the petitioner. The said chit was recovered during the examination, and it was found that the petitioner has signed on the chit.

4. The respondent Board thereafter conducted an enquiry into the alleged malpractice. The petitioner appeared before the Enquiry Officer and denied the

allegations. Ultimately by his report dated 29-4-2002 the Enquiry Officer exonerated the petitioner. In the enquiry report the Enquiry Officer has come to the conclusion that though the chit was found below the desk of the petitioner, but, it had not been proved that he has used the chit for the purpose of copying. He has concluded that there was possibility of some body having thrown the chit and it may be lying below the desk of the petitioner. He has also seen the answer book of the petitioner and has come to a positive conclusion that from the answer book it does not appear that the petitioner had copied anything from the chit.

5. The report of the Enquiry Officer was sent to the Standing Committee, and the Standing Committee appears to have held the petitioner guilty and cancelled his performance in March, 2002 examination and debarred him from appearing in October, 2002 examination, merely on a finding that there was a signature of the petitioner on the chit in question.

6. On perusal of the record, we are not convinced that the reason given by the Standing Committee is sufficient and we are inclined to give benefit of doubt to the petitioner. We find that there is a signature of the invigilator below the signature of the candidate, below the name Hemant Sahare which is the name of the candidate. There is also one signature below it. It is difficult to believe that the candidate would be signing the chit. It appears to us that in all probabilities the signatures could have been obtained by the invigilator in order to verify the chit in question in further enquiry and that the mere signature on the chit cannot have any bearing on the question as to the same was used for the purpose of copying. In the circumstance we grant benefit of doubt to the petitioner. We allow this writ petition and rule is made absolute in terms of prayer Clause (i).

7. The impugned order dated 10-6-2002 is quashed and set aside so far as it relates to the petitioner, and respondent No. 1 is directed to declare the result of the petitioner forthwith.

8. Rule made absolute in the aforesaid terms.

9. Certified copy expedited.