
(2015) 02 MP CK 0105
In the Madhya Pradesh High Court
Case No : Writ Petition No. 16737 of 2013

Himanshu Rajak

APPELLANT

Vs

Board of Secondary Education Bhopal

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Citation : (2015) 02 MP CK 0105

Hon'ble Judges : Rajendra Menon, J.

Bench : Single Bench

Advocate : M.K. Mishra, Learned Counsel, for the Appellant; Anshuman Singh, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenging the marks awarded to the petitioner in the subject of General English in the Higher Secondary School Certificate Examination, 2013 undertaken by the petitioner, this writ petition has been filed seeking revaluation of the answer sheets and for award of more marks.

2. Petitioner was a candidate, who appeared in the Higher Secondary School Certificate Examination (10+2) in the academic session 2012- 2013 and was a student in the Govt. Multi-purpose Higher Secondary Excellence School Seoni. According to the petitioner, he received distinction in all the subjects except in General English, where he got only 54 marks. It is stated that he had done very well in the subject in question, but as the answer book for the subject has not been valued properly, having obtained the answer book under the Right to Information Act vide Annexure P-3, the petitioner had come out with a case that answers to the questions nos. 4, 6, 9B and 11 have not been corrected properly. According to the petitioner, in question no.4 he has been awarded 3 marks out of 8 marks, whereas petitioner claims that a teacher of his school, who has seen the answer books, says that the petitioner should have received 5 marks out of 8 marks. Similarly, in question no.6, petitioner has received 7 marks out of 10 marks, whereas it is the case of the petitioner that he should have received 9

marks out of 10 marks and as far as question no.6, 9B and 11 are concerned, it is the case of the petitioner that he has been awarded 3 and 2 marks respectively, whereas he should have received 9 and 4 marks for answering these questions.

3. Inter alia contending that according to the teacher of the school who teaches the subject in question, the petitioner has received less marks and, therefore, contending that the answer books have not been valued properly, this writ petition has been filed seeking revaluation of the answer books.

4. It is stated that in certain cases like Astham Agrawal Vs. Madhya Pradesh Board of Secondary Education, Bhopal and another, and in the case of Ku. Deeksha V. Board of Secondary Education - W.P. No.11179/2012 decided on 11/10/2012, this Court had been pleased to direct the revaluation of the answer books, the petitioner seeks a direction for revaluation of the answer books.

5. Respondents have filed their reply and have stated that all the answer books of the petitioner having been valued properly, the question referred to by the petitioner in the body of the petition for which enhanced marks are prayed, are of descriptive nature and once the examiner after evaluating the same and subjecting it to his satisfaction has awarded certain marks, interference into the matter by this Court is not called for.

6. Learned counsel for the respondents further invites attention of this Court to an order passed in W.P. No.15912/2011 Annexure R-1 on 18/11/2011 to say that in the matter of revaluation of answer books, when the answer books have been valued properly and when there is no provision for revaluation, no mandamus can be issued for revaluation. Similarly, inviting my attention to the judgment of the Division Bench in W.A. No.1285/2013 decided on 29/11/2013 to say that when there is no express provision for revaluation, therefore, revaluation cannot be ordered by this Court. Accordingly, respondent contends that now no relief can be granted to the petitioner.

7. I have considered the contentions advanced by learned counsel for the parties and have also gone through the material available on record. This is a case, where the petitioner who has appeared in the subject of General English and has received 54 marks out of 100 marks has come out with a case that his answer book has not been valued properly and he seeks revaluation of the answer books on the ground of answers to question nos.4, 6, 9B and 11 have not been valued properly. He has obtained the answer books under the Right to Information Act and says that when the answer books were shown by him to a teacher in his school, the opinion given by the teacher is that he should have received more marks than the one awarded by the examiner. Accordingly, based on the opinion given by a teacher, who has seen the answer books, the petitioner is before this Court seeking revaluation of the answer books on the ground that they have not been valued properly.

8. As far as revaluation of an answer book by issuance of a mandamus is

concerned, it is a well settled principle of law that revaluation of answer book on direction by a writ Court is permissible only if there is a statutory provision or rule available permitting revaluation of answer book. In the absence of there being a provision for revaluation, a writ Court cannot direct for revaluation of the answer book. In this regard the law laid down by this Court in the following case may be referred to which specifically say and deal with the question of revaluation of the answer books in the matter of examinations conducted by the M.P. Board of Secondary Education and the law laid down is that in the absence of there being any statutory provision, the writ Court cannot direct for revaluation of the answer book. The cases in this regard are :-

9. The judgment of the Supreme Court in the case of *The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others*, and by this Court in the case of *Ku. Neha Indurkha Vs. M.P. Board of Secondary Education*, and *Pranshu Indurkha Vs. State of M.P. and Others*, .

10. That being so, the prayer made by the petitioner for revaluation of the answer books in the absence of there being a statutory provision for doing so cannot be accepted. However, even if there is no provision for revaluation of the answer book, but from the material available on record and on scrutiny of the same, it is apparent that the answer book has not been valued properly. On account of arbitrariness or material irregularity in the matter of valuation of answer book and on account of there being error apparent on the face of the record in evaluating the answer book, it may be possible for the writ Court to issue a mandamus. However, for doing so, the burden lies heavily on the person making a complaint to demonstrate by cogent material and evidence before this Court that the answer books have not been valued properly. In this case by referring to the questions as indicated herein above, the petitioner has tried to discharge his burden and that being so, this Court has to look into this aspect of the matter and take a decision in the matter.

11. The petitioner says that for question no.4, the petitioner has been awarded 3 out of 8 marks whereas he should get 4 out of 8 marks. The question no.4 answered by the petitioner pertains to writing a letter by a student studying in Class XII to the Superintendent of Police complaining about nuisance of loudspeakers playing in the area. Petitioner has answered this question and the letter of the petitioner is hardly of 9 lines consisting of less than 40-50 words. On going through the letter written by the petitioner, there seems to be some grammatical error also. After considering the answer, the valuer has exercised his subjective satisfaction and has awarded 3 marks out of 8 marks. Similarly, with regard to question no.6, petitioner was required to write an essay on various subjects and petitioner chose the subject, ?Science : A Boon or A Bane? and in the essay written by the petitioner again apparently on reading the answer, this Court does find certain grammatical and other errors. However, for this question also, the valuer has applied his mind and based on subjective satisfaction has awarded 7 marks out of 8 marks, whereas the petitioner claimed that he should

have got 9 marks out of 10 marks. Similarly, question no.9B mandates the petitioner to answer 3 queries and questions and say about (b) Who are people far from us? (c) What is the difference between a selfish and helpless man ? and (d) What is the two meanings of the word ?Cricket??

12. Even though, the petitioner has answered this question also, it is seen that the valuer has given the petitioner 3 marks based on his subjective satisfaction after taking note of the manner in which the petitioner has answered the question. Finally, as far as question no.11 is concerned, it pertains to a question wherein the petitioner is required to describe the structure of the brain and in his answer given by the petitioner he has received 2 marks out of 8 marks, whereas the petitioner claims that he should have been given 4 marks. If drawing of the brain made by the petitioner and the description of the structure in question is taken note of, *prima facie*, this Court feels that it is not as it should have been and in this question also, the valuer has given marks based on his subjective satisfaction, i.e. 2 marks out of 8 marks.

13. After analyzing the manner in which questions are put to the candidates and the manner in which the answers given by the petitioner, the valuer and the expert on the subject has valued the answer and given the marks. It is clear that the valuer based on the answers given by the petitioner and after evaluating it in the light of his subjective satisfaction has awarded marks to the petitioner. Once the expert has awarded marks based on his subjective satisfaction and on going through the manner in which questions have been answered, this Court is of a *prima facie* opinion that it is not a case, where the case would fall in the exceptional category of the answer book being valued in an arbitrary manner warranting interference by this Court. On the contrary, it is seen that based on the satisfaction of the examiner and on reasonable manner, the examiner has valued the answer book and has awarded marks to the petitioner. This being in conformity with the requirement of law, I see no reason to interfere into the matter.

14. This is not a case, where the manner in which the examiner has valued the answer books shows arbitrariness, unreasonableness that interference by this Court is called for.

15. Accordingly finding no ground to interfere into the matter this petition is dismissed.