
(2008) 03 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 41288, 41290 of 2007

Krishna Kumar (Minor) and others

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 03 AHC CK 0091

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Disposed Of

Judgement

Rakesh Tiwari, J.

1. Heard learned Counsel for the parties.

2. The petitioners have appeared as regular student from Sri Ram Sewak Savitri Devi Inter College Keshampur, Auraiya, district Auraiya in the High School Examination.

3. The result of High School Examination, 2007 was declared and the petitioners were declared fail. The petitioners received their marksheets and found that marks obtained in Math are not upto their expectation, though in all other subjects petitioners have secured very good marks. The petitioners have therefore come before this Court to the Payer to call for the copies.

(i) A writ of mandamus directing the respondents to produce the answer books of the petitioners in respect to first and second papers of Mathematics for the High School Examination, 2007 as regular candidates from the Sri Ram Sewak Savitri Devi Inter College Meshampur (Phaphoond) Auraiya, District Auraiya, being Roll Numbers are:

SI. No. Roll Numbers Subjects Name

1. 1386854 Math I and II paper Krishna Kumar

2. 1386990 Math I and II paper Sudheer Kumar
3. 1386916 Math I and II paper Ram Kumar
4. 1387016 Math I and II paper Vipin Kumar
5. 1386963 Math I and II paper Shailendra Kumar
6. 1387007 Math I and II paper Vijay Kumar
7. 1386794 Math I and II paper Avneet Pal
8. 1387004 Math I and II paper Umesh Chandra
9. 1386766 Math I and II paper Alok Kumar
10. 1386906 Math I and II paper Pravendra Kumar
11. 1386760 Math I and II paper Ajab Singh
12. 1386925 Math I and II paper Ravi Babu
13. 1386908 Math I and II paper Rahul Kumar

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to issue the correct marksheet or to issue fresh marksheet if there is change found by the Hon''ble Court in the answer books.

(iii) Issue, a writ of mandamus commanding the respondents to reevaluate the petitioners'' answerbook in which the petitioners have applied for scrutiny.

4. As regards prayer No. 3 and concerned, there is no provision for evaluation of the copies of the Board of High School and Intermediate. Hence this prayer cannot be granted.

5. Learned Counsel for the petitioner has also drawn attention of the Court to the amendment application filed by the petitioners in the petition in which it has been averred that copies of the petitioners have been changed from other students, who informed the petitioner about their poor performance in the subject and obtaining good marks in them.

6. Learned Standing Counsel submits that in the circumstances average/ aggregates marks in Math I and II papers may be given to the petitioners by taking average/aggregates marks of all other subjects.

7. In paragraph Nos. 5, 6 and 7 of the counter affidavit it has been stated that petitioners have secured zero marks in Mathematics I and II papers. All the petitioners received zero marks in Math I and II papers. This Court by order dated 8.10.2007 directed the respondents to make an enquiry in the matter and file counter affidavit.

8. In compliance of the order enquiry has been conducted. It is averred in paragraph No. 7 of the counter affidavit, which is as under:

"In compliance of the order of this Court, enquiry was conducted by the enquiry officer and during the course of enquiry the Enquiry officer has matched the handwritings of the petitioners on the cover page of the answerbooks of Mathematics I and II papers with the handwriting on the inner pages of the answer books and it was found that the handwritings are similar. Further, the handwritings of the petitioner of other papers were also matched with the handwritings of the petitioners of Mathematics I and II paper and it was found that they are same handwritings. After conducting detailed enquiry, the Enquiry Officer submitted his report that on the dates of examination of Mathematics I and II papers due to the presence of Flying Squad of the Board the petitioners could not succeeded in copying therefore, they could not answer any question and that is why they were awarded zero marks."

9. Paragraph 7 of the counter affidavit has been replied in paragraph 5 of the rejoinder affidavit is as under :

"In reply to paragraphs 7 of the counter affidavit are wholly wrong and vehemently denied, any enquiry dated 31.10.2007 known to the petitioners nor is in persuasion of the direction of the High Court. It appears that a vague enquiry report has been submitted to divert the attention of the Court. Not only this but the contents of para under reply and the enquiry report are contradictory to each other. However it is submitted that on 12.11.2007 the High Court directed to hold an enquiry before Additional Secretary Madhyamik Shiksha Parishad, Allahabad and directed the petitioners to be present before authority concerned on 20.11.2007, as the respondents avoided to hold the enquiry on one pretext or other blaming the petitioners that they could not ensure their presence. The Court directed the petitioner's Counsel to give an undertaking to ensure the presence of petitioners before the authority concerned on the date fixed, 20.11.2007. That pursuant to the direction of High Court and undertaking given by petitioner's Counsel all the petitioners attended the aforesaid enquiry dated 20.11.2007 before authority concerned. The answer books of Math I and II papers were shown to the petitioners, except cover page. The answer books were blank and the petitioners clearly submitted that the cover page is not filled by them it is filled in the hand writing of some other person and the cover page of all the answer books was filled and they also submitted before the enquiry officer that they have no knowledge of any flying squad they had solved the questions to the best of their skill and sincerely with a sole motto the respondents submitted report dated 31.10.2007 to misguide the Court.

10. It is quite unbelievable to infer that the hand writings on the cover page and in answers copies have been reported to be in handwriting of the petitioners while the answer books were founds to be blank. This raises a bonafide question to the basis of comparison of handwriting on answer copies and their cover it was in same handwriting?

11. It is also unbelievable that the hand writings were tallied by the answer books of other papers was produce before petitioners on 20.11.2007 nor even

the enquiry report dated 31.10.2007 submitted by the respondents anywhere disclose that the hand writing was tallied with the hand writing of petitioners in the answer books of other papers." which admittedly are said to be blank copies.

12. Learned Counsel on behalf of the Board submits that in the circumstances of the case aggregates marks obtained by the petitioners in remaining other papers may be awarded to the petitioners and fresh marksheet shall be issued to the petitioners.

13. Thus it appears from the arguments of learned Counsel for the parties that on one hand Board is claiming that if compared the hand writings of the copies and the cover of the petitioner but on the other hand it appears that blank copies are said to have been submitted by the petitioner. Hence this averment cannot be believed hence stand of the Board cannot be believed.

14. In view of the report dated 31.10.2007 submitted by the Board also the hand writing on the covers of the copies does not tally with hand writing of the petitioner in the answer copies.

15. As regards flying squad there is no report of confiscation of any material from the petitioner or their using unfair means in that examination.

16. As regards question of taking action as per report i.e. for debarring center for a period of five years etc. and of taking action against other person, it appears from annexure Nos. 1 and 2 of the supplementary affidavit that no action has been taken according to own report of Board and the Board that the report of Board is only eye wash.

17. The aggregates marks of other four subjects as regards 1st paper and IInd paper shall be given to the students in Math 1st paper and 2nd paper.

18. For the reason stated above, the writ petitions are disposed of with direction to the Board to consider awarding average/aggregates marks to the petitioners in Math I and II papers on basis of marks obtained in other four subjects within ten days from the date of production of a certified copy of this order and shall issue fresh marksheets to them accordingly within 15 days from the date of production of certified copy of this order.