
(2003) 07 CHH CK 0004
In the Chhattisgarh High Court
Case No : Writ Petition No. 1931 of 2003

Ku. Nashima Rao

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Board of Secondary Education Regulations, 1965 — Regulation 119

Citation : AIR 2005 Chh 10 : (2003) 2 CGLJ 31 : (2003) 3 MPHT 50

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Bharat Rajput, for the Appellant; Sanjay K. Agarwal, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

L.C. Bhadoo, J.—Heard.

2. By this writ petition under Article 226/227 of the Constitution of India, the petitioner seeks relief to command the respondents for re-valuation of the answer-sheets of the petitioner and also to direct the respondents to compensate the petitioner to the tune of Rs. 50,000/-.

3. In Para 5.1 of the petition, it has been mentioned that the petitioner is a very brilliant and extra-ordinary intelligent student and she has always been awarded above 85% marks in the examination. In 1995-96 the petitioner secured 70.5% marks in Vth Board Examination and in the year 1999 the petitioner, secured 75.2% marks in VIIIth Class Board Examination and in 2000-2001 the petitioner secured 80% in Xth Class Board Examination and in the year 2002 the petitioner secured 84.2% marks in XIth Class Examination. The petitioner has also participated in Senior General Knowledge Test Certificate and secured 63% marks. It has been further mentioned that while studying in Class XII the petitioner devoted herself in her studies and not a single minute spent in other activities, she had worked hard in preparation of her examination and the

petitioner had answered all the questions and after facing each question paper the petitioner calculated the marks and according to the petitioner, she should have been awarded 92% marks in each subject whereas she has been awarded 82% marks. The petitioner submitted her application for re-valuation of her all answer- sheets. But same is not being considered on the ground that there is no provision in the regulations for re-valuation of the answer-sheets.

4. I have heard Shri Bharat Rajput, Counsel for the petitioner and Shri Sanjay K. Agarwal, Deputy Advocate General for the State.

5. Counsel for the petitioner submitted that since there is no provision for re-valuation of the answer-sheets, the respondents are not re-valuating her answer-sheets. He further submitted that the petitioner is a very brilliant and intelligent student and through out her career she has secured more than 80% marks and she has reasonable doubt that the answer papers of the petitioner have been evaluated rightly. On the other hand, the State Counsel while drawing attention towards Regulation No. 119 of the Regulations of the Board of Secondary Education, Madhya Pradesh, Bhopal, pointed out that as per this provision the scrutiny of the marks obtained by the candidate can be done and also the re-checking of his/her result in accordance with the rules framed by the Board. Since there is no provision regarding re-valuation of the answer-sheets, the same cannot be re- valued.

6. Counsel for the petitioner himself has admitted that there is no provision in the Regulations regarding the re- valuation of the answer-sheets and as such, if there is no Regulation regarding re-valuation of the answer-sheets, then how the respondents can re-value the answer-sheets. The learned Counsel was not able to answer this query.

7. The jurisdiction of this Court under Article 226 is an extra-ordinary jurisdiction. If any, provision exists for re-valuation of the answer-sheets and the concerned authorities are not acceding to the request of the petitioner for re-valuation of the answer-sheets, then the petitioner has a right to ask for re-valuation. But where there is no provision regarding the re-valuation of the answer-sheet, in that case in order to seek the remedy under Article 226 the petitioner has to make out a strong and exceptional case showing error apparent present in the matter of evaluation of her answer-sheets, based on the previous academic career and other relevant material, that the authorities are by their act or omission not acceding the request for re-valuation in spite of the exceptional case of the petitioner, because there is a presumption of the State action and the burden is on the person who alleges arbitrariness on the part of the authority and to prove the assertion. However, where there is no plausible reason or principle is indicated nor is it discernible and the impugned action, therefore, appears to be ex-facie, arbitrary, the initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable. If the State is to unable to produce the material to justify its action as fair and reasonable then the burden on the person who alleges arbitrariness must be held

to be discharged. Therefore, since there is no provision for re-valuation, the petitioner has to make out a prima facie exceptional case based on her previous academic record, as also other material showing error apparent on the face of record and circumstances existing in her case prima facie indicate that something unusual unreasonable has been done, and error apparent exists on the face of it. Without showing such exceptional case, the Court is not required to interfere in the matter and grant the relief to the petitioner as of a right of the petitioner in a routine manner. Now I shall proceed, based on this principle, to consider as to whether the petitioner has been able to make out a prima facie exceptional case so as to entitle her to get the favourable order.

8. In order to ascertain as to whether a prima facie exceptional case exists in favour of the petitioner, as per the assertion of the petitioner that the petitioner is a brilliant student and through out her career she had secured above 85% marks, after this examination she was expecting 92% and only 82% marks has been awarded to her, therefore, she has a reasonable doubt that her answer-sheets have been evaluated properly.

9. If we look at the academic career of the petitioner, the petitioner herself mentioned in Para 5.1 that she has always been awarded above 85% marks whereas in Para 5.2 she has stated that in Vth Class Board Examination she secured only 72.5% marks, in 1999 she secured 75.2% marks in VIIIth Class Board Examination, in Xth Class Board Examination she secured 80% marks and in XIth Class Examination she secured 84.2% marks and this time the petitioner secured 82% marks. The record itself shows that she has never crossed 84% marks that too in Xth Class Board Examination also she secured only 80% marks, therefore, looking to the past academic career, when the petitioner was obtaining marks around 80-82% particularly when the last Xth Class Board Examination she secured only 80% marks, she had never been able to secure above 85% marks through out her past academic career then how particularly this time her expectation increased and how she was expecting that this time she will get 92% marks. In view of her past academic career or any other ground the petitioner has not been able to make out a strong/exceptional case so as to enable this Court to direct the respondents to re-valuate her answer-sheets. For these reasons, I am of the opinion that there is no force in this petition and the same is misconceived and is liable to be dismissed and it is accordingly dismissed.

10. In view of the above, M.W.P. No. 1746/2003 and I.A. No. 5761/2003 stand disposed of.