

(1983) 07 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 22 of 1983

Master Ashwani Kumar

APPELLANT

Vs

Board of School Education for Himachal Pradesh, Simla and
Others

RESPONDENT

Date of Decision : 20-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 HP 4 : (1983) 12 ILR HP 321

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Advocate : K.D. Sood and Bhawani Singh, for the Appellant; D.K. Khanna, for the Respondent

Final Decision : Allowed

Judgement

T.R. Handa, J.—It is rather unfortunate, frustrating and disgusting that a brilliant school student, still in his minority. (the petitioner herein) had to knock at the door of this Court to seek redress against the injustice alleged to have been caused to him at the hands of the authorities of an educational institution, viz. the Himachal Pradesh Board of School Education, respondent 1. in relation to his merit position in the Matric examination, March 1982. conducted by the respondent Board.

2. The petitioner appeared in the Matric examination conducted by the respondent Board in March. 1982 as a regular student from the Government High School, Nerwa under Roll No. 326120. Respondent 2 Shri pamposh Raina also appeared for the same examination under Roll No. 329059. The result of this examination was published in the 4th July 1982 issue of the Hindi Daily Tribune, copy of which is found at annexure PA. As per this result the petitioner was shown to have topped the list of the successful candidates securing 832 marks. Respondent 2 was ranked second in merit securing 825 marks. The same result was also published in the official Gazette of the Board.

3. The State Bank of India award their regular trophy to the student who tops the list of successful candidates in the Matric examination conducted by the Board. This trophy for the year 1982 was in terms of the above result awarded by the State Bank of India to the petitioner. Similarly Messrs. Hindustan Machine Tools Limited also award one watch to the student who tops the list in the Matric examination and on the information conveyed by the Board to Messrs. Hindustan Machine Tools Limited with respect to the result of the Matric examination. Messrs. Hindustan Machine Tools Limited awarded a HMT watch to the petitioner along with a letter of congratulation copy of which is found at annexure PD.

4. Respondent 2 Shri pampash Raina who ranked second in order of merit later applied for re-evaluation of his Urdu paper in which had earlier been awarded 59 out of 80 marks. On such re-evaluation he was awarded 70 out of 80 marks in that paper. With this increase of 11 marks the Urdu paper the aggregate marks of respondent 2 were increased from 825 to 836 that is, more than the marks secured by the petitioner, Consequent upon such re- evaluation a revised merit list was issued by the respondent Board some time in January 1983. A copy of this list is found at annexure PE. As per this list respondent 2 Pamposh Raina was ranked at No. 1 while the petitioner was ranked at No. 2.

5. The petitioner claims that the result originally announced by the respondent Board wherein the petitioner had been ranked first had been prepared after thorough scrutiny by scrutinisers, tabulators, checkers etc. and the re-evaluation later obtained by respondent 2 was bad inasmuch as there was no provision for such re-evaluation. In any case this re-evaluation, was not bona fide and had been procured by respondent 2 through the undue influence of his father respondent 3 who wields a great influence in the Board of School Education respondent 1, as he is employed as Deputy District Education Officer in the Education Department of Himachal pradesh.

6. The petitioner has accordingly prayed for issue of an appropriate writ, direction or order declaring the revised merit list found at annexure PE to be void, requiring the respondent Board not to award any marks beyond the marks of 825 to respondent 2 and further directing the respondent Board to stick to the original result of the Matric examination in terms of which the petitioner had been shown as topping the list of successful candidates.

7. When this writ petition came up for admission on 8-3-1983 this Court directed respondent 1 through its counsel, to produce the original Urdu paper of respondent 2 which was re-evaluated along with the re-evaluation by the Examiners concerned. This paper as also its re-evaluation was produced by respondent 1- in Court on 22-3-1983 when after its perusal this Court formed the view that the Urdu paper of the petitioner also needed to be looked into. Respondent 1 was accordingly directed to produce the Urdu paper of the petitioner also. The petitioner's paper in Urdu was produced for inspection of this Court on 11-4-1983. On that date after comparing the two papers, that is, the Urdu paper of the petitioner and the paper of respondent 2, of the same subject,

this Court held that it was a fit case which, needed to be looked into deeply. Accordingly a rule nisi was issued.

8. The matter then came up for actual hearing before me on 27-5-1983. Since I entertained some doubt whether both the papers, that is, of the petitioner and respondent 2 had been assessed from the point of view of the same standard I considered it proper to examine the Examiners who had evaluated and re-evaluated these papers. I accordingly directed that the Examiner who had marked the Urdu paper originally and also the Examiners who had marked the paper of respondent 2 on re-evaluation should be summoned in Court to explain if the marking made by them was in accordance with the instructions issued by the Board in that regard so as to satisfy me that the same standard had been applied in marking both the papers.

9. On 24-6-1983 both the Examiners Sarvshri Kishori Lal Gupta and Hari Chand Gupta who had re-evaluated the Urdu paper of respondent 2 appeared in Court. Shri Khanna, the learned counsel for the Board had brought with him the original answer papers in Urdu pertaining to respondent 2 as also the petitioner. He had also produced the question paper and the instructions to the Examiners in regard to the marking of the answer-books. Both these Examiners were then asked to once again re-evaluate the paper of respondent 2 in the presence of the Court in accordance with the instructions issued by the Board and a copy of which was furnished to them. They were also asked to re-evaluate the Urdu paper of the petitioner. Both the Examiners separately examined the two papers and awarded fresh marks. In terms of this re-avaluation conducted in the presence of the Court Shri Kishori Lal Gupta Examiner awarded 60 1/2 marks to respondent 2 as against 59 marks originally allowed to this respondent before re-evaluation. The other Examiner Shri Hari Chand Gupta awarded 33 1/2 marks to respondent 2. It may be observed that earlier while re-evaluating this very paper these very Examiners namely Kishori Lal Gupta and Hari Ghand Gupta had awarded 68 and 71 respectively to respondent 2 Shri Pamposh Raina.

10. As regards the paper of the petitioner, he had originally been awarded 65 marks and the same marks were awarded to him on re-evaluation by Shri Kishori Lal Gupta. The other Examiner Shri Hari Chand Gupta, however, awarded him 64 marks.

11. Both these Examiners were then called upon to explain the difference in re-evaluation as made by them originally and as made by them in Court with respect to the paper of Pamposh Raina respondent 2. Their main and common explanation was that the instructions for marking the papers which had been made available to them in Court had not been made available to them while they were required to re-evaluate the paper of respondent 2 previously.

12. It is thus conceded by both these Examiners that the instructions/guidelines for marking the papers as prescribed by the Board had not been earlier supplied to them while they had re-evaluated the paper of respondent 2 which in other

words would mean that they had not applied the prescribed standard for marking the paper at the time of re-evaluation earlier. Keeping in view this fact alone the re-evaluation made earlier by these Examiners with respect to the Urdu paper of respondent 2 cannot be accepted as valid since it was not in accordance with the prescribed instructions. The re-evaluation made by these Examiners in Court in accordance with the prescribed instructions must be considered as the proper re-evaluation.

13. Now the rules of, re-evaluation as found at annexure R-2 require that each answer-book would be got re-evaluated by two Examiners. For the purposes of re-evaluation the average of the two highest awards out of the three (including; the original award shall be taken into consideration. The result would be changed only if the increase or decrease as a result of re-evaluation is 5%, or more of the marks originally awarded. If we take into consideration the re-evaluation of the Urdu paper of respondent 2 as made by the two Examiners Sarvshri Kishori Lal Gupta and Hari Chand Gupta in the presence of the Court as genuine and valid re-evaluation, the marks on re-evaluation to be awarded to this respondent in Urdu paper would come to 62, being the average of the two highest awards, namely, 60 1/2 and 63 1/2. In other words he will be entitled to an increase of only, 3 marks over the original award, of 59, marks in this paper. Since this increase is more than 5% of the marks originally, allotted to this respondent in Urdu paper, he is entitled to the change of his result on re-evaluation to that extent.

14. In the face of re-evaluation as made in accordance with the relevant instructions in the presence of the Court by the same two Examiners which was admittedly done in accordance with the guidelines for re-evaluation of answer-books as found at annexure Rule 2 neither party was in a position to urge anything against the re-evaluation made in Court. It is obvious in terms of the common explanation offered by both the Examiners that, this discrepancy, in re-evaluation made by them earlier and later in Court was on account of the fact that the earlier re-evaluation was made without taking into consideration the prescribed guidelines and the re-evaluation made in Court was, in, accordance with these guidelines.

15. On the undisputed facts, of this case and as discussed above the earlier re-evaluation of the Urdu paper of respondent 2 increasing his marks from 59 to 70 is undoubtedly invalid and deserves no consideration. It is only the later re-evaluation made in the presence of the Court and in accordance with the guidelines/instructions laid down, for the purpose which alone can be considered as valid.

16. In the light of the observations made above, I feel no hesitation whatever in directing and do hereby direct that the revised merit list issued by the respondent Board of School Education found at annexure PE be forthwith amended so as to restore the original seniority of the- petitioner who secured 862 marks at No. 1, and respondent 2 Pamposh Raina who secured 828 marks

as a result of the re-evaluation of his Urdu paper be ranked at No. 2. The petitioner shall be entitled to the costs of this petition the liability for the payment of which is fixed on respondent 1,

17. Although on the material placed before me. I am not in a position to give any definite and positive finding with regard to the real circumstances which made the innocent petitioner to approach this Court, I feel constrained in observing that it looks more a case of a calculated move and conspiracy among certain persons in authority to deprive the petitioner of his well earned position in the merit list. This is not the first time that this Court has come across such like acts of misconduct on the part of unscrupulous Examiners who would not hesitate in sacrificing the future of one student for another. If not checked in time this nefarious practice is bound to have serious repercussions on the student community who as it should be, are by now very much aware of their legal rights.

18. It is an admitted position that the Board of School Education or the Examiner who set the Urdu paper had laid down clear guidelines/instructions which were required to be taken into consideration while marking the answer-books of the students. A copy of such (guidelines/instructions has been placed on the record by the Board itself. Obviously the idea of issuing such guidelines was to ensure that as far as possible all the answer-books are marked in accordance with the same standard. It was certainly a wholesome and desirable provision. I have every reason to assume and believe that the Board of "School Education must have issued standing instructions that a copy of such guidelines/instructions must be supplied to all the Examiners who are entrusted with the job of marking the answer-books. "Similarly I have reason to assume that the Examiners concerned must be aware of this practice and they must look into the instructions/guidelines laid down for marking the papers before they actually start doing so. I can imagine inadvertence on the part of the particular authority of the Board who entrusted the Urdu paper of respondent 2 to the Examiners for re-evaluation in not sending a copy of the prescribed guidelines for making the paper. It is, how ever, beyond my imagination how this omission on the part of the authority entrusting the paper to the Examiners for re-evaluation escaped notice of either of the two Examiners and why each of them proceeded to re-evaluate the paper without asking for such guidelines. All these circumstances ,prima facie suggest that there is positively something below the surface which calls for a thorough and deep probe. Again as a result of the re-evaluation originally made, the marks of respondent, 2 were increased from 59 to 70 that is an increase of more than 18%. There is no explanation as to why the authorities of the Board did not consider it advisable to inquire into the matter and proceed against the Examiner/Examiners at fault, especially when as stated at the Bar, the rules do require for such an action. I sincerely hope and wish that the Board shall get the whole matter inquired into through some independent and impartial agency and ensure that such like episodes are repeated.