
(2008) 02 GAU CK 0020
In the Gauhati High Court

Mira Rani Sarkar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2008) 2 GLT 914

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Judgement

Amitava Roy, J.—The petitioner seeks a writ of mandamus and/or an appropriate direction to the Assam Higher Secondary Education Council (hereinafter referred to as the "Council") for re-evaluation of her daughter's answer scripts in Physics and Chemistry for the Higher Secondary 1st Year Examination, 2007.

2. I have heard Mr. T.J. Mahanta, learned Counsel for the petitioner and K.H. Choudhury, learned Senior Counsel for the Council.

3. Briefly stated, the petitioner's pleaded case is that her daughter Priyanka Sarkar who had passed the High School Leaving Certificate Examination, 2006 from St. Mary's English High School, Guwahati with star marks took the Higher Secondary 1st Year Examination, 2007 under Roll 0551 No. 50412 from the Cotton College, Guwahati conducted by the Council. Her results were declared on 06.07.2007 wherein she was shown to have secured the following marks in Physics and Chemistry:

Subject Marks Physics 40 Chemistry 51

According to the petitioner, her daughter has answered questions carrying 69 marks and 89 marks in Physics and Chemistry and expected to secure 62 and 75 marks respectively. Being dissatisfied with the marks awarded in the said two subjects and comprehending that her answers had not been properly evaluated, the candidate on 10.07.2007 applied before the Controller of Examinations of the Council for re-examination of her answer scripts in Physics and Chemistry and

therefore deposited the necessary fee. The Council eventually declared the results of re-examination of answer scripts of all candidates who had similarly applied indicating no improvement in the marks of the petitioner's daughter.

Contending that the candidate in her High School Leaving Certificate Examination had secured 98, 91 and 83 in Mathematics, General Science and Social Science respectively and that her parents being teachers were fully cognizant and confident of her capacity and performance in the examination involved, the instant petition has been preferred with the allegation that abnormally low marks awarded to the petitioner is due to some serious lapse on the part of the examiners in evaluating the answers provided and/or in tabulation of the marks recorded.

In terms of the order of this Court, the candidate's original answer scripts in Physics and Chemistry were produced in Court by the learned Counsel for the Council on 09.01.2008. For a prima facie ascertainment of the tenability of the petitioner's contention, this Court requested Mr. B. Pathak, Advocate to verify the anomaly, if any, in awarding of marks to the objective questions attempted by the candidate vis-a-vis the model answers provided therefor. For the satisfaction of the candidate, this Court also permitted her presence during the scrutiny as ordered. On completion of the exercise Mr. Pathak apprised this Court that three marks in each paper had not been awarded though the answers were correct in terms of the model answers drawn up by the Council. As the parties sought for further time for additional pleadings to adequately project their stand on the basis of the revelations, they were granted the same.

4. In her additional affidavit, the petitioner while reiterating the determination made by Mr. Pathak, furnished a chart of questions in both the papers attempted by the candidate, marks allotted therefore and awarded to her. The petitioner also categorized the above particulars corresponding to the objective and descriptive questions. On the basis thereof it was contended as hereunder;

Physics															S.
Questions	Marks	Marks	Nos.	alloted	obtained										
									1	8(a) (objective)	1				
0	2	11(c) (objective)	2	0	3	3(a)	1	0	4	8(a)	1	0	5	9(a)	
2	0	6	9(c)	2	0	7	12(a)	1	0	8	12(c)	1	0	9	
10	4(a)	4	1	11	7(a)	5	4	12	11(a)	3	1	13	13(c)	4	

5. According to the petitioner, the candidate was wrongly denied three marks for question No. 8(a) and 11(c) and though she had correctly answered question Nos. 3(a), 8(a), 9(a), 12(a), 12(c) and 9(c) those were treated as wrong. Further, the candidate was awarded less marks than what she deserved for her answer for question Nos. 3(c), 4(a), 7(a), 11 (a) and 13(c).

Chemistry								Sl.
Questions	Marks	Marks	Nos.		alloted	awarded		

due to casual and unmindful disposition of the examiners, she ought not to be made to suffer the adverse consequences therefore for no fault of her. In support of his contention, Mr. Mahanta has placed reliance on the decision of the Apex Court in *President, Board of Secondary Education, Orissa and Anr. Appellants v. D. Suvankar and Anr. Respondents* (2007) 1 SCC 603.

10. Mr. Choudhury in reply has urged that apart from increase in three marks each in both the papers and a correction of the petitioner's initial marks as 41 in Physics, the process of evaluation had been flawless and therefore no judicial intervention is warranted as solicited. Mr. Choudhury was emphatic in maintaining that under the Regulation, no re-evaluation of any answer script is comprehended and that in the process of reexamination thereof totalling of marks and assessment of answers unevaluated is only permissible. As in the instant case, no answer of the examinee had remained unevaluated, the plea of wrongful appraisal is untenable. The omission to award three marks each in the two papers having been acknowledged by the Council, the candidate is entitled thereto to be added to the marks secured by her in Physics (41) and Chemistry (51). In absence of any provision in the Regulation for re-evaluation of the answer scripts, this Court in the exercise of its power of judicial review would not direct the same, he urged. Mr. Choudhury to buttress his arguments, has placed reliance on the decision of the Apex Court in *Board of Secondary Education, Appellant v. Pravas Ranjan Panda and Anr. Respondents* (2004) 13 SCC 383.

11. The competing pleadings and the arguments have received the thoughtful consideration of this Court. There is no wrangle at the Bar that under the Regulation, re-evaluation of the answer scripts envisages only retotalling of the marks awarded and assessment of the answers not assayed by the examiner. The Council has conceded that the candidate is entitled to three additional marks in Physics and Chemistry against the questions referred to hereinabove. Further, her marks in Physics had been wrongly shown to be 40 instead of 41. On a re-examination of her answer scripts by the Controller of Examinations of the Council, the evaluation of the answers otherwise has been approved. The said authority has resorted to a dialectical scrutiny of the questions and the answers written by the candidate in scrupulous details and has sought to justify the marks awarded. Tested on the concept of re-examination as prescribed by the Regulation, according to Council, the candidate does not deserve any further improvement in her assessment.

12. The Apex Court in *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, had ruled that in public interest, the results of public examinations should have some finality attached to them and the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions and the departments controlling them. While

emphasizing that award of marks by the examiner has to be fair and that as re-evaluation is not permissible under the statute, he has to be careful, cautious and dutiful to ensure that the answers are properly evaluated, their Lordships predicated that the scope of interference in matters of evaluation of any answer paper is very limited and only for compelling reason and in case of apparent infirmity in evaluation that the Court may step in.

In the reported case, the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 did not comprehend re-evaluation of the answer scripts. The judgment of the High Court recognizing the right of the examinee to demand re-evaluation of the answer books was interfered with holding that in absence of a special provision to that effect, an examinee is not endowed with such a right/privilege and therefore no such direction could be issued.

The same view was reiterated in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, . It was noted in the contextual facts that under the relevant rules of the examination conducting authority i.e. Bihar Public Service Commission, there was no provision authorizing a candidate to seek re-evaluation of his answer book and that only checking any mistake in the totalling of marks and correct recording thereof was permissible. In *Board of Secondary Education v. Pravas Ranjan Panda* cited on behalf of the respondent Council, the view taken in *Promod Kumar Srivastava* was noticed and reiterated. There the Regulation, of the Board of Secondary Education, Orissa did not provide for re-evaluation of the answer scripts of the students. The order of the jurisdictional High Court for re-evaluation thereunder was set aside.

In *President, Board of Secondary Education, Orissa v. D. Suvankar and Anr.* (supra), pressed into service on behalf of the petitioner, their Lordships of the Apex Court after a thorough scrutiny of the precedential law on the issue approved the verdict of the Orissa High Court rejecting the respondent's prayer for re-evaluation of his answer scripts in SSH paper in his High School Certificate Examination, 2004 conducted by the appellant Board.

13. The projected panorama of the decisions rendered by the Apex Court unambiguously proclaim against any direction for re-evaluation of answer scripts of an examinee if the governing Regulation or guideline do not sanction the same. It is in exceptional cases exhibiting apparent infirmity and inexplicable incongruity in the evaluation and for persuasive and compelling reasons that a judicial intervention is allowable. A candidate's perception of inadequate and erroneous appreciation of his/her answers per se would not justify a direction for re-evaluation thereof in the exercise of this Court's jurisdiction of judicial review. The plethora of the pronouncements alluded hereinabove, testify the consistent view of the Apex Court disapproving the said course as a matter of routine test, thereby an uncalled for inroad on the autonomy and credibility of an academic institution is countenanced. This view being emphatic and categorical admits of no departure and is even otherwise binding of this Court under Article 141 of the

Constitution of India.

14. The conspectus of facts noticed hereinabove, do not unreservedly depict a singular case of demonstrably apparent error in the evaluation of the answers provided by the examinee so much so that a direction for re-evaluation is an impelling necessity, Indubitably the mistake in correctly recording the candidate's marks in Physics and the omission to award three marks each in the two papers project an inexcusable lapse on the part of the examiner(s) for which appropriate action against them ought to be taken by the Board. This in isolation in the teeth of the Regulation ipso facto, however, do not entitle the candidate to a direction for re-evaluation of her answers in Physics and Chemistry on the grounds as enumerated in the writ petition. In evaluation of answers, marginal difference in award of marks is a normal phenomenon attendant on the yardstick of appraisal applied by the examiners. This is a risk which every candidate is confronted with in all examinations and cannot be an acceptable justification to return a finding against correct appreciation of the performance of the candidates.

In the above view of the matter, the petition lacks in merit vis-a-vis the prayer for re-evaluation of the answer scripts in the two subjects involved in addition to three marks" each in Physics and Chemistry. Additionally, her marks in Physics ought to be construed as 41. In other words, the candidate would now be entitled to 44 (41 +3) in Physics and 54 (51+3) in Chemistry in the Higher Secondary Education 1st Year Examination, 2007 conducted by the Council. The petition is partly allowed to the extent indicated hereinabove. No cost.