
(2015) 08 MP CK 0029
In the Madhya Pradesh High Court
Case No : W.P. No. 11392 of 2015

Prakhar Kumar Mishra

APPELLANT

Vs

Madhya Pradesh Board of Secondary Education and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Citation : (2015) 4 MPLJ 93

Hon'ble Judges : Alok Aradhe, J.

Bench : Single Bench

Advocate : Malti Dadariya, for the Appellant; Mahendra Pateria, for the Respondent

Final Decision : Disposed Off

Judgement

Alok Aradhe, J.—In this writ petition, the petitioner who had appeared in the examination of Class 12 held by the Board of Secondary Education in the year 2015, inter-alia seeks a direction to the respondents to re-calculate the marks obtained by the petitioner in the subject of English and to re-evaluate the answer script of the petitioner in the subject of Hindi (Special) and to issue revised mark-sheet to him. The petitioner has also prayed for grant of compensation to the tune of Rs. 5 Lakhs. Facts giving rise to filing of the writ petition, briefly stated, are that the petitioner had appeared in the examination of Class 12th, conducted by the Board of Secondary Education, Bhopal. The petitioner secured 71 marks out of 100 in the subject of English, whereas, he was awarded 75 marks out of 100 in the subject of Hindi (Special). It is the case of the petitioner that his marks were not properly counted while evaluating his answer script in the subject of English and the answer script of Hindi was not properly evaluated as a result of which, he got lower ranking in Joint Entrance Examination (JEE) [Mains]. It is also averred that the petitioner had correctly answered questions No. 6, 8 to 14 as well 16, 17 and 21 in the subject of Hindi, however, the same were not properly valued and consequently, the petitioner was awarded less marks. In the aforesaid factual background, the petitioner has approached this

Court.

2. Learned counsel for the petitioner submitted that the petitioner is a meritorious student but has been awarded less marks in the subjects of English and Hindi in the Higher Secondary School Certificate Examination, 2015. On the other hand, learned counsel for the respondents admitted that on account of inadvertence on the part of valuer, marks awarded to the petitioner in the subject of English were not properly counted and petitioner has secured 81 marks in English and that revised mark-sheet shall be issued to him. It was further submitted that petitioner can claim compensation in the Civil Suit. In support of aforesaid submission, reliance has been placed on an order dated 5-5-2014 passed in Writ Appeal No. 85/2014.

3. I have considered the respective submissions made by learned counsel for the parties. It is well settled in law that an institution which has to perform a sanguine duty of conducting an examination has to conduct itself in an astute and perspicacious manner and cannot afford to put forth a stand which would appear sanctimonious, though it does not have basic or fundamental sacrosanctity at its base. The fate of students is dependent upon the action of the teachers. While evaluating an answer paper a teacher has to be extremely alert and absolutely astute, thoroughly involved and perfectly poised. He cannot afford to forget that he is deciding the fate and future of younger generation and at that juncture, he cannot afford to behave in an asinine manner which will make the entire evaluation process a farce. His action must demonstrate concentration and display application of a focused mind. See : Prem Ratan Agrawal Vs. Board of Secondary Education and Others, . A Division Bench of this Court in the case of Board of Secondary Education, Madhya Pradesh Bhopal v. Rajiv Gupta, L.P.A. No. 295/2001 decided on 26-2-2004 has held that as a general rule, the Court has no power to order for re-evaluation of the paper since the rules do not provide for re-evaluation. However, in extra-ordinary cases where the student is bright and where injustice has been done in the case of evaluation of the marks specially in subjects like Mathematics and Science, it is sometimes open to the Court to have a look at the answer sheet and compare with the model answers papers and if there are gross discrepancies in awarding marks, it is always open to the Court to direct the Board to reevaluate the marks. The aforesaid decision has been followed by another Division Bench of this Court in the case of Priyanka Pandey Vs. Secretary, Board of Secondary Education and Another, . The Supreme Court in the case of Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, , has held that revaluation of answer scripts in the absence of specific provision is perfectly legal and permissible in a given case. Thus, it is evident that in extraordinary cases, this Court has power to direct the Board to re-evaluate the answer scripts.

4. Presumably, in the backdrop of aforesaid well settled legal position, a Bench of this Court vide order dated 24-7-2015 had passed the following order:---

"It is further submitted by the learned counsel that the answer sheets of the petitioner in the subject of English be retotalled and re-examined and of Hindi be revalued in the Court by the experts of the concerned subject and in case no change is found in the answer sheets, the petitioner is willing to deposit Rs. 5,000/- (Rupees Five thousand). The petitioner also undertakes to deposit cost of Rs. 500/- (Rupees five hundred) each for each valuer called for revaluation and retotalling.

In view of the undertaking and statement of the learned counsel for the petitioner, the learned counsel appearing for the Board is directed to produce the answer sheets of the petitioner in the subject of English and Hindi and the concerned question papers and model answers on the next date of hearing.

The learned Govt. Advocate is directed to ask the District Education Officer, Jabalpur to ensure the presence of two subject expert teachers in the subject English and Hindi, one each from Model School of Excellence, Jabalpur and the other from Kendriya Vidyalaya, Jabalpur on the next date of hearing to undertake the retotalling/revaluation of the answer sheets of the petitioner.

The learned counsel appearing for the respondent/Board is directed to keep the Divisional Officer of the respondent/Board present before this Court on the next date of hearing and also give a statement in respect of the mistake in retotalling, if any, in the subject of English. The Divisional Officer of the respondent/Board is also directed to ensure that the examiners who had originally checked the copy of the petitioner would also remain personally present before this Court on the next date of hearing".

5. Mr. Mahendra Pateria, learned counsel for the respondents submitted that there has been mistake in calculation of the marks awarded to the petitioner in the subject of English and infact, the petitioner has secured 81 marks out of 100, however, on account of inadvertence of the valuer, the petitioner was granted 71 marks. The aforesaid fact is also admitted by Mr. Bhuwan Bhargava, Varishta Adhyapak (English), who has evaluated the answer script of the petitioner in the subject of English and is present before this Court. Learned counsel for the respondents submitted that the revised mark-sheet shall be issued to the petitioner by awarding him 81 marks out of 100 in the subject of English.

6. So far as the grievance of the petitioner with regard to improper evaluation of the answer script of Hindi subject is concerned, in compliance of the order dated 24-7-2015, two subject experts Smt. Richa Vyas, Varishta Adhyapak, Model High School and Smt. Sunita Lohra, P.G.T. English, Kendriya Vidyalaya, GCF, Jabalpur, are present before this Court. The answer scripts of the petitioner were handed over to them along with model answers. After evaluating the answer script, both the independent valuers who are subject experts, stated that the petitioner has been awarded less marks in respect of Questions No. 6, 12, 13 and 14 and the petitioner ought to have been awarded 5 more marks in the subject of Hindi. The fact that the petitioner has not been awarded two marks in respect of Question

No. 6 and ought to have been given one mark each in respect of Questions No. 13 and 14, is admitted by Mr. Mahendra Raghuwanshi, Varishta Adhyapak, who had evaluated the answer script of the petitioner in the subject of Hindi and is present before this Court. Thus, admittedly, the petitioner is entitled to receive 5 more marks in the subject of Hindi. In view of preceding analysis, it is evident that in the fact situation of the case, the valuers have not been alert and vigilant in performing their duties which decides the fate and future of the young generation. A valuer has to be careful, cautious and has the duty to ensure that answers are properly evaluated. The valuers have failed to perform their duties in this case. Admittedly, the petitioner is entitled to get 10 marks in the subject of English on account of lapse on the part of the valuers and he is entitled to 5 marks in the subject of Hindi. The Supreme Court in the case of The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another, , had upheld the action of the High Court in awarding compensation to the student who has suffered on account of negligent act of the valuer. In view of aforesaid enunciation of law by the Supreme Court and in the facts of the case, I deem it appropriate to direct that the Board of Secondary Education Madhya Pradesh, Bhopal to award a sum of Rs. 50,000/- (Rs. Fifty Thousand) by way of compensation to the petitioner, without prejudice to the right of the petitioner to claim damages in the Civil Suit. The aforesaid amount shall be sent by demand draft at the address of the petitioner within a period of one month from today. The respondent-Board is further directed to issue revised mark-sheet to the petitioner within a period of two weeks from the date of receipt of certified copy of this order. Needless to state, the respondent-Board shall be at liberty to recover the aforesaid amount from the valuers, namely, Bhuwan Bhargava and Mahendra Raghuwanshi. The Board shall also pay the sum of Rs. 500/- each to the independent valuers, who are present today before this Court within two weeks from today. The valuers have been grossly negligent in performing their duties, therefore, it is directed that the aforesaid valuers shall not be given the duty of valuation of answer scripts for a period of three years from today.

With the aforesaid directions, the writ petition stands disposed of.