

(2015) 05 MP CK 0016
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4159 of 2014

Prateeksha Parmar

APPELLANT

Vs

Board of Secondary Education

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 05 MP CK 0016

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : P.D. Bidua, for the Appellant; J.P. Mishra and Gaurav Mishra, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.

1. In this petition filed under Article 226 of the Constitution, the petitioner has challenged the action of the respondent in improperly evaluating the answer sheet of the petitioner in the subject of "Sanskrit (General)". The action of the respondent, whereby the change was made subsequently, is also called in question. It is contended that because of aforesaid action, the petitioner was deprived to participate in selection of PPT (Pre-Polytechnic Test). It is contended that the petitioner appeared in High School Certificate Examination (10+2). In original mark sheet, Annexure P/1, she was given 21 marks in said subject with a remark that she has received "supplementary". The petitioner was shocked to see the said result because she was expecting her success in the said subject in flying colours. The petitioner filed the answer sheet, Annexure P/3, to demonstrate that the total marks received by her were not properly calculated.

2. Shri Bidua drew the attention of this Court on Annexure P/4, whereby request of the petitioner for re-totalling was declined by showing the result as "no change". The petitioner left with no option, filed this petition.

3. Along with the return, the respondents filed the revised mark sheet (Annexure R/2). As per this mark sheet, the petitioner's marks in Sanskrit (General) are enhanced from 021 to 081. She was given "distinction" in the subject of Sanskrit. The petitioner has specifically pleaded in the petition that the original result was declared in the month of May 2014 whereas the corrected result, Annexure R-2, was declared in August 2014. Between these two dates, the PPT was conducted and petitioner lost her chance in this regard. Shri Bidua relied on certain judgments of this Court.

4. Per contra, Shri J.P. Mishra relied on the Division Bench judgment of this Court in Writ Petition No. 85/2014 (Abhishek Parmar vs. Board of Secondary Education). He submits that the petitioner has not shown as to what substantive prejudice has been caused to her if she could not appear PPT Examination. It is contended that as per PPT Rules (Clause 2.4.3) (2) (Note-2), the candidate with supplementary can also appear in the said examination. He also relied on the judgment of this Court in WP No. 3360/2013 (Samiksha Gupta vs. Board of Secondary Education, MP).

5. I have heard the learned counsel for the parties and perused the record.

6. The extreme callousness shown by the respondent is beyond comprehension. The petitioner drew attention of the respondent about improper totalling, upon which she was informed that on re-totalling of the marks, there was no change in the original marks obtained by the petitioner. However, after receiving notices in this matter, the wisdom prevailed on the respondent and on proper scrutiny they found that the petitioner got 081 marks with "distinction". This is a sorry state of affair. If students are dealt with in this manner, it is a painful story.

7. The petitioner has successfully shown that because of aforesaid delay in correcting her marks, she was deprived to participate in PPT Examination. I do not see any merit in the contention of respondent that the petitioner was unable to show the actual prejudice caused to her because of her non- participation in PPT Examination. Note-2 aforesaid cannot be read to mean that even a student/candidate with supplementary was eligible to appear in PPT. In Samiksha Gupta (supra), this Court did not grant relief because the petitioner therein could not establish as to what prejudice was caused to her. Thus, the said judgment is distinguishable because in the present case the petitioner has succeeded to establish the prejudice. The fundamental right of petitioner for consideration in PPT Examination was infringed because of said action of respondent. Hence, judgment of Abhishek Parmar (supra) is of no help to respondent.

8. The point involved in this matter is no more res integra. In WP No. 5676/2010 (Ku. Kanchan Parihar vs. Board of Secondary Education), this Court opined as under:-

"6. The only question is whether the petitioner is entitled for any compensation or not? Shri Katare heavily relied on a judgment passed by this Court in W.P. No. 9023/03 (Pankaj Sharma Vs. State of M.P. and Others). In the said case, because

of the illegality of the respondents the petitioner was declared passed in second division and he was denied admission for L.L.M. course. He was not given appointment in Rajasthan Judicial Service because of second division. In the said case even after revaluation the respondents came out with the case that valuation was proper and there is no change in the marks. Thereafter, when this Court directed for production of answer books, it was produced without verifying the same. The Court perused the answer book and errors were pointed out by the Court to the respondents and they were directed to reevaluate the answer books. Only after this exercise, the respondents rectified their mistake, however, in the present case, the respondents on their own rectified the mistake by way of revaluation. This case is little different than the case of Pankaj Sharma (supra). Despite these different facts, it is crystal clear that petitioner is made to suffer. She lost opportunities to appear in PPT and Civil Services Examination. The mental agony and depression cannot be measured. It must be sky high and Himalayan heavy. In these circumstances, petitioner deserves compensation.

7. This Court in para 8 of the said judgment of Pankaj Sharma referred a case where Rs. 20,000/- was granted as compensation in the year 2004 to a student, who had appeared in Class-12 examination and whose answer book was not properly valued. In the opinion of this Court, the adequate compensation for the petitioner in 2011 shall be Rs. 75,000/- (Rupees seventy five thousand only), which shall be payable by the respondent Board to the petitioner within 30 days. This direction is passed taking note of the loss suffered by the petitioner, the mental agony and depression she has undergone for a long time, coupled with the fact that she missed opportunity to appear in PPT and Civil Services Examination. However, it is made clear that the respondent Board may recover this amount from the erring officers."

This order was unsuccessfully put to test in WA No. 46/2012 (Board of Secondary Education vs. Ku. Kanchan Parihar). The Apex Court also dismissed the SLP of Board bearing No. SLP (CC) 9845/2012 on 4.7.2012.

9. In the light of aforesaid, I find that the petitioner is entitled to get similar treatment. Accordingly, the respondents are directed to pay Rs. 75000/- (Rupees Seventy Five Thousand) to the petitioner as compensation within thirty days. This direction is passed by taking note of the prejudice and loss suffered by the petitioner, the mental agony and depression she has undergone for quite sometime. This is coupled with the fact that she missed opportunity to appear in PPT Examination. In Ku. Kanchan Parihar (supra) also, petitioner lost opportunity to appear in PPT Examination.

10. However, it is made clear that amount of compensation shall not be a burden on public exchequer. The respondent- Board shall recover the amount from erring official in accordance with law.

11. Petition is allowed to the extent indicated above.