
(2002) 02 MP CK 0078
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5259/99

Prem Ratan Agrawal

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 2 MPHT 570 : (2003) 1 MPJR 33 : (2002) 2 MPLJ 588

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : D.N. Shukla, for the Appellant; S.L. Saxena P.D. Gupta, Dy. A.G. and J.P. Pandey, for the Respondent

Final Decision : Partly Allowed

Judgement

Dipak Misra, J.

The petitioner, a young man in his teens, has approached this Court for issue of a direction to the Board of Secondary Education (for brevity "the Board") to take appropriate and suitable action against the person who had committed some mistakes and further to award Rs. 5 lakhs towards compensation for humiliation, mental shock and the loss sustained by the petitioner.

The facts as have been exposited in the writ petition are that the petitioner was a regular student of Class XII of Pandit Lajja Shankar Jha Higher Secondary School, Jabalpur. He appeared in the Higher Secondary School Certificate Examination from the Centre No. 71012 in the months of March-April, 1999. The petitioner has narrated about the marks obtained by him in various subjects of his academic career to highlight that he is a meritorious student. The result of the examination was declared in the month of May, 1999. He was in puzzlement when he came to know that he had been declared failed in the subject of Physics as he was awarded 39 marks out of 100. In all other subjects he was awarded distinction and was placed in First Division. A copy of the mark-sheet has been

brought on record as Annexure P-3. Being dissatisfied the petitioner applied for scrutiny of marks in the aforesaid subject by complying with the formalities. On the basis of the marks contained in Annexure P-3 he applied for taking admission in the Government Science College, Jabalpur but he was denied as his percentage fell short as the admission was closed at 79%. Being in this situation he suffered mental shock and was admitted in a hospital for treatment. When the matter stood thus, the Board in the month of October, 1999 informed the petitioner that he should deposit his old mark-sheet and collect a fresh mark-sheet of Class XII. In pursuance of the aforesaid letter he deposited his earlier mark-sheet and collected new mark-sheet from the Principal of the Government High Secondary School, Jabalpur in which he was awarded 70 marks out of 100 in place of 17 marks (Theory Paper) and was given distinction in all the subjects. Thus, he secured 365 marks out of 450 (above 81 % marks). The revised mark-sheet has been brought on record as Annexure P-5.

According to the writ petitioner he has actually secured 70 marks in the Theory Paper in Physics but was shown 17 marks and declared supplementary in that subject. Because of this action of the Board the petitioner has suffered immensely and there was enormous delay by the Board in giving the correct mark-sheet as a consequence of which he could not get admission in the College. It is set forth by him that he has suffered very severely and his entire career has been ruined. The petitioner hails from a very poor family and his one academic session has been lost due to obdurate attitude of the Board. It is urged in the petition that after obtaining rectified mark-sheet he approached the Principal of the Science College, Jabalpur but he was not admitted as by that time the date for admission was over. This created a turmoil and discomposure in his mind and he suffered from intolerable distress and mental shock and was totally excruciated. In this backdrop the petitioner has approached this Court for grant of compensation.

A return has been filed by the respondent Nos. 1 and 2, the Board of Secondary Education through its Chairman and the Secretary of the Board. It is put forth in the return that the Board of Secondary Education is a body corporate under the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 but it has no staff of its own for the purpose of conducting examinations, collection of answer books and examination of answer books. The Board works under the directions, supervision and control of the State Government. A reference has been made to Section 9 of the aforesaid Act. It is put forth that on the recommendation of the school authorities the Board sets up the examination centres and appoints Examination Superintendents, who are all officers of the Education Department of the State Government. It is the Examination Superintendent who deposes the school teachers for in vigilation purposes. The examiners are selected and appointed on the basis of the recommendation of the education authorities and they are Government employees and the Board has no power to take action against them except to make a report to the education authorities for any lapse committed by them. It is the further stand of the Board that the examiner awarded 70 marks to

the petitioner and the marks received are to be entered in the counterfoil of the examination by the examiner himself. The examiner/valuer entered 17 marks in the counterfoil against roll number 27102010 in the subject of Physics. The result was prepared through computer and it is on the basis of the counterfoil that feeding had taken place. As the valuer had entered 17 marks in the counterfoil same was reflected in the mark-sheet. It has been put forth that the answer script of the petitioner in the subject of Physics was valued by the valuer, namely, Smt. D. Kaur, Lecturer, Government Mahatma Gandhi Higher Secondary School, Barkheda (BHEL), Bhopal and she is responsible for entering incorrect marks in the counterfoil. The Board has no disciplinary control over the valuer who is a Government employee. It has been set forth that the board did serve a notice to show cause on the valuer, who admitted her guilt. This reply of the valuer has been brought on record. It is the stand of the Board that the matter has been reported to the State Government for taking suitable action. It is also stated that even if any compensation is granted the same should be realised from the valuer and not from the Board.

It is apposite to state here on the basis of the aforesaid affidavit this Court directed the petitioner to amend cause title and incorporate the name of Smt. D. Kaur as respondent No. 4. Thereafter notice was issued to Smt. D. Kaur and on 16-10-2001 this Court directed that the respondent No. 4 shall remain personally present before this Court.

In pursuance of the order of this Court the respondent No. 4 was present in person. She had very fairly agreed that she had written Annexure R-2 to the Board's authorities and the mistake had occurred. She had fairly admitted that she had expressed remorse in the letter and assured that she would not commit such mistakes in future.

I have heard Mr. D.N. Shukla, learned counsel for the petitioner, Mr. S.L. Saxena, learned senior counsel for the Board and Mr. J.P. Pandey, learned counsel for the respondent No. 4.

Mr. Shukla, learned counsel for the petitioner has submitted that the petitioner has suffered due to the insensitive attitude of the Board as there was delay in doing the scrutiny and the negligence shown by the valuer, the petitioner should be suitably compensated by both of them.

Mr. S.L. Saxena, learned senior counsel appearing for the Board has submitted that the Board conducts examinations of more than 10 lakhs students and number of applications are filed for scrutiny and hence, some time is consumed for doing the scrutiny/re-checking/re-totalling and when such colossal exercise is undertaken some leniency has to be shown and compensation should not be awarded.

Mr. P.O. Gupta, learned Deputy Advocate General for the State submitted that as the mistake has been owned up this Court may exercise any discretion as it deems fit.

Mr. Pandey, learned counsel appearing for the respondent No. 4 submitted that as the respondent No. 4 has repented and has assured not to commit this kind of mistake again, she should not be penalised. Smt. D. Kaur, the respondent No. 4 who was personally present while admitting the mistake had submitted for absolution.

As has been indicated before the facts are beyond the pale of controversy. In absence of any kind of dissension or disputation the core issue that arises for consideration is whether this Court should grant compensation as prayed for by the petitioner. Mr. Shukla, learned counsel for the petitioner has raised two prong attack, namely, the Board being languorous having caused delay in scrutiny is liable to pay compensation and secondly, the respondent No. 4 who enjoys the status of a teacher and put on a high pedestal, has evinced lackadaisical proclivity and, therefore, is also accountable and susceptible to pay the damages. The salience facet of the case is whether this Court should ignore and brush aside the mistake occurred and totally shut its eye to the harrowing and scaring experience experienced by the petitioner. There is no doubt that the petitioner was appalled and dismayed when he received the original mark-sheet. It is manifest that he applied for revaluation on 3-6-1999. It is also not in dispute that the Board issued the corrected mark- sheet on 25-10-99 as is evident from the Annexure P-9. The Board has taken a stand, it is the mistake of the valuer. The Board has not disputed in regard to the time spent in re-checking/scrutiny/re-totaling. It does not require Solomon's wisdom to arrive at the conclusion that there has been delay at the level of the Board. It was a pure, simple and straight- forward case of rechecking of the answer scripts. It was absolutely elementary and uncomplicated. The Act did not require any kind of adroit effort. The Board may take a stand that it has enormous task to do but it cannot be forgotten that more the duty, more the alertness. Any institution which has to perform a sanguine duty of conducting 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 Board has consumed four months to rectify the mistake. The delay caused by the Board, in my considered opinion, is inexplicable and unjustified. Not for nothing it has been said he who causes delay runs the risk because delay is dangerous and belated action does not easily get effused. Delay is ordinarily regarded as dangerous. The Board would have done well to expedite the matter of rechecking and in that event, the agony of the petitioner would irrefragably be diminished and possibly his one academic year would not have been lost. The loss caused to the petitioner cannot be made good by grant of compensation, but the Board has to be put to task. A statutory body has to remain awake and act with alacrity and should not take an ambivalent stance. It is its duty to ameliorate itself and conceive of positive paradigm. The Board cannot afford to pave the path of infractious and create a maze. It must understand the marrow of feelings and sensitivity of a young man. In the case at hand, as the Board has failed to do so. I am inclined to direct that it shall pay a

compensation of Rs. 10,000/- (Rupees Ten Thousand only) to the petitioner within a period of two months from today.

Now to the second spectrum, the respondent No. 4 has prayed for exoneration. She has clearly admitted that mistake had taken place. The question that falls for consideration is whether such a mistake is a pardonable one. It cannot be forgotten that the respondent was chosen to evaluate the answer scripts of the students. The duty of a teacher by no stretch of imagination, can be marginalised. The teacher is given respect because he performs a noble duty. Fate of students is dependent upon the action of the teachers. While evaluating an answer paper a teacher has to be extremely alert, absolutely astute, totally conceded, 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. The respondent No. 4, it does not seem as adhered to any of these qualities. She has not been careful while entering the marks in the tabulation sheet and by such an act an aspirant young man has suffered. True it is, she has felt the feeling of contrition and given assurance to emend herself. But should it be given weightage to give her total exoneration ? I do not think so. The feeling of repentance has to be given its due weightage but the grievance of the petitioner has to be vindicated.

Considering the totality of the circumstances I am inclined to direct that the respondent No. 4 shall pay compensation of Rs. 15,000/- (Rupees Fifteen Thousand only) to the petitioner within a period of two months from today. The amount shall be sent by her by way of bank draft in the address of the petitioner. If she fails to pay, it will be the duty of the Secretary, School Education Department to deduct the aforesaid amount from the salary of the respondent No. 4 and send it to the petitioner. That apart, the respondent No. 4 shall not be given the duty of the valuation of answer scripts for a period of three years from today. It is hereby made clear, in view of the aforesaid action being directed, no disciplinary action shall be taken against her.

Consequently, the writ petition is allowed in part. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.