

(2003) 01 OHC CK 0085
In the Orissa High Court
Case No : Writ Petition (C) No. 401 of 2002

Rajib Lochan Panda

APPELLANT

Vs

Council of Higher Secondary Education and Another

RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 01 OHC CK 0085

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : P.K. Rout and L. Bhuyan, for the Appellant; S.S. Das and R.K. Sahoo, for the Respondent

Judgement

1. The Petitioner appeared in the Higher Secondary Examination in March, 2002 conducted by the Council of Higher Secondary Education, Orissa (for short, "the Council"). He has secured 51 marks in Political Science Paper II (EOP) in the said examination. Not satisfied with the said marks in Political Science Paper II, the Petitioner has filed this writ petition for a direction to the opposite parties for revaluation/re-checking and re-addition of marks in the said paper. The Petitioner has stated in the writ petition that he has given very impressive answers satisfactorily to the questions of the said Political Science Paper II and he expected 70 marks but has been awarded only 51 marks. The Petitioner has further stated that his answer books have been evaluated by inexperienced teachers.

2. On 9.8.2002, we passed orders that before we decide to entertain the writ petition, we would like to know the system that the Council is following with regard to the valuation of answer scripts for the purpose of finding out as to whether the system followed by the Council ensures fairness and accuracy in evaluation of answer scripts.

3. Pursuant to the said orders passed by the Court, a counter-affidavit has been filed on behalf of the opposite parties stating therein the system of valuation

adopted by the Council. The relevant portion of the said counter-affidavit is quoted herein below:

(E) A detailed schemes of valuation, prepared by the experts are prepared for each and every paper to maintain uniform of valuation in all the zones. On the 1st day of valuation of Chief Examiner discusses with the Assistant Examiner about the Scheme of Valuation according to which the scripts are to be valued. Each examiner values only 5 scripts on 1st day and the Chief Examiner has to verify all these scripts and to give them instruction to rectify the mistake if any found with the assistant examiners. Each Examiner is given 20 Coded answer scripts, relevant mark strip (containing code number only), question paper, Scheme of valuation. After valuing 20 scripts the Assistant Examiners are to post these marks against the Code number printed in the mark strip. The Chief Examiner who works as a safety valve is instructed to examine at random 10% of the scripts valued by the Assistant examiners each day. He has also to verify all the answer scripts of students awarded marks above 80%. After award of marks by the Assistant Examiner, the scrutiniser verifies posting of marks, valuation of all questions and addition or totalling of marks on the scripts and put his signature on the scripts. After verification by the scrutiniser the assistant examiner enters the marks in the mark foil. The Assistant Examiner, Chief Examiner and Scrutiniser put their signature on the mark foil. After that the mark foils are handed over to the Zone Supervisor/Dy. Zone Supervisor in sealed packets which are collected by the deputed officers of the Council and sent to the Computer firm for processing of results without breaking the seals of the packets, containing mark foils. Results are processed in a Firm outside of the State.

The aforesaid averments of the counter-affidavit would show that a detail Scheme of Valuation is prepared after discussion between the Chief Examiner, Assistant Examiners for each and every paper to maintain uniformity of valuation in all the Zones and each examiner is given the answer scripts, relevant mark strip, question and the Scheme of Valuation for valuation of the answers. After valuing the answer scripts, the Assistant Examiners post the marks against the code number printed in the mark strip. The Chief Examiner examines at random 10% of the scripts valued by the Assistant Examiners each day. After award of marks by the Assistant Examiner, the Scrutiniser verifies the posting of marks, valuation of all questions and addition and totalling of marks on the scripts and puts his signature on the scripts. After verification by the scrutiniser, the Assistant Examiner enters the marks in the marks foil.

4. It is further stated that the Regulations of the Council do not provide for revaluation of answer scripts but re-checking/re-addition is permitted on deposit of requisite fees within thirty days from the date of declaration of results. In the counter-affidavit filed on behalf of the opposite parties, the system of re-addition of marks has also been described thus:

(G) During re-addition of marks on scripts, the papers are taken out, and subject

experts from nearby reputed Colleges are given assignment to come to the Council and to go through the papers carefully to check correctness in posting of marks and totaling of marks on the answer scripts. At the same time if any portion of an answer remains unvalued, then that portion is evaluated by the subject expert and marks awarded, if any are posted on the main script. Then the changed mark is awarded to the candidate and on the script, the subject experts certifies the reason of increase in marks and when no change is affected, a "No Change or "N.C." certificate is given by the subject expert with his signature. Change or no change of marks is communicated to the candidate immediately after re-addition is over. After a preservation time of six months these answer scripts are disposed off. All care was taken to ensure accuracy before publication of result."

It will be clear from the aforesaid system of re-addition of marks as adopted by the Council that at the time of re-addition, the papers are taken out and carefully checked to ensure that the marks have been correctly posted and totalled and if any portion of an answer remains unvalued, that portion is evaluated by the subject expert and marks are awarded and the changed mark so awarded to the candidate are intimated to the candidate if there is any change.

5. The Petitioner has applied for re-addition of marks in his answer scripts in Political Science Paper II, vide Annexure-2 series, to the Council. But Mr. Rout, learned Counsel for the Petitioner, submitted that the Petitioner will not be satisfied only with re-addition of marks and that this is a fit case in which the Court should direct the opposite parties to re-value the answer script of the Petitioner in Political Science Paper II. He relied on a decision of the Division Bench of this Court in *Manas Ranjan Dash and Others Vs. Council of Higher Secondary Education and Another*, , in support of his submission that a direction for re-valuation of the said answer script of the Petitioner should be given by the Court. He further submitted that the Petitioner has filed Misc. Case No. 279 of 2002 for directing the opposite parties to produce the answer script of the Petitioner in the said Political Science Paper II for proper adjudication of the case.

6. Mr. S.S. Das, learned Counsel appearing for the opposite parties, on the other hand, submitted that in the absence of any provision in the Regulations for revaluation of answer scripts, the Court cannot direct such revaluation of answer scripts. Mr. Das submitted that in the case of *Jasodhara Padhi*, the High Court had directed revaluation of answer scripts and modification of the marks of the Petitioner on the basis of such revaluation, but when the matter was carried in appeal, the Supreme Court held that in absence of any rule permitting revaluation of answer papers, no examinee has any right to insist for revaluation of his answer papers and the Court should not direct for revaluation of answer papers of an examinee unless there are compelling reasons for the same. Mr. Das also cited the decision of this Court in *Sri Chitta Ranjan Mishra Vs. Utkal University and another*, , for the proposition that the assessment of a candidate of his own performance in the examination cannot be ground for the Court to

direct revaluation and it is only in exceptional and rare cases where compelling reasons are shown, will the Court direct revaluation and not otherwise. He also cited a recent Division Bench decision of this Court in Soumya Ranjan Pattanayak, Priyadarsini Samanta and Manojit Gharai Vs. Chairman, Admission, J.E.E. (E and M) 2002, R.E.C. and Others, , wherein it was held that unless specific allegations with supporting material are forthcoming creating a clear doubt in the mind of the Court about any possible error or omission in the matter of evaluation of answers, it will not be possible or proper for the Court to interfere with the whole examination process.

7. In the case of Jashodhara Padhi (supra) cited by Mr. Das, learned Counsel for the opposite parties, the candidate had passed the +2 Science Examination conducted by the Council of Higher Secondary Education, Orissa, securing First Division with 756 marks out of 900 marks but she was not satisfied with the marks awarded to her. She therefore, filed an application for verification and addition of marks awarded to her in seven papers. The Council of Higher Secondary Education, Orissa, informed the Petitioner that on such verification/ addition of marks her marks in Mathematics Paper II had been revised from 79 to 82 but the marks in other papers were found to be correct. The candidate filed a writ petition under Article 226 of the Constitution and the High Court issued instructions to a retired Professor of Utkal University to revalue the answer scripts of the candidate in English Papers I and II and after such revaluation, the candidate was awarded 71 marks in place of 50 marks in English Paper I and 79 marks in place of 46 marks in English Paper II. On the basis of such revaluation, the High Court directed the Council of Higher Secondary Education, Orissa, to modify the marks secured by the candidate. When the matter was carried in appeal, the Supreme Court held,

...There is no permitting revaluation of answers given by a candidate in the absence of any such rule, no examinee has a right to insist for the revaluation of his answer books. The Council of Higher Education appoints examiners for examining answers given by the examinees and they are authorised to award marks in accordance to their judgment and discretion. Since the rules do not provide any revaluation of the answers, the marks awarded by the examiners appointed by the Council acquire finality and no other authority has power to reassess the same for the purpose of awarding marks. In such a case the Court should not direct for the revaluation of the answer books of an examinee unless there are compelling reasons for the same. If there are allegations of mala fide which are founded on good grounds, or if it is found that the answer books of an examinee could not be assessed by the examiner, the Court may direct for the revaluation of the answers. However, this should be done only in rare cases where a very strong ground is made out for adopting such a course. But even if the Court finds it necessary to get the answer books revaluated it must be carried out by the examiners approved and appointed by the examining authority and not by an outsider agency.

It is thus from the aforesaid judgment of the Supreme Court in the case of Jashodhara Padhi that where the rules do not provide for revaluation of answers, the marks awarded by the examiner appointed by the Council acquires finality and no other authority has the power to re-assess the same for the purpose of awarding marks and in such a case, the Court should not direct for revaluation of the answer books of an examinee unless there are compelling reasons for the same. The Court further held that revaluation can be directed by the Court only in rare cases where a very strong ground is made out for adoption of such a course.

8. In Manas Ranjan Dash's case (supra), the Division Bench took note of the aforesaid decision of the Supreme Court in the case of Jashodhara Padhi but held that the facts involved in that case were different and the Apex Court was not confronted with the problems of the magnitude posed in the case at hand. The Division Bench further held.

...In the absence of any provision, revaluation cannot normally be directed to be done. But it would be arbitrary to leave the students without a remedy, even though there is apparent and tell-tale improper evaluation. Merely because law does not permit demand of revaluation by candidates, it does not provide invincibility to the Council. Courts are not helpless in such matters and on being satisfied that injustice is being done, a time may come when Courts would be compelled to lift the veil of protection and direct the authorities in charge of examinations for revaluation. Instances are there when Courts, on being satisfied about the apparent fallacy in award of marks, have directed revaluation....

A reading of the aforesaid observation of the Division Bench of this Court also shows that it is not in every case where revaluation and it is only where there is apparent fallacy in the award of marks or tell-tale improper evaluation will the Court direct revaluation to remedy the injustice caused to the candidate.

9. Thus, the Court has to examine in the present case as to whether there are compelling reasons or tell-tale improper evaluation or apparent fallacy in the award of marks so as to call for a direction to the opposite parties to re-evaluate the answer books of the Petitioner in Political Science Paper II. In the writ petition, the only case made out is that the Petitioner had given very impressive answers satisfactorily to the questions in the said Political Science Paper II and expected 70% marks but has secured only 51 marks. But we have seen from the portion of the counter-affidavit quoted above that for every paper a detail Scheme of Valuation (model answers) are prepared by the experts to maintain uniformity of valuation and the answer papers of the candidates are valued keeping in mind the Scheme of Valuation After valuation, the Scrutiniser and the Chief Examination also check the answer papers. Since the system of valuation followed by the Council has built-in provisions for ensuring uniform and proper valuation of answers, the Court will not direct revaluation unless there are compelling reasons for the same. The Petitioner's expectation of higher marks than what has been awarded also cannot be a compelling reason for directing

reevaluation of his answer script.

10. The Petitioner has prayed for production of his answer script in Political Science Paper II. But in *Farah Mustafa Vs. Secretary, Board of High School and Intermediate Education, Allahabad and Another*, a Division Bench of the Allahabad High Court has held:

9. Before parting with the case, we must observe that looking to the functions being performed by the Board, the Court should not normally pass an order for production of answer-books in Court. The Board conducts the examination of over 30 lakhs students who appear in the High School and the Intermediate examinations every year. There are five subjects in each class and each subject has two papers and thus a student gives examination in at least 10 papers. This means that there are over three crores answer-books of the students. The examinations are held in March/April and the results are declared in June. The Board has to perform a gigantic task which it is doing admirably. If the High Court starts entertaining requests for production of answer-sheets in Court, it will not only cast an onerous duty upon the Board but would also give rise to spate of litigation in this Court as many disgruntled or dissatisfied students may like to take a chance by filing a writ petition and getting an order for production of answer-books in Court with the object of manipulating the affairs as in the present case. We are, therefore, of the opinion that except in very rare cases where the Petitioner makes out a very strong and foolproof case no order for production of answer-books in Court should be passed.

We agree with the view taken by Allahabad High Court in the aforesaid judgment that the Court should not normally pass an order for production of answer books in Court and only where a very strong and rare case is made out, should the Court pass an order for production of answer script of a candidate. This is not a very strong and rare case justifying an order for production of answer book of the Petitioner in Court.

11. For the aforesaid reasons, we are not inclined to direct reevaluation or production of answer book of the Petitioner in Political Science Paper II, but we direct that the result of re-checking/re-addition of marks applied for by the Petitioner under Annexure-2 will be intimated to the Petitioner within fifteen days from today if the same has not been intimated to him already.

The writ petition accordingly stands disposed of. Considering however, the facts and circumstances of the case, the parties shall be their own costs.