

(2000) 09 GAU CK 0015

In the Gauhati High Court

Case No : Writ Appeal No"s. 334 and 336 of 2000 in WP (C) No. 3617 of 2000

Rohit Purkayastha and Others

APPELLANT

Vs

Board of Secondary Education, Assam and Others

RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 GLT 83

Hon'ble Judges : Brijesh Kumar, C.J;D.N. Choudhury, J

Bench : Division Bench

Advocate : N. Dutta, M. Bhuyan and H. Das, for the Appellant; G.A. Assam and T.C. Chutia, for the Respondent

Judgement

Brijesh Kumar, C.J.—These appeals are preferred against the judgment and order dated 21.7.2000 passed by the learned Single Judge in WP(C) No. 3617/ 2000. It appears that several writ petitions were disposed of by a common order.

2. We have heard Shri N. Dutta, learned counsel for the appellants and Shri T.C. Chutia, learned counsel appearing for the Board of Secondary Education, Assam.

3. The grievance which had been raised by the petitioners in the writ petition related to marks as allotted to them in practical paper in the subject of Fine Arts. According to the appellants, there is suspicion of under marking in the above noted paper. Certain averments have been made indicating the reasons. But at the very outset it may be indicated that it is not necessary to go into the reasons. The facts, however, which according to the petitioners, led to the inference of general under marking in the practical paper of Fine Arts are the most of the students who appeared in the said examination from centre at Gopal Boro High School have been declared failed in that paper. The learned counsel appearing for the respondent Board on the basis of instructions received, informs that in all 218 candidates had appeared in the practical of Fine Arts from the said centre, namely, Gopal Boro High School, out of whom 107 students had passed in the said paper and the remaining 111 students had failed. Learned counsel for

the appellants has then drawn our attention to the averments made in paragraph 5 of the petition which indicate that the appellants along with others had obtained very good marks as high as up to 76% in the selection test held in December, 1999. A perusal of the averments made in the said paragraph shows that students had obtained marks between 50 to 76%. In connection with the averments denial on the part of the Board is only to the extent that the said examination was not conducted by the Board but was conducted by the Inspector of Schools and further that the percentage of marks indicated is not in the practical of Fine Arts but total performance of all the subjects. It is, however, indicated on behalf of the appellants that in general it shows the merit of the students. It is submitted on behalf of the appellants that normally such high percentage of failure in the practical paper of Fine Arts is unusual, more particularly from one centre giving rise to the suspicion that there has been under-marking.

4. It appears that the learned Single Judge while dealing with the matter, considered the submissions made and called for the answer sheets of the practical paper. The learned Single Judge at the very outset observed on scrutiny of the answer sheets that there was no palpable error inasmuch as the students did not give answer according to the question. On the prayer of the learned counsel for the respondent, 10 days time was allowed to file affidavit. It was then observed that there was no occasion to grant any interim order. Later on it is observed that as agreed, the writ petitions would stand disposed of with direction that the students who were entitled to the compartmental examination in Fine Arts, they should be provided an opportunity and the compartmental examination was to be held within 2 months.

5. Learned counsel for the appellants submits that the observations that "the students did not give answer according to the question" is not correct in so far as the answer sheets would show that they have drawn the drawings in accordance with the questions. In view of this argument, we had directed the learned counsel for the Board to make available the answer sheets of the appellants. The same were produced before us. We perused the question paper and we find that in most of the answer sheets the students had drawn figure of a hill-girl with load as required in one amongst other questions. We also found that in some answer sheets, according to the question, birds were depicted taking food under a tree. All the students have answered the other question depicting border of a saree. Therefore, it is submitted that it will not be correct to say that the students had not drawn the drawings according to the questions. The assessment of quality of the answer and the marks that they may be awarded is a different question, but in case a picture is drawn as required by the question, it may be difficult to say that the students had not answered according to the question. We also find that the students have used only three colours as permitted by the question paper in respect of the second question. Out of the 11 answer sheets placed before us, perhaps 2/3 at the most may be said to have not drawn according to the question and the rest of them had drawn according to the question. Therefore,

we find force in the submission made on behalf of the appellants that the observation that the answers were not in accordance with the question is not correct.

6. We then come to the other part of the matter, namely, the scope of interference in such matters by the Court. Needless to emphasise more nor we find it necessary to burden this judgment with citations to indicate that the scope of interference is limited and in such matters the opinion of the experts in the subject has to be generally accepted. But in cases where some suspicion may arise about fair assessment of the answers in general, there would certainly, be no restriction for the Court to remove such suspicion. Learned counsel for the appellants has rightly submitted that it is not a case where it is being canvassed that instead of 50 marks one should have been awarded 55 or where 30 marks have been awarded, 35 or 40 marks should have been awarded. This case does not involve any such question of individual assessment of the answers given by the students. It is a matter where it is to be seen whether a suspicion of under-marking in general arises or not.

7. Learned counsel for the respondent has referred to Regulation 48 which provides that there would be no reevaluation of the scripts. In connection with that learned counsel for the respondent referred to a decision reported in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, The provision that there would be no revaluation as involved in that case was upheld. The relevant observations as made in paragraphs 24 and 26 have been placed before us. While recognising that there may be fair play in awarding marks matching the performance of the students, it has been observed that what constitutes fair play depends upon the facts and relating to each particular given situation. It is then held that "if it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the Courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play." In context with the above observation made by the Supreme Court, the learned counsel for the appellants refers to the provisions of the Regulations framed by the respondent Board more particularly to Regulation 31 which makes a provision of Head Examiners. Regulation 31 is quoted below:

"31. DUTIES OF HEAD EXAMINERS :

(i) The Head Examiner shall be required to be present every day at the scrutiny works..... on the first day he shall address the Examiners..... and brief them about the evaluation work.

(ii) The Head Examiner shall of the answer scripts examined by each examiner to ascertain the standard of his/ her examinations and ensure that Instructions have been carried out fully by the examiner.

(iii) If, as a result of examination as aforesaid, the Head Examiner finds any under-marking or over-marking in any paper, he may add or deduct, as the case may be, such marks as he/ she deems justified provided that total addition or deduction shall not exceed 10% of the total marks of the paper.

If the Head Examiner is of the opinion that a packet requires re-examination, he/ she shall take necessary action and submit a note in his/her report.

(iv) On conclusion of his works, the Head Examiner shall under confidential cover submit a report in prescribed form to the Board as to the performance of the examiners, scrutinisers and examinees.

(v) He/she shall rectify the mistake as referred to In clause 34 below."

A reference then has been made to Regulation 32 which Indicates duties of the examiners and Clause (iii) of Regulation 32 is quoted below:

"(iii) It shall be the duty of the examiner to examine the answer script with due care, calmness and precision, justice, equity and fairness, and without any bias, prejudice and emotion and to maintain strict secrecy about the answer scripts."

On the basis of the above provisions it is submitted that there may be cases where there may be under-marking or over-marking of the answers. In the light of the observations made by the Hon"ble Supreme Court, to check this kind of uncertainty or unfairness, check and balance have to be there. Learned counsel for the respondent Board Shri Chutia, however, submits that so far practical examinations are concerned, there is no Head Examiner. For this purpose he placed before us Regulation 25 which reads as under:

"25. PRACTICAL EXAMINATION :

In the Examinations of Craft subject and in Music, Dance, Agriculture, Home Science, Fine Arts etc. with practical papers mark as prescribed by the regulations shall be reserved for testing the ability of the candidate to handle scientific apparatus and carry out practical experiments. Such practical examinations shall be conducted by external and internal examiners."

However, we do not find any such thing in the above noted provision providing that there shall not be Head Examiner. May be that in certain practicals it may not be possible to have re-checking or cross-checking, but in examinations like Fine Arts where answer sheets may very well be available for verification for any kind of matter, it is not understandable as to why Head Examiners would not be there. The duties of the Head Examiners as indicated in Regulation 31 indicate that he shall address the examiners and brief them about the evaluation work. In this connection, it is submitted that for practical examination there has to be one external examiner as well. It Is, therefore, submitted that there was no occasion

for any Head Examiner addressing the examiners or to oversee and check or crosscheck as to whether there has been any under-marking or not. It is further submitted that whatever marks have been awarded by the practical examiners, they are final. In case such an argument is accepted and the checks and cross-checks as required are not there yet to make the marking as done absolute, permitting no re-evaluation or re-checking, that would not be permissible. The possibility of under-marking or over-marking is not ruled out. Such an eventuality cannot be left without any remedy or check or crosscheck. In any case, according to the learned counsel for the respondent, this provision was not applicable in so far as it relates to practical examination in Fine Arts that is to say, either way this check was not available to the appellants. In case where it may be shown or suspicion may arise about under-marking or over-marking it would be open to the Courts to look into the matter in the Interest of Justice and fair play. Such a principle is discernible from other two decisions relied upon by the learned counsel for the appellants reported in *Kanpur University and Others Vs. Samir Gupta and Others*, and *Abhijit Sen and Others Vs. State of U.P. and Others*, . Yet in another case reported in *State of Orissa v. Prajnaparamita Samanta*, (1996) 7 SCC 106 President, Board of Secondary Education v. D.Suvankar 2006 JT 10 the scope of re-evaluation has been considered and it has been found to be permissible in appropriate cases.

8. In the present case, as observed earlier, we find that a general averment has been made about under-valuation of answers in the Fine Arts practical examination. The answer sheets are available and have been perused by us. The observation made by the learned Single Judge that the students did not answer according to the question is not correct. The majority of the appellants whose answer sheets have been placed before us, they have drawn the picture according to the question. The learned Single Judge, however, did not advert to the other aspect of the matter whether there was any possibility of undervaluation or not. In connection with that, it may be observed that generally possibility of such a high percentage of failure may not be there in practical or drawing of Fine Arts. On the own showing of the Board, 111 student failed out of 218. Thus the failure was more than 50%. A perusal of the answer sheets also shows that even though the drawing was in accordance with the questions the students have been awarded even 4/5 marks out of 40 marks. These circumstances do not inspire confidence though as observed earlier, we are not probing into the reasons as sought to be shown by making averment in the petition. The fact, however, remains that on mere perusal of the answer sheets of the appellants it can well be seen and said that out of 11 at least 8 candidates had drawn the drawings in accordance with the questions, for example, a hill-girl with her load, birds taking food under a tree and border of a saree which were drawn by all the candidates. A student may not be entitled for very good marks, say 70, 80 or 90% because of some technical flaws or combination of colour etc.. which would be a matter for experts to examine, but it cannot be said that they deserve the marks as awarded and indicated above that is 4, 5 and 7 etc. out of

40 marks.

9. Learned counsel for the appellants submits that the learned Single Judge has only provided that a compartmental examination of the students who may be entitled for the same according to the rules be held within 2 months. It is submitted that it does not solve the problem. A student who passes the HSLC examination in compartmental examination is not awarded any division. It is submitted that many of the appellants otherwise have obtained first division marks or high percentage of marks, but they will not be awarded any division, instead they will be indicated to have pass the HSLC examination and for all practical purposes they will go down even to those who get third division as it is indicated in the certificate issued that they have passed the HSLC examination in compartmental examination. This would be there throughout their career causing prejudice at every stage.

10. Considering all the facts and circumstances, in our view, such circumstances have been made out which throw some suspicion as to the under-making in the Fine Arts practical examination held at Gopal Boro High School centre as a result of which apparently more than 50% of the students have failed and have been awarded very low marks even though apparently they had drawn the drawings according to the question paper. In our view, in such a case where a large number of students seem to have been affected by reason of apparent under-marking and there is no safeguard which is provided or in case it is there, none has been provided as according to the respondent there would be no Head Examiner, we feel that It would an appropriate case for interference so that the suspicion which has been created is cleared and the young students, their interest may not suffer for all time to come as their career is yet to start. We, therefore, set aside the order passed by the learned Single Judge and provide that the Board shall appoint a committee of two qualified persons to check the answer sheets of Fine Arts practical to crosscheck the marks as awarded to the appellants and if necessary, the said committee may award the marks afresh as thought fit, in accordance with the quality of answer made by the appellants. The committee would consist of persons other than the examiners who had initially examined the answer sheets. This exercise shall be undertaken and completed within 6 (six) weeks from today.

11. Parties to bear their own cost.