

(2003) 03 AHC CK 0123
In the Allahabad High Court
Case No : C.M.W.P. No. 48080 of 2002

Sarika Sharma

APPELLANT

Vs

Board of High School and Intermediate Education and
Another

RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 15

Citation : (2003) 2 AWC 1479

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : M.M.L. Srivastava, for the Appellant; M.S. Niranjana, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri M. M. L. Srivastava appearing for the petitioner and Sri M. S. Niranjana learned Standing Counsel appearing for the respondents.

2. Counter and rejoinder-affidavits have been exchanged and with the consent of the parties, the writ petition is being finally decided.

3. By this writ petition, the petitioner has prayed for issuing a writ of mandamus commanding the respondents to correct the result of the petitioner in the light of the amended Regulation 20 Chapter XII and declare her pass in the intermediate examination of 2002. Another relief claimed is for issuing a writ of mandamus commanding the respondents to scrutinise the answer book of Physics-I paper of the petitioner of intermediate examination of 2002 and issue correct mark-sheet and certificate accordingly.

4. Facts giving rise to the writ petition, briefly stated, are : petitioner appeared in intermediate examination of 2002 conducted by Board of High School and Intermediate Education, U. P. The petitioner was declared failed in the aforesaid examination. In Physics-I paper, the petitioner secured zero marks out of 35 and

in second paper secured 15 marks out of 35. The petitioner secured 30 marks out of 30 in physics practical. Petitioner's case in the writ petition is that she was entitled to be passed after awarding necessary grace marks in accordance with amended provisions of Regulation 20 of Chapter XII but she was not awarded any grace marks and was declared failed under erroneous assumption of law. The petitioner applied for scrutiny of marks in Physics-I paper. The petitioner prayed that answer book of the petitioner be produced before the Court.

5. This Court vide an order dated 14th November, 2002 directed the respondents to produce the answer-sheet of the petitioner in respect of Physics-I paper.

6. The answer-sheet of the petitioner of Physics-I paper was produced on 17.12.2002 before the Court. The Court perused the original record and recorded in the order passed on 17.12.2002 that there is no error in awarding of marks. In view of the fact that no error was found in awarding of marks, the Court also recorded the submission of the petitioner that she should be given grace marks according to regulations as amended on 27th October, 1997.

7. The learned counsel appearing for the petitioner raised following submissions :

(i) The petitioner is entitled for award of grace marks in physics theory in accordance with Regulation 20 of Chapter XII of the Regulations ; consequently the petitioner was entitled to be declared as pass.

(ii) There is no requirement in the regulations framed under the U. P. Intermediate Education Act, 1921 for possessing of minimum passing marks both In theory and practical of a subject.

8. The learned Standing Counsel refuting the submissions of the counsel for the petitioner submitted that in theory paper of physics minimum passing marks were 23, hence the petitioner was declared fail. It was further submitted that for becoming eligible for grace marks in physics theory papers at least 17 marks were required and since the petitioner secured only 15 marks in physics theory papers, she was not entitled for grace marks. Relying on regulations as amended on 27th October, 1997, It was submitted that for becoming entitled of grace marks, 25% marks separately in theory and practical were required. It was submitted that for 2002 examinations, the Information regarding minimum passing mark was published. With regard to scrutiny as applied by the petitioner, it was stated by learned Standing Counsel that scrutiny was conducted by the expert and there was no change In the marks of the petitioner.

9. I have considered the submissions of both the parties and perused the record.

10. The first submission of counsel for the petitioner is with regard to entitlement of grace marks to the petitioner in physics theory papers. The Board of High School and Intermediate Education (hereinafter referred to as Board) has been constituted under the U. P. Intermediate Education Act, 1921 (hereinafter referred to as the Act). Section 15 of the Act provides for regulation making power of the Board. Section 15 (1) provides that the Board may make

regulations for the purpose of carrying into effect the provisions of the Act. Sub-section (2) of Section 15 enumerates certain specific fields covering the regulation making power without prejudice to the generality of the power. Sub-clause (e) of Sub-section (2) of Section 15 provides :

"(e) the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates."

Various regulations have been framed u/s 15 of the Act by the Board. Chapter VI of the regulations relates to examination committee. Regulation 2 of Chapter VI enumerate various duties of the examination committee. Regulation 2 (i) empowers the examination committee to frame rules for the award of grace marks. Chapter VI-A provides for Results Committee. Regulation 2 of Chapter VI-A provides that under the approval and control of the Board it shall be one of the duty of the Result Committee to reduce the minimum passing marks where necessary. Chapter XVI of the Regulations provided that detail information regarding examination of the Board shall be given in Prospectus (Vivaran Patrika) which will be issued by the Secretary of the Board. Chapter XII provides for grant of grace marks for declaring a candidate pass. Regulation 20 of Chapter XII was amended by the Board vide its notification dated 27th October, 1997 copy of the amended regulation has been filed as Annexure-5 to the writ petition.

11, Amended Regulation 20 of Chapter XII which is relevant for the present case is extracted below :

20- ifj"kn dh gkbZ Ldwy rFkk b.VjehfM,V ijh{kk ds fdh ,d fo"k; esa vuqrh.kZ ifj{kkFkhZ dks fuEu O;oLFkkvkssa ds vuqlkj vuqxyzgkad ns; gksxk %

?d? ifj"kn dh ,d ijh{kk esa izfo"V ijh{kkFkhZ ;fn dsoy ,d fo"k; ftlesa iz;ksxkRed ijh{kk ugha gksrh gSa] esa vuq?kh.kZ jgs vkSj ml fo"k; esa mls 25 izfr"kr ;k vf/kd vad feys gksa rks mls vuq?kh.kZ gq, fo"k; esa ikB;?e lfefr }kjk fu/kkZfjr m?kh.kk?d rd vad ikus ds fy, mlds lEiw.kZ ;ksx ds vk/kkj ij ijh{kk lfefr }kjk fu/kkZfjr le;≤ ij fu/kkZfjr fu;eksa ds vuqlkj vko";d vad vuqxyzgkad ds :i esa nsdj m?kh.kZ ?kksf"kr fd;k tk;sxk vkSj Js.kh nh tk;sxh A

?[k? ifj"kn dh ,d ijh{kk esa izfo"V fdh ijh{kkFkhZ dks dsoy ,d fo"k; ftlesa fyf[kr ds lkFk&lkFk iz;ksxkRed ijh{kk Hkh gksrh gSa] bu fo"k;ksa esa ijh{kkFkhZ dks fyf[kr rFkk iz;ksxkRed ijh{kk esa vyx&vyx 25 izfr"kr vad ikuk vfuok;Z gksxk A bl izdkj iz;ksxkRed nksuks esa vyx&vyx 25 izfr"kr vad izkIr djus ij og vuqxyzgkad ds fy, vgZ gksxk A izfrU/k ;g gS fd ijh{kkFkhZ dks ,d [k.M fyf[kr vFkok iz;ksxkRed ,d esa gh vuqxyzgkad ns; gksxk A fdh Hkh n"kk esa nksuksa [k.Mksa ? fyf[kr rFkk iz;ksxkRed? esa vuq?kh.kZ gksus ij vuqxyzgkad ns; ugha gksxk A

?x? ifj"kn dh gkbZ Ldwy rFkk b.VjehfM,V ijh{kk esa Js.kh iznku dh ;kstuk fuEuor gksxh %

lEeku lfgr m?kh.kZ gksus ds fy, okafNr lEiw.kZ ;ksx dk 75 izfr"kr ;k vf/kd U;wure vad

izFke Js.kh ds fy, okafNr U;wure vad ;ksxkad dk 60 izfr''kr

f}rh; Js.kh ds fy, okafNr U;wure vad ;ksxkad dk 45 izfr''kr

r`rh; Js.kh ds fy, okafNr U;wure vad ;ksxkad dk 33 izfr''kr tgkW blds izfrdwy mYys[k u gks A**

12. The regulations which are statutory in nature now specifically provides the conditions under which grace marks can be awarded to a candidate. Regulation 20 (Kha) is with regard to grant of grace marks in those subjects in which apart from theory, practical examination is also held. Regulation 20 (Kha) specifically provides that it is necessary to secure 25% marks separately in both theory and practical and the candidate securing 25% marks both in theory and practical examination will be eligible for grace marks. Regulation further provides that in only one part, i.e., either theory or practical grace mark will be available.

13. The mark-sheet of the petitioner copy of which has been filed as Annexure-1 to the writ petition shows that the petitioner has secured 15 marks in theory and 30 marks in practical. Physics papers are of 100 marks, 70 marks for theory and 30 marks for practical. According to Regulation 20 (Kha) for becoming eligible for grant of grace marks, 25% marks were required separately in practical and theory. 25% marks of 70 comes to 17.5 marks and the petitioner having secured only 15 marks in physics theory, she does not become entitled for grant of grace marks in accordance with Regulation 20 (Kha). According to amended regulation, the petitioner was not entitled for any grace marks and Board has rightly not awarded any grace marks to the petitioner. In the writ petition, there is no challenge to the amended regulation dated 27th October, 1997 and the petitioner is basing her claim for award of grace marks in accordance with the amended Regulation dated 27th October, 1997. The argument of the counsel for the petitioner that petitioner is entitled for grace marks in accordance with amended Regulation 20 of Chapter XII is without any substance. The Regulation 20 (Kha), as noted above, clearly disentitles the petitioner for grant of grace marks.

14. The next submission of counsel for the petitioner that there is no requirement of minimum passing marks both in theory and practical needs to be considered. The petitioner in the writ petition has not set up the claim that there is no requirement of passing of separate marks in theory and practical rather in paragraph 13 of the writ petition, it has been stated that prior to 1997 no regulation was framed prescribing separate minimum passing marks in theory and practical. It was further stated in the said paragraph that Regulation 20 of Chapter XII was amended Incorporating the minimum passing marks In practical and theory separately. However, during the course of argument, learned counsel for the petitioner raised the submission that there is no requirement of having passed separately in practical and theory by a candidate, hence the petitioner was entitled to be declared pass since she has secured more than 33% marks in total. Regulation 20 (Ga) itself provides that for passing a candidate in first division 60% marks are required, for passing in second division 45% marks are

required and for passing in third division 33% marks are required.

15. Learned Standing Counsel has produced for the perusal of the Court, the notification issued by Secretary of the Board dated 10th February, 2000 containing information with regard to 2002 Intermediate examinations. The said notification at page 49 contemplates that minimum passing mark in physics theory are 23 and minimum passing marks in physics practical are 10. Clause 2 at page 49 states :

^^?nks? b.VjehfM,V ijh{kk o"kZ 2002 Is fuEufyf[kr fo"k;ksa esa iz;ksxkRed rFkk fyf[kr ijh{kkvksa ds U;wure mRrh.kk?d fuEuor fu/kkZfjr fd, x, gSa %

fyf[kr ijh{kk

iz;ksxkRed ijh{kk

fo"k; iw.kk?d U;wure mRrh.kk?d iw.kk?d U;wure mRrh.kk?d

1- Hkqxsy 70 23 30 10

2- -----

6- HkSfrd foKku 70 23 30 10

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16. The notification dated 10th February, 2000 shows that it contains details of course and books prescribed for examination. The learned counsel for the petitioner contended that the said notification has been issued by Secretary who has no jurisdiction to fix any minimum marks. The notification dated 10th February, 2000, as noted above, contain details of course and books prescribed for various examinations. According to the regulations, there are several committees including committee for prescribing courses for different subjects. The notification dated 10th February, 2000 issued by Secretary of the Board contains details of various information and requirement pertaining to examination. The Secretary of the Board has only issued the notification compiling the various details. The details contained in notification is in accordance with the decisions taken by various committees of the Board in accordance with the regulations. For example, various courses prescribed and books prescribed are not by Secretary of his own but the said Information has been issued by Secretary as prescribed by authorised committees and the Board. The information contained at page 49 of the notification dated 27th October, 1997, as referred above, clearly shows that aforesaid requirement has been prescribed. The submission of counsel for the petitioner is not correct that said requirement has been prescribed by the Secretary. The Secretary has only issued notification containing the said prescription. Further Chapter XVI empowers the Secretary to issue detailed information in prospectus regarding examination. The Notification dated 10th February, 2000 has been issued by the Secretary in

accordance with Regulation 1 of Chapter XVI. The contention of counsel for the petitioner that said requirement is by Secretary is without any basis.

17. It is relevant to note that in the writ petition, the petitioner has not challenged the notice dated 10th February, 2000 issued by Secretary of the Board. The details as published by notification dated 10th February, 2002 is by the Secretary in accordance with Regulation 1 of Chapter XVI containing various details as prescribed by the competent authorities. As noted above, the Board and the Committees framed by the Board have power to lay down conditions for passing examination and the notice dated 10th February, 2002 is only compilation of the said requirement prescribed under the regulations framed under the Act. Thus the prescription of minimum passing marks in physics theory and practical for intermediate examination of 2002 is in accordance with law and no exception can be taken to the said prescription. The contention of counsel for the petitioner that there is no requirement of passing separately in theory and practical has no substance.

18. In view of the foregoing discussions, none of the submissions raised by counsel for the petitioner has any substance.

19. The writ petition lacks merit and is dismissed.