

(2010) 07 CHH CK 0008
In the Chhattisgarh High Court
Case No : Writ Appeal No. 70 of 2010

Shiv Kumar Dewangan

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2011) 1 CGLJ 144 : (2011) 2 MPJR 13

Hon'ble Judges : Nawal Kishore Agarwal, J; I.M. Quddusi, J

Bench : Full Bench

Judgement

I.M. Quddusi, J.

Heard.

The instant writ appeal has been filed against the order dated 08-03 -2010 passed by learned Single Judge in W.P.(C) No. 7451/2009 dismissing the writ petition filed by the Appellant herein.

Brief facts of the case are that the Appellant herein appeared in the written examination on 06-12-2009 which was conducted by Respondent No. 2 for filling up the vacant posts of Shiksha Karmi Grade II. The time of the examination was scheduled to be fixed at 11-00 A.M. to 2-15 P.M. At 11-00 A.M.. the question papers were distributed to the candidates. There was objective type of questions to be solved by the candidates in a separate answer sheets. At the front of the question paper instructions were given to the candidates. For this purpose, instruction No. 4 is relevant which is as under:

4. After opening the seal, ensure that the Question Booklet contains total No. of pages as mentioned above and printing of all the 200 questions is proper. If any, discrepancy is found, please inform the invigilator and get the correct booklet.

There are 200 questions to be answered carrying 200 maximum marks. All the questions were compulsory and carry one mark each, as mentioned in instruction No. 7 which is quoted as below:

7. There are 200 objective type questions in this booklet. All questions are compulsory and carry one mark each.

The examination centre of the writ Appellant was Govt. Girls Higher Secondary School, Manendragarh, District Koriya, Centre Code No. 1224.

After about 1 1/2 hours of the examination, the writ Appellant made a complaint to the invigilator of the concerned room No. 10 of the said Centre regarding discrepancies in the question paper. Thereafter, the invigilator of the said room has reported the matter to the Incharge of the centre and accordingly the said Incharge of the said Centre contacted the controller of the district and after seeking instructions from the office of Respondent No. 2-Controller, the controller of the District has directed the Centre Incharge to open other question paper of Set-B to provide the same to the Petitioner/Appellant. Accordingly, four question papers of set-B were opened by the Centre Incharge but the serial number of these four question papers were not similar to the question paper which was already solved by the writ Appellant upto 60% of the questions. Thus, overall the ultimate fact is that the writ Appellant had no occasion to solve all the questions. In all the questions several defects in question paper were pointed out by the writ Appellant in 9.3 of the writ petition which is quoted as below:

3. That the question paper had the following defects:

- a. There were 7 questions missing in the question paper i.e. after question No. 56 there was question No. 61 and after question No. 120 there was question No. 124 directly.
- b. at page No. 56 of the question paper, after question No. 143 there is question No. 139 and 140.
- c. questions given at serial No. 61 to 70 are repeated at serial No. 111 to 120 and questions at serial No. 124 to 130 are again repeated as question No. 174 to 180.

The Appellant had claimed the reliefs which are as follows: "10. Reliefs sought:

It is therefore, most respectfully prayed that this Hon"ble Court may kindly be pleased to issue appropriate writ/writs, order/orders, and direction/directions:

- a. directing the Respondents to produce the mode answer sheets. model question paper and marking schemes with respect to "Shiksha Karmi" selection examinations.
- b. declaring that the Petitioner was forced to attempt the defective question paper and therefore the examination was illegal and bad in law.
- c. directing the Respondents to conduct afresh examination for the Petitioner.
- d. to hold that the said action of the Respondents is illegal, bad in law, arbitrary and liable to be set aside/quashed.

e. any other relief as deemed fit by this Hon''ble Court.

f. granting cost of the petition.

At this stage, learned Counsel appearing for the writ Appellant has submitted that there is rule regarding awarding of bonus marks in the said examination. But after perusal of the provisions, we have found that the bonus marks are for all students, in case wrong questions were given in the question papers or none of the options given against any question was correct or if the meaning of the question appears to be different in English and Hindi. Therefore, in our opinion the benefit of bonus marks cannot be awarded to the writ Appellant.

Further it cannot be ruled out that there was a fault in the question papers as the writ Appellant was deprived of giving answer to certain questions and some questions were repeated. Further in the instructions, time was not mentioned under which a candidate could have informed about the discrepancy in the question. There were 200 questions and the Appellant started to attempt the questions to save his time which is quite but natural. Though the case of the Respondent is that he had informed after 1 1/2 hours from starting of the paper, but there was ample time at that moment to solve the remaining question paper if the same would have been provided to him, but unfortunately, the question paper which was to be provided to him was of different set, that was another default for which we think that the writ Appellant should not be a sufferer.

In para 4 of the return filed by Respondents No. 1 & 3. it is clear that four question papers of Set-B have been opened by the Centre Incharge. but serial number of these four question papers were not similar to the question paper which was already allotted to the writ Appellant. Para 4 of the return is reproduced as under:

4. That it is respectfully submitted that the Petitioner appeared in the said examination at Centre Govt. Girls Higher Secondary School. Manendragarh, District Koriya (Centre Code No. 1224) After about one and half hours of the examination, the Petitioner has made a complaint to the invigilator of the concerned room No. 10 of the said centre regarding the discrepancy in the question paper and thereafter, the invigilator of the said room has reported the matter to the said centre Incharge and accordingly the said Centre Incharge has contacted the Control room of the District Koriya and after seeking instructions from the office of the Respondent No. 2. the Controller of district Kortya has directed the Centre Incharge to open other question paper of Set-B and provide the same to the Petitioner. Accordingly, the four question papers of Set-B has been opened by the Centre Incharge, but serial number of these four question papers were not similar to the question paper which was already allotted to him upon which the Petitioner had opted to solve the same question paper as he had already solved 60% question. For describing the above stated fact, a copy of the letter dated 06/12/2009 written by the Invigilator to the Centre Incharge and copy of letter dated 06/12/2009 written by the Centre Incharge to the Controller,

Chhattisgarh Professional Board, Raipur are being annexed herewith as Annexure R/1 and R/2 respectively.

In view of the above mentioned facts and circumstances, though we are not inclined to grant the relief claimed by the writ Appellant but we think it would be proper if the number of questions which could not be attempted by the writ Appellant should not be counted. Further those questions which were repeated and attempted should also not be counted. Since each question carry one mark, the number of such questions be calculated equally to that marks reduced from the maximum marks and then his result be reconsidered. We also think that this is a peculiar type of case involving peculiar facts which cannot be common for other participants in the examination. So, this order will not be treated as a precedent.

The writ appeal is disposed of accordingly.