

(2015) 05 PAT CK 0111

In the Patna High Court

Case No : LPA No. 1330 of 2014 [in CWJC No. 12277 of 2013]

The Chairman, Bihar School Examination Board and Others

APPELLANT

Vs

Brajesh Kumar and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Citation : (2015) 3 PLJR 852

Hon'ble Judges : L. Narasimha Reddy, C.J. and Sudhir Singh, J.

Bench : Division Bench

Advocate : Satyabir Bharti, for the Appellant; Shree Prakash Srivastava and Sanjay Kumar Pandey, for the Respondent

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, C.J.

1. The Letters Patent Appeal arises out of order dated 25.2.2014 passed by the learned Single Judge in CWJC No. 12277 of 2013. The 1st respondent filed the writ petition, with a prayer to command the appellants herein, to produce his marks file and marks register maintained by the Bihar School Examination Board, Patna, and to restore the marks secured by him in the first evaluation.

2. The 1st respondent studied 12th Class in A.R.K. High School, Kumharson, Begusarai, in the academic year 2012-13. The examinations were held in February, 2013 and results were declared thereafter. It is stated that when the 1st respondent down loaded the marks, it was revealed that he secured 402 marks, which comprised of 60 marks in English, and several discrepancies were noticed in the mark-sheet. Similar situation is said to have existed in the Hindi subject.

3. The 1st respondent submitted an application seeking permission to verify the original records. It emerged that the Chairman of the Board had taken a decision on 12.5.2013 to the effect that answer-sheets of the candidates, who figured in top 1 to 20 positions must be reevaluated and, in the process, the marks in the

English subject, which were originally awarded as 79 were reduced to 60, and in the Hindi subject, the original marks of 35 were reduced to 26. In all, the 1st respondent has suffered the loss to the extent of 28 marks. It is in this context, that the writ petition was filed.

4. The appellants sought to justify their action stating that though the decision of the Board, taken in March, 2013 was to get the answer scripts re-evaluated, if the candidate was awarded 80% marks or more, the Chairman had taken a decision at a later point of time, in exercise of the power conferred upon him, under the Bihar School Examination Board Act, 1952 (for short, "the Act") to get the answer-sheets of the candidates, who figured in top 20 positions also, re-evaluated.

5. The learned Single Judge was not impressed with the reasons assigned by the appellants, and allowed the writ petition. Directions were issued to restore the original marks of the 1st respondent as well as his position. Hence, the appeal.

6. Heard Sri Satyabir Bharti, learned counsel for the appellants, and Sri Shree Prakash Srivastava, learned counsel for the 1st respondent.

7. The Board is conferred with the power to prescribe the guidelines for conducting of examinations as well as for evaluation of the marks, and then to declare the results. Normally, the guidelines in this behalf are required to be framed before the examination takes place. Once the examinations are held, the procedure or guidelines for evaluation or for declaration of result cannot be changed. The second aspect is that it is the Board is conferred with such power, and well informed decision has to be taken in this behalf.

8. In the instant case, the Board is said to have taken a decision to direct re-evaluation of the answer scripts, wherever the candidate is awarded 80% marks or more in a subject. This may be obviously with a view to ensure that no favouritism or malpractices takes place in the examination or evaluation.

9. It is brought to the notice of the Court that in all subjects, other than Hindi and English, the 1st respondent was awarded more than 80% marks, and in re-evaluation, the marks virtually remained the same. The controversy is only about the marks secured in Hindi and English.

10. It is only on the basis of the decision taken by the Chairman of the Board on 12.5.2013 that the answer scripts of the 1st respondent in English and Hindi were also ordered to be re-evaluated. This was on the ground that the 1st respondent figured in top 20 positions.

11. The learned Single Judge has taken into account the provision, under which the Chairman acted,, and held that it was meant only to meet the emergency situation, but not in a routine manner. Even otherwise, the very purpose of constituting the Board is to ensure that a collective decision is taken after elucidating the views of the members of the Board. The direction, as to re-evaluation of answer scripts only on the ground that the candidates figured in the

top 20 positions, could have been taken only by the Board, that too by assigning appropriate reasons. If a candidate was awarded fairly high marks, valuable right accrues to him, and that cannot be taken away, on the basis of a whimsical decision of the Chairman or any other officer. The fact that in re-evaluation, the 1st respondent was awarded same marks in all subjects, except Hindi and English, needs to be taken into account, and an element of uncertainty cannot be injected in the process of crucial stage of the career of the student.

12. We, therefore, agree with the direction issued by the learned Single Judge for restoration of the original marks to the 1st respondent in the subjects of English and Hindi. However, the direction to restore the rank would lead to certain complication. The reason is that on the basis of re-evaluation, several changes have taken place, and the 1st respondent cannot be interpolated in the list, unless another candidate is disturbed. That, in turn, would lead to chain reaction.

13. We, therefore, partly allow the appeal, by setting aside that part of the order passed in the writ petition, which directed restoration of the rank of the 1st respondent, but upholding rest of the order. Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.