
(2020) 09 SHI CK 0126
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2847 Of 2020

Vaibhav Singh

APPELLANT

Vs

Central Board Of Secondary Education And Another

RESPONDENT

Date of Decision : 09-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 09 SHI CK 0126

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Onkar Jairath, Shubham Sood, Ritta Goswami, Komal Chaudhary

Final Decision : Dismissed

Judgement

L. Narayana Swamy, CJ

1. The petitioner, by the medium of this petition, seeks a writ of mandamus directing the respondents to permit the petitioner to apply for obtaining the copies of evaluated answer book(s) of Economics Paper and further allow him to apply for re-evaluation of the same. A further direction has been sought to supply him the evaluated answer book and re-evaluate his paper.

2. The case of the petitioner, shorn of all necessary details is that he is a meritorious student and has scored excellent marks throughout his Educational Career so far. The petitioner is having high aspiration for his career and as such is diligently and honestly dedicated towards his education. His aim is to become a member of Civil Services with the sole aim and objective of serving the Nation and the society. To pursue his aim to the best of his ability, petitioner appeared in Matriculation Examination conducted by the Council for the Indian School Certificate Examinations, New Delhi in the year 2018 and scored 93% marks. Thereafter he appeared in 10+2 examinations conducted by the Central Board of Secondary Education in the year 2020 and due to hard work put in by him and his legitimate expectation, he scored 98.8% in 10+2 examinations. The details of

the marks obtained by the petitioner is as under:

Sr. No.

Subject

Marks

1.

English Core

99

2.

History

98

3.

Political Science

99

4.

Economics

86

5.

Sociology

99

6.

Computer Science

99

3. The above tabulated chart of marks sheet of the petitioner does show that in all the subjects he scored around 99% marks except Economics in which he scored 86 marks. It is further averred that the petitioner is one of the toppers of the CBSE, besides being the topper of the State of Himachal Pradesh.

4. It appears that the respondents issued Notice dated 14.7.2020, (Annexure P-4) and vide Annexure A appended to the said Notice has given different dates for applying for the verification of marks, obtaining photocopy of evaluated answer books and re-evaluation, which reads as under:

Sr. No

Activity

Duration

1.

VERIFICATION OF MARKS applying online

17th July, 2020 to 21st July, 2020

2.

OBTAINING PHOTOCOPY OF EVALUATED ANSWER BOOKS applying online

1st August, 2020 to 2nd August, 2020

3.

RE-EVALUATION Applying online

6th August, 2020 to 7th August, 2020

5. It is stated that aforesaid all the three stages are different and independent and an incumbent can apply for any of the stages as per the schedule. It is stated that due to ambiguous language used in the Notice dated 14.7.2020, petitioner could not apply for obtaining the copy of evaluated answer book in time. He then sent an e-Mail to the respondents but of no avail. It is stated that no genuine reason has been assigned for rejection of the request of the petitioner. It is further submitted that petitioner has scored 20 out of 20 marks in his practical examination in the paper of Economics. It is averred that due to less marks in Economics, petitioner may not be admitted in Delhi University where the last cut-off goes very high even to the extent of 100%.

6. The respondents/Board, on the other hand, contended that the activities of the respondents/Board are time bound and are required to be administered within time limit, despite that the respondents/Board gave an opportunity to the candidates for verification of marks etc. and Notice dated 14.7.2020 came to be issued. It is stated that there is no ambiguity in the said Notice. It is further stated that the petitioner did not pay any heed to instructions as mentioned in the modalities. It is further averred that the modalities itself clarify that only those candidates who will apply for the verification of marks online will be eligible to apply for obtaining photocopy of answer book(s) in that/those subject(s). Thus the application of the petitioner was automatically rejected by the Application Tracking System which automatically screens an application of the candidate and determines whether the applicant is eligible or not for applying the same. It is stated that the petitioner is eligible for obtaining photocopy of the answer booklets under Right to Information Act, 2005 but he will not be eligible for re-evaluation of answer sheet. Therefore, it has been prayed that the petition may be dismissed.

7. We have heard learned counsel for the parties and have gone through the records.

8. Ms. Ritta Goswami, learned counsel for the respondents-Board submits that in case this Court interferes in this matter, it will open the flood gates and it would be very difficult for the respondents-Board to consider the request made by millions of candidates in this regard. On this ground, she seeks dismissal of this petition. She has placed reliance on WA-1097/2020 dated 18.8.2020, whereby a Division Bench of the Kerala High Court has rejected the similar relief by affirming the judgment dated 11.8.2020, of the learned Single Judge in WP © No. 16071/2020.

9. During the pendency of the petition, learned counsel for the petitioner made a prayer for permitting the petitioner to make an application under the Right to Information Act, 2005 for issuance of photocopy of answer script of Economics paper of the petitioner and respondents were directed to consider his application for the purpose of issuance of answer script as per norm. In pursuance of the aforesaid order, the answer script of the petitioner has been provided to him and he is in possession thereof.

10. We have considered all the materials placed before us in the light of arguments advanced and keeping in mind the well accepted principle that in deciding the matters relating to orders/instructions issued by authorities of educational institutions, the Court should not normally pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and wisdom and the Court should interfere with them only when it thinks it must do so in the interest of justice and in exceptional circumstances.

11. From the papers made available and on the basis of the submissions and the pleadings on record, this Court noticed that the petitioner has been exceptionally a brilliant student throughout his career. He has scored 99% marks in English Core, 98% marks in history, 99% in Political Science, 99% in Sociology and 99% in Computer Science as is evident from the academic records. Thus, it is argued that respondents have failed to appreciate that the petitioner is one of the meritorious students, who has scored more than 98% marks in his 10+2 examinations and is having legitimate expectation of getting higher marks in Economics on the basis of his performance in the exam and self- evaluation of the answers written by him. It was all due to misconception owing to ambiguous language in Annexure-A appended with the Notice dated 14.7.2020 that petitioner could not apply for verification of marks at first stage. It is further contended that had the language been so clear in Annexure-A that the candidate firstly need to apply for verification of marks and then only he can apply for obtaining the copy of the evaluated answer book(s), there was no manner of doubt that he would have firstly applied for the verification of his marks.

12. The Notification dated 14.7.2020, coupled with Annexure-A appended thereto makes it clear that a candidate, at the first stage, has to apply for verification of marks online, thereafter to obtain photocopy of evaluated answer books and third stage is for re-evaluation, that too, online. The petitioner has failed to

exercise first option, i.e., for verification of marks therefore, he is not entitled to exercise second option directly. The Notification itself clarifies that "only those candidates who will apply for the verification of Marks online will be eligible to apply for obtaining photocopy of answer book(s) in that/those subject(s)."

13. The petitioner, in the present case, did not follow the instructions mentioned in the said modality, and instead of applying for the verification of marks, he directly applied online for obtaining the photocopy of evaluated answer- books on the scheduled date, i.e., 1.8.2020 and his application was automatically rejected by the Application Tracking System. When such being the case, as the application of the petitioner has been rejected by an electronic system, there is no scope to interfere in this matter. The petitioner himself has admitted that he could not apply in accordance with the Notification supra, due to inadvertence.

14. The Hon'ble Supreme Court in H.P Public Service Commission v. Mukesh Thakur and another, AIR 2010 SC 2620 has held as under:

"27.Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct re-evaluation."

15. The Supreme Court in Pramod Kumar Srivastava v. Chairman, Bihar Public Service commission, Patna and others, AIR 2004 SC 4116 has held as under:

"7.....In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others, AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re- evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on

different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

16. This Court is aware that even in absence of any provision for re-evaluation, a direction cannot be issued to respondents to re-evaluate the answer scripts. Under exceptional circumstances, power under Article 226 can be exercised. In the present case, when the entire process is prescribed/given under the Notification, referred to supra, this Court is not inclined to interfere in the matter by issuing a direction to the respondents to re-evaluate the answer scripts of the petitioner.

17. In *Secy., W.B. Council of Higher Secondary Education vs. Ayan Das and others*, (2007) 8 SCC 242, the Supreme Court in para 9 has held as under:

"9.The permissibility of re-assessment in the absence of statutory provision has been dealt with by this Court in several cases. The first of such cases is *Maharashtra State Board of Secondary and Higher Secondary Education & Anr v. Paritosh Bhupeshkumar Sheth & Ors.* reported in (1984 (4) SCC 27). It was observed in the said case that finality has to be the result of public examination and, in the absence of statutory provision, Court cannot direct re-assessment/re-examination of answer scripts."

18. In addition to the aforesaid judgments, it is also apposite to refer to para 5 of the judgment made in *President Board of Secondary Education Orissa vs. D. Suvankar*, (2007) 1 SCC 603 as under:

"5.The Board is in appeal against the cost imposed. As observed by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth. etc.* 1984 AIR(SC) 1543, it is in the public interest that the results Public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the Court to make a pedantic and purely idealistic approach to

the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one were to be propounded. In the above premises, it is to be considered how far the Board has assured a zero defect system of evaluation, or a system which is almost fool-proof."

19. At this stage, learned counsel for the petitioner submits that a direction can be issued in the instant case to the respondents by observing that this will not be treated as a precedent in other cases. In our considered opinion, this submission of the learned counsel cannot be accepted and we accordingly reject such submission for the reason that there might be several students who are exceptionally brilliant like petitioner, thus granting such leeway to the petitioner would tantamount to injustice to those students.

20. In Board of Secondary Education vs. Pravas Ranjan Panda and another reported in (2004) 13 SCC 383, the Supreme Court observed in para 6 as under:

"6.The High Court though observed that the writ petitioner who has taken the examination is hardly a competent person to assess his own merit and on that basis claim for re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation in marks. It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for re-evaluation of answer-books of the students. The question whether in absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer-books has been examined by us in Pramod Kumar Srivastava V/s. Chairman, Bihar Public Service Commission decided on 6.8.2004. It has been held therein that in absence of rules providing for re-evaluation of answer-books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for re-evaluation of the answer-books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for re-evaluation of the answer- books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside."

21. In the aforesaid case the order of the High Court directing for re-evaluation of the answer books of all the examinees securing 90% or above marks was clearly held unsustainable in law.

22. In view of the observations made hereinabove and in the light of the judgments referred to supra, we have considered the case of the petitioner on all fours. We are of the considered opinion that no direction can be issued to the respondents for re-evaluation of the answer scripts of the petitioner.

23. In view of the what has been argued and pleaded, the petitioner himself is at fault in understanding the Notification issued on 14.7.2020. Therefore, it is not open for the petitioner to invoke the jurisdiction of this Court for issuance of a

writ of mandamus.

24. Having regard to aforesaid discussion, the petition fails and is accordingly dismissed, alongwith pending applications, if any.