

HIGH COURT OF MADHYA PRADESH: JABALPURSINGLE BENCH:HON. SHRI JUSTICE A.K. SHRIVASTAVAWRIT PETITION NO. 12270/2010..... Petitioner

Ku. Brahmi Pandey,
 aged about 16 years,
 (minor) through its
 natural guardian father
 Shri Sudhakar Prasad
 Pandey, 72/10, behind
 Janta College near Shiv
 Durga Temple Anantpur,
 Rewa, M.P.

Versus..... Respondents

1. Central Board of Secondary Education, Regional Office, Ajmer, Rajasthan through its Secretary
2. Principal, Jyoti Senior Secondary School, Allahabad Road, Rewa, M.P.

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 Petitioner - Shri D.K. Tripathi, Advocate.

Respondents - Shri Rajesh Mainderatta, Advocate.

ORDER

(23/02/2011)

By filing this petition under Article 226 of the Constitution of India, the petitioner is seeking following reliefs:-

- (i) to call for entire relevant record.
- (ii) to direct the respondent to recheck answer sheet of supplementary examination of petitioner of subject Physics, through any neutral teacher.
- (iii) to direct the respondents to pay compensation to the petitioner, if after rechecking of answer sheet marks will be increased.
- (iv) to pass such any other order as deem fit under the facts and circumstances of the case.
- (v) Any other relief together cost of the petition which this Hon'ble Court deem fit and proper under the facts and circumstances of this case may also be awarded in favour of the petitioner”.

2. The petitioner appeared in the Senior School Certificate Examination conducted by the Central Board of Secondary Education (hereinafter referred to as the Board). The Board declared the result and except in Physics subject, the petitioner obtained more than 60% marks. In physics subject, the petitioner obtained only 11 marks out of 70 and was permitted to appear in supplementary examination in that subject. A copy of mark sheet has been placed on record as Annexure P/1. The petitioner submitted requisite application for verification of marks in accordance with law along with requisite postal order on 2.6.2010 (Annexure P/2) but no result of verification of marks was communicated to her as a result of which she appeared in

the supplementary examination, 2010 and out of 30 questions she attended all questions and expected 50 marks out of 70 but she was shocked on seeing the result that only 15 marks were given to her and she was declared 'fail'. The copy of the mark-sheet of the supplementary examination is Annexure P/3.

3. The petitioner again submitted an application on 13.8.2010(Annexure P/4) for verification of the marks in the supplementary examination but the respondent no.1 has not sent any information regarding verification of marks and did not declare her result of verification of her marks.

4. Hence this petition has been filed by the petitioner seeking relief which are quoted hereinbefore.

5. By refuting the averments made in the petition, return has been filed by the Central Board of Secondary Education. In para 2 of the return it has been pleaded that this petition is not maintainable as the Examination Bye laws do not provide revaluation of the answer books of main or of supplementary examination. According to respondents, Rule 61 of the Examination Bye-laws provides for verification of marks obtained by a candidate in a subject and only this much is to be seen whether on the title page of the answer

book there is an error of totaling of the marks or not. Further in para 3 of the return, it has been pleaded that the candidate is required to submit an application within 21 days from the date of declaration of the result for main examination and 15 days for supplementary examination. It has been specifically pleaded that petitioner initially applied for verification of marks in the subject of Physics (main examination) but no mistake was detected and the same was communicated to the petitioner vide letter dated 26.6.2010. It has also been pleaded that for verification of marks in respect of subject of Physics in supplementary examination, the application was received after the expiry of the last date, hence the same was sent back to the petitioner by post at the address mentioned by her in the application along with the fee which the petitioner sent.

6. In para 5 of the return, it has also been pleaded that as per the Weeding Out Rules, the answer book of a candidate is to be preserved only for three months after declaration of results and one year in respect of rechecking cases. The answer book of the petitioner as regards main examination is preserved for one year whereas the answer sheet of supplementary examination has already been

disposed in terms of the said Rules because the application for rechecking was received after the last date of its expiry. Copy of those rules has been annexed as Annexure R/3.

7. A rejoinder has also been filed on behalf of the petitioner refuting the averments made in the return by the respondents and specifically it has been pleaded that result of supplementary exam of Physics was declared on 31.7.2010 and the application for verification of marks was sent on 13.8.2010 and hence the petitioner applied for verification of marks within prescribed period of 15 days from the date of declaration of result. In para 3 of the rejoinder it has also been pleaded that respondents vide letter dated 6.9.2010 (Annexure RJ-1) which was signed after two days on 8.9.2010 intimated the petitioner that her application was received after last date and, therefore, the Board is unable to entertain it. In para 4 of the rejoinder, it has been specifically pleaded that in terms of Weeding Out Rules, the answer book of the petitioner was required to be preserved only for three months after the declaration of the result of supplementary exams, but it has been disposed of earlier to that period. Further it has been pleaded that the result of the supplementary examination of Physics was

declared on 31.7.2010 and, therefore, in terms of Bye-laws and the Rules, three months would expire on 31.10.2010. The return was filed on 21.10.2010 mentioning that the answer book of supplementary exam has been destroyed in terms of those Rules and, therefore, the action of the respondents is *de hors* to the rules and is illegal. In the rejoinder it has been further pleaded and prayed that since the answer book of the supplementary examination has been destroyed prior to the statutory period, therefore, the petitioner is entitled to be declared as a “pass student” in Physics subject.

8. I have heard Shri D.K. Tripathi, learned counsel for the petitioner and Shri Rajesh Mainderatta, learned counsel for the respondents.

9. Learned counsel for the petitioner has placed heavy reliance on the decision of the Supreme Court in **AIR 1999 SC 199 C. Tulasi Priya Vs. A.P. State Council of Higher Education and others** and by inviting my attention to para 9, 10 and 11 of the aforesaid decision of the Supreme Court it has been prayed that petitioner be declared pass in the supplementary examination of Physics.

10. On the other hand, Shri Mainderatta, learned counsel for the respondents submitted that indeed relief of revaluation has been sought by the petitioner which cannot be permitted to be allowed and in this regard he has invited my attention to several authorities of the Supreme Court and of this Court which are referred in the return.

11. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed.

12. In the present case, on bare perusal of the mark-sheet (Annexure P/1) it is gathered that petitioner obtained following grade in the subjects:-

SUB. CODE	SUBJECT	TH.	PR.	TOTAL	TOTAL WORDS IN	POSITIONAL GRADE
301	ENGLISH CORE	075	XXX	075	SEVENTY FIVE	B1
302	HINDI CORE	068	XXX	068	SIXTY EIGHT	C1
044	BIOLOGY	038	027	065	SIXTY FIVE	C2
042	PHYSICS	011	027	038	THIRTY FIVE	E
043	CHEMISTRY	030	029	059	FIFTY NINE	D1
500	WORK EXPERIENCE					B1
502	PHY & HEALTH EDUCATION					B2
503	GENERAL STUDIES					B1

13. On bare perusal of mark-sheet, Annexure P/2 it is gathered that petitioner obtained 11 marks in theory and 27

marks in practical in total 38 marks in Physics subject in the main examination and she submitted application on requisite format (Annexure P/2) which has also been sent along with the postal order of Rs.100/- and this application was sent by registered A.D. post. It has been specifically pleaded in para 5.3 of the memorandum of petition that despite petitioner submitted requisite application for valuation of the mark, no action was taken and the petitioner was not informed about the result of the verification of the marks. But in view of Annexure R/1 it is found that result of verification of marks of Physics subject of the main examination was intimated to her. The petitioner thereafter appeared in the supplementary examination of Physics subject.

14. It is an admitted position that after the declaration of supplementary examination result of Physics subject in which the petitioner was declared fail, she again applied for verification of the marks by submitting requisite application (Annexure P/4). This application (Annexure P/4) was sent on 13.8.2010 by registered A.D. post on the prescribed format and the requisite fee of Rs.100/- which was sent through Bank Draft payable at Union Bank of India, Ajmer.

The application (Annexure P-4) was sent to Ajmer within 15 days of the declaration of the result of supplementary examination. The petitioner is a resident of Rewa and she sent the application (Annexure P-4) within time and, therefore, according to me, Rule 61(ii) was duly complied with and, therefore, the respondents were obliged to dispose of the application by verifying the marks. Admittedly, the application of valuation of supplementary examination of petitioner was not decided by the respondents. On the other hand, the application was sent back to her along with the fee, hence I am of the view that action of the respondents failing to verify the marks of the petitioner is not only arbitrary and illegal but *de hors* to the rules. In the application (Annexure P/4), only request was made for the verification of the marks and not for the revaluation and, therefore, even if the petitioner in this petition has prayed relief for revaluation of marks, according to me, looking to the scope of her application, it should be confined only for verification of the marks.

15. One glaring fact which cannot be marginalized and blinked away and which shows the arbitrary action of the respondents is that as per their own showing, the

respondents were required to preserve the answer book for a period of three months and in this regard the Weeding Out Rules (Annexure R/2) may be seen. Admittedly, prior to the expiry of this period as per the stand taken by the respondents in the return, the answer book of the supplementary examination of Physics subject of the petitioner was destroyed. The result of the supplementary examination admittedly was declared on 31.7.2010 and, therefore, three months would expire on 31.10.2010. The return was filed on 21.10.2010 mentioning the fact that answer books have been destroyed meaning thereby they were destroyed prior to the expiry of the requisite period and, therefore, according to me, the petitioner cannot be allowed to suffer for the wrong of respondents. The maxim "*actus curiae neminem gravabit*" means that a litigant should not be allowed to suffer for the action or inaction of the Court. According to me, it should also be made applicable to the respondents who are discharging the public duties by conducting the examinations.

16. The Supreme Court in **2008(17) SCC 769 Andhra Pradesh Electricity Regulatory Commission Vs. R.V.K. Energy Private Limited and another** in para 118 has laid

down law of land that nobody should suffer for the wrong done by the *quasi-judicial body* by relying the aforesaid maxim. It would be profitable to quote entire para 118 which reads thus:-

“As regards setting up of MPPs the principle of estoppel shall also apply. It is now a well settled principle of law that nobody should suffer for the wrong done to by a quasi-judicial body. In view of the principle analogous to ‘*actus curiae neminem gravabit*’, we are of the opinion that because of the unreasonable stand taken by A.P.TRANSCO before the Commission, LVS Powers should not suffer. In the aforementioned situation the High Court has issued the directions”.

By applying the aforesaid maxim in the present factual scenario, safely it can be said that on account of arbitrariness and unreasonable action of the respondents eliminating the answer books before the prescribed period , the petitioner should not be allowed to suffer for their arbitrary action firstly for not considering the application (Annexure P/4) of the petitioner for verification of marks and secondly by destroying her answer books before expiry of the statutory period. Hence, the decision of the Supreme Court in case of **C. Tulasi Priya (supra)** placed reliance by

the learned counsel for the petitioner is applicable in the present case because in the said case, the Supreme Court has directed that the candidate shall be considered for admission to a Medical College. For the reasons assigned herein-above, I am of the view that in the present case, the petitioner should be declared pass in the supplementary examination.

17. For the reasons stated hereinabove, catena of decisions placed reliance by the learned counsel for the respondents which are referred in the return are not applicable as they are distinguishable on the facts.

18. Resultantly, this petition succeeds and is hereby allowed with costs. The petitioner is hereby declared pass in supplementary examination of Physics subject for the year 2010. Counsel fee Rs. 2000/-, if pre-certified.

(A.K. SHRIVASTAVA)
JUDGE

rao

W.P. No. 12270/1023.02.2011

Shri D.K. Tripathi, learned counsel for the petitioner.

Shri Rajesh Mainderatta, learned counsel for the respondents.

Although today the matter has been listed for admission and for interim relief however, with the consent of the parties, petition is heard finally.

Order dictated. Signed and dated separately.

(A.K. Shrivastava)
Judge

rao