

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3081 OF 2014

Zaibunnisa Malik

... Petitioner

Vs.

Maharashtra State Board for
Technical Education & anr.

... Respondents

Mr.M.M. Vashi, Sr.Advocate i/b M.P. Vashi & Associates for the Petitioner
Mr.J.S. Saluja, Assistant Government Pleader, for Respondent No.1
Mr.A.G. Kothari for Resp. No.2

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 21st JANUARY, 2015

ORAL JUDGMENT (Per C.V. BHADANG, J.):

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner is working as a Head of the Computer Engineering Department in Saboo Siddik Polytechnic conducted by the Respondent No.2. The Respondent No.1 is the Maharashtra State Technical Education Board ('the Board' for short).

3. The examination for the 1st and 5th Semester was held in Winter 2013 and the results were declared on 15.1.2014. The said examination is

governed by the scheme framed by the Respondent No.1 whereunder the students have to appear in a theory examination as well as to do term work/project work which is known as internal examination. According to the petitioner, the system of giving internal marks is different depending on the subjects. The present dispute pertains to the marks assigned in the subject of basic workshop practice (BWS)(TW) in the Computer First Semester, G Scheme (CO1G) and the subject of Professional Practice (TW) in the 5th Semester (CO5A). The internal marks are to be given out of 50. However, in the concerned college, the same were given out of 25 marks and were supposed to be doubled. When the marksheets of the students appearing in the said subjects was uploaded under the signature of the petitioner as the head of the department, the marks continued to be shown out of 25 instead of being doubled. According to the petitioner, this was purely on account of inadvertence and a bonafide mistake. The petitioner realised the same the very next day and, therefore, she immediately informed the Respondent No.1 Board on the basis of a circular dated 15.1.2014 with a request to correct the results of the students. However, the Board vide communication dated 28.5.2014 refused to correct the marks.

4. It appears that the Board sent a committee of 4 persons to visit the college and ascertain the circumstances in which the marks were so

uploaded. It further appears that the committee accordingly visited the college when the petitioner was also present and the committee was informed that the marks were uploaded purely out of an inadvertent mistake on account of the fact that there were different schemes for allotting the marks in different subjects. Thus, the petitioner conceded and accepted that there was an error which occurred on account of a stress due to the ill-health of her mother. According to the petitioner, without giving any show-cause notice and an opportunity of being heard, the Board passed an order on 11.6.2014 levying a penalty of Rs.1 lakh on the concerned college as a condition precedent for correcting the results. It has been further directed that an adverse entry be taken in the service book of the petitioner and debarring her from examination related work for a period of 2 years. Feeling aggrieved, the petitioner is before us.

5. We have heard Mr.Vashi, the learned Senior Counsel for the petitioner, Mr.Saluja, the learned Assistant Government Pleader for the Respondent No.1 and Mr.Kothari, the learned Counsel for the Respondent No.2.

6. It is submitted on behalf of the petitioner that admittedly, there are different schemes for allotment of the marks in different subjects and

although the marks in the concerned subjects were to be allotted out of 50, the college was allotting the same out of 25 and while uploading the marksheets, the marks were expected to be doubled so as to bring them in conformity i.e., being out of 50. It is submitted that it was purely on account of inadvertent and bonafide mistake that the marks were so uploaded and the petitioner on realising the mistake, had informed the Board with a request to correct the results on the basis of the Circular governing the field. The learned Counsel would submit that in such circumstances, the action taken by the Board is quite drastic and uncalled for. The learned Senior Counsel submitted that it is nobody's case that there was any intention of the petitioner or there was any attempt at any manipulation of the marks. It is submitted that in such circumstances, the Board could not have passed the order debarring the petitioner for a period of 2 years and also imposing a fine of Rs.1 lakh on the management. He, therefore, submitted that the petition be allowed.

7. The learned Assistant Government Pleader appearing for the Respondent No.1 has submitted that the petitioner has clearly acted with gross negligence while uploading the marks of the students which has caused avoidable inconvenience to the students/parents and has interfered with the smooth working of the system as a whole. It is submitted that the

relevant Regulation No.17 governing the conduct of the examination mandates that the person in charge of conducting the examination has to act with extreme diligence and in the face of such a requirement, the act of the petitioner cannot be condoned or justified in any manner claiming it to be a bonafide mistake. It is submitted that the Board has acted within its bounds having regard to the provisions of penalty/punishment for mal practices or negligence in the process of examination rules and in particular, Rule D thereof in passing the impugned order. He submitted that if such acts of dereliction are dealt with lightly, the same would send wrong signal and would not be conducive to the smooth working of the examination and the system as a whole.

8. The learned Counsel for the Respondent No.2 submitted that the amount of Rs.1 lakh has already been deposited without prejudice to the rights and contentions. It is submitted that at any rate, there was no occasion and the management could not have been slapped with a fine as has been done, without issuance of any show-cause notice or opportunity of being heard.

9. We have considered the rival circumstances and the submissions made. The material facts are not in dispute. Thus, it is not in dispute that

there are different schemes applicable in respect of different subjects in the matter of allotment of the marks. Insofar as the concerned subjects, namely, basic workshop practice and professional practice are concerned, the college was allotting the marks out of 25 and the marks were to be doubled while being uploaded to bring them in conformity with being out of 50. It is also not in dispute that after the petitioner realised the incorrect uploading of the marks, the Board was requested to correct the same in accordance with the Circular governing the subject. It appears that the Board had imposed a fine of Rs.1 lakh, against the management, as a condition precedent for correction of the results, which has already been deposited. It is also not in dispute that a committee was deputed to look into the matter and for ascertaining the circumstances leading to the uploading of the incorrect marks and the petitioner had accepted her mistake. For the present purpose, we need not go into the aspect of the personal reasons given by the petitioner i.e., being under stress on account of the ill-health of her mother. We find that it is nobody's case that there was any intentional or active negligence on the part of the petitioner in the matter of the uploading of the marks. It is nobody's case that there was any manipulation as such. Undoubtedly, this has to be categorised as a bonafide mistake and although it is bound to result into certain inconvenience to the students/parents, we find that the impugned order

and the punishment imposed cannot be sustained. When the order passed or the punishment imposed is found to be totally unconscionable, the same can be interfered with and needs to be corrected. The learned Counsel for the petitioner has shown willingness to deposit an amount of Rs.25,000/- with the Board as a matter of remorse for the inadvertence on the part of the petitioner.

10. In that view of the matter, we find that the following order would meet the ends of justice:

- i) The petition is allowed.
- ii) The impugned order dated 11.6.2014 is hereby quashed and set aside.
- iii) The respondent No.1 Board shall refund the amount of Rs.100,000/- to the respondent No.2.
- iv) The petitioner, however, is directed to deposit Rs.25,000/- with Respondent No.1 – Board within a period of 2 months from today.

11. Rule is made absolute in the aforesaid terms, with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)