

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1631 of 2016**

- Mahima Varwandkar D/o Ajit Varwandkar, Aged About 18 Years R/o 76, MIG- II, Maruti Vihar, Mahoba Bazar, GE Road, Raipur, (Chhattisgarh)

---- Petitioner**Versus**

1. Union Of India Through The Secretary, Department Of School Education & Literacy, Ministry Of Human Resource Development Shastri Bhawan, New Delhi, 110001
2. Central Board Of Secondary Education, (An Autonomous Organization Under The Union Ministry Of HRD, Govt. Of India), Through Its Chairman, Shiksha Kendra 2, Community Center, Preet Vihar, Delhi 110301
3. Controller Of Examinations, Central Board Of Secondary Education, (An Autonomous Organization Under The Union Ministry Of HRD, Govt. Of India), Shiksha Kendra 2, Community Center, Preet Vihar, Delhi 110301

---- Respondent

For Petitioner : Shri Anumeh Shrivastava, Advocate.
 For Respondent No.1 : Shri R.K. Gupta, Advocate.
 For Respondents 2 & 3 : Shri T.K. Tiwari, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****13/07/2016**

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashment of clause 3 i) of the notice dated 24.5.2016 (Annexure-P/1) issued by respondent No.3 and for allowing

of re-evaluation of the petitioner's answer sheet in the subject of Physical Education.

2. Facts of the case, as projected in the writ petition, are that the petitioner appeared in the Class-12th Examination from K.P.S. Krishnapuram, Raipur, affiliated to Central Board of Secondary Education (for short 'CBSE'), which was conducted in the month of March, 2016, the result whereof was declared on 21.5.2016. However, to her surprise, she was shown to have secured only 53 out of 70 marks in the question paper of Physical Education.
3. The petitioner intended to apply for re-evaluation, therefore, as per the procedure for re-evaluation, she obtained photocopy of the evaluated answer books and having matched it with the model answers, she found lapses in the evaluation causing loss to her. Since in the re-totalling there is only verification of marks without re-evaluation, the petitioner was noticed that no mistakes were found in the result. The petitioner could not even apply for re-evaluation because the said facility is not included in the list of subjects permitting re-evaluation as prescribed under clause 3 i) of the Notice (Annexure-P/1).
4. On the strength of the orders passed by the Delhi High Court in the matter of **Samarth Mittal Vs. Union of India & Ors.** {WP(C) No.6170/2015, decided on 6th July, 2015}; judgments rendered by the Punjab-Haryana High Court in the matters of **Shaurya Gulati Vs.**

Central Board of Secondary Education {CWP No.12420/2016, decided on 13.6.2016} and **Karmanya Vs. Central Board of Secondary Education and Another** {CWP No.12548/2016, decided on 15.6.2016}, it is argued that the petitioner is entitled to get her answer sheet in the subject of Physical Education re-evaluated because Delhi and Punjab & Haryana High Courts have held that allowing the facility of re-evaluation in some other papers barring Physical Education is without any reason or justification.

5. Learned counsel for the respondent/CBSE would submit that the CBSE has issued circular which permits re-evaluation in 10 subjects only in which Physical Education is not included, therefore, the Writ Petition has no substance.
6. Short question arises for consideration in this case is - whether the CBSE is entitled to issue circular contrary to the bye-laws and secondly whether facility of re-evaluation can be restricted to some subjects?
7. Learned counsel for the respondent/CBSE consented for final disposal of the matter in view of the urgency stated by learned counsel for the petitioner.
8. Rule 61 (iv) of the Examination Bye-laws, as amended with effect from 11th March, 2015, is as follows:-

“No candidate shall claim, or be For Senior School Certificate (Class XII) entitled to, revaluation of his/Examination, a candidate may also apply “iv) her

answer book(s) for re-evaluation in the manner as prescribed by the Board from the time to time. However for Secondary School (Class C) Examination conducted by the Board no candidate shall claim, or be entitled to, revaluation of his/her answer book(s).”

9. The circular issued by the CBSE through the Controller of Examination in regard to re-evaluation makes the following provision:-

“3. Revaluation

i) Only those candidates who have applied for obtaining photocopy of the evaluated answer book shall be eligible to apply for revaluation or challenge the marks awarded to any question (s) in the following subjects only.

English Core, English Elective (CBSE), English Elective (NCERT), Hindi Core, Hindi Elective, Mathematics, Physics, Chemistry, Biology, Business Studies, Economics, Accountancy.”

10. To answer the stated questions referred above for determination, the meaning and import of word 'in the manner as prescribed by the Board from time to time' as occurring in Rule 61 (iv) of the Examination Bye-laws, has to be understood.

11. In the Blacks Law Dictionary and the Law Lexicon the meaning of word 'manner' is provided as 'a way, mode, method of doing anything or mode of proceeding in any case or situation' and as 'procedure to be followed'.

12. In AIR 1967 SC 1823 (Sales Tax Officer Vs. K.I. Abraham), the Supreme Court while considering the phrase “in the prescribed manner” in Section 8(4) read with Section 13 (4)(c) of the Central Sales Tax Act,

1956, has held that it only confers power to prescribe rule stating what particulars are to be mentioned in the prescribed form, but does not authorize the rule making authority to prescribe a time limit within which declaration is to be filed by the registered dealer.

13. Undeniably, prior to amendment made with effect from 11th March, 2015, in the bye-laws of CBSE, re-evaluation was not permitted. It came to be introduced by way of amendment with effect from 11th March, 2015 permitting such re-evaluation in Class-12th Examination. The word “in the manner as prescribed by the Board” would clothe the CBSE with the power to prescribe the manner but by no stretch of interpretation it enables CBSE to restrict the facility of re-evaluation only in 10 papers/subjects and not in other papers. It amounts to selectively granting facility for the benefit of some of the students to the detriment of students who have opted for some other subjects which are not included within 10 subjects permitted for re-evaluation. The circular issued by the Controller of Examination is thus apparently dehors or in excess of permissibility under Rule 61 (iv) (Supra). All the students appeared in the theory papers of CBSE Examination form one class, therefore, one set of students who have appeared in the 10 selective subjects cannot form a separate class benefiting them with the facility of re-evaluation to the detriment of other students who have appeared in some other subject like Physical Education in the present case in which re-evaluation has not been made permissible. Thus,

limiting the facility of re-evaluation only in 10 subjects is quite vividly arbitrary and discriminatory offending the principles enshrined under Article 14 of the Constitution of India.

14.While taking afore-stated view, I am fortified by the judgments/orders passed by the Delhi High Court in the matter of **Samarth Mittal** and Punjab-Haryana High Court in the matters of **Shaurya Gulati** and **Karmanya** (Supra).

15.For the foregoing, the Writ Petition deserves to be and is hereby allowed. The respondent/CBSE is directed to receive the application from the petitioner for re-evaluation of her answer book in the theory subject of Physical Education within a period of one week and thereafter complete re-evaluation and declare re-evaluated marks/result within next one week.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve