

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2409 of 2016**

1. Sunder Pal Chouhan S/o Late Himmat Singh Chouhan, Aged About 52 Years Teacher R/o House No. 2, Kabir Kaisal, J.P. Vihar, Mangla, Bilaspur Chhattisgarh 495001
2. Utkarsh Singh Chouhan (Minor 17 years Student) Through Father And Natural Guardian Shri Sunder Pal Chouhan Aged About 52 Years Teacher R/o House No 2 Kabir Kailash J.P. Vihar Mangla, Bilaspur 495001

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Education Department, Naya Mantralaya, Naya Raipur Chhattisgarh 492002
2. The Secretary, Chhattisgarh Board Of Secondary Education, Pension Bada, Raipur 492001 Chhattisgarh

---- **Respondent**

For Petitioners : Shri Shailendra Bajpai, Advocate.
 For Respondent/State : Shri Ramakant Mishra, Deputy AG.
 For Respondent No.2 : Shri Animesh Tiwari, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****13/01/2017**

1. In this petition under Article 226 of the Constitution of India, the petitioners have prayed for a direction to respondent No.2, Chattisgarh Board of Secondary Education, Raipur (henceforth 'the Board') to re-evaluate the answer books of the 5 subjects in which

petitioner No.2 has appeared in his Higher Secondary School Certificate Examination (for short 'the HSSC, examination') and thereafter to issue revised mark-sheet at the earliest.

2. Petitioner No.2 appeared in the HSSC examination, 2016 as a regular student in the subjects of English (Special), Hindi (General), Physics, Chemistry and Maths. On declaration of result, he has secured 400 out of 500 marks which comes to 80%, therefore, he submitted an application for revaluation/re-totalling of answer books. Upon re-totalling/revaluation, there was no substantial change in the marks awarded to him. The Board has also supplied xerox copies of the answer sheets to the petitioner No.2.
3. It is the case of the petitioner No.2 that he has done quite well in the examination, therefore, upon receipt of copies, he got it evaluated from the reputed teachers who awarded him substantially higher marks, therefore, the Court should direct the petitioner No.2's copies to be evaluated by the experts.
4. I have heard learned counsel for the petitioners at length and perused the papers.
5. The petitioners have not stated in the writ petition as to the rules of the Board governing revaluation/re-totalling, however, in course of arguments, it was informed that the Board allows only re-totalling and not revaluation. Thus, it was not disputed that there is no provision for revaluation of the answer sheets in the examination conducted by the Board wherein thousands of candidate appear.
6. The law concerning direction by the Court to re-evaluate the answer sheets is settled that unless there is provision under the

Rules allowing revaluation, the Court may not issue such direction in exercise of power under Article 226 of the Constitution of India.

7. In the matter of **Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others** {(1984) 4 SCC 27}, the following has been held in para-12:-

“12. Though the main plank of the arguments advanced on behalf of the petitioners before the High Court appears to have been the plea of violation of principles of natural justice, the said contention did not find favour with the learned Judges of the Division Bench. The High Court rejected the contention advanced on behalf of the petitioners that non-disclosure or disallowance of the right of inspection of the answer books as well as denial of the right to ask for a revaluation to examinees who are dissatisfied with the results visits them with adverse civil consequences. The further argument that every adverse “verification” involves a condemnation of the examinees behind their back and hence constitutes a clear violation of principles of natural justice was also not accepted by the High Court. In our opinion, the High Court was perfectly right in taking this view and in holding that the “process of evaluation of answer papers or of subsequent verification of marks” under clause (3) of Regulation 104 does not attract the principles of natural justice since no decision-making process which brings about adverse civil consequences to the examinees is involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there

has been a proper and fair valuation of the answers by the examiners. As succinctly put by Mathew, J. in his judgment in the *Union of India v. Mohan Lal Kapoor* it is not expedient to extend the horizon of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be. [SCC para 56, p. 863: SCC (L&S) p. 31]. The challenge levelled against the validity of clause (3) of Regulation 104 based on the plea of violation of natural justice, was therefore, rightly rejected by the High Court.”

8. Yet again, the Supreme Court in the matter of **Himachal Pradesh**

Public Service Commission Vs. Mukesh Thakur and Another

{(2010) 6 SCC 759} held thus in paras- 24, 25 & 26:-

“24. The issue of revaluation of answer book is no more res integra. This issue was considered at length by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, wherein this Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under: (SCC pp. 39-40 & 42, paras 14 & 16)

“14. ... It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. ...

* * *

16. ... The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act.”

25. This view has been approved and relied upon and reiterated by this Court in *Pramod Kumar Srivastava v. Bihar Public Service Commission* observing as under: (SCC pp. 717-18, para 7)

“7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. *In the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks.*”

(emphasis added)

A similar view has been reiterated in *Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State, Board of Secondary Education v. Pravas Ranjan Panda, Board of Secondary Education v. D. Suvankar, W.B. Council of Higher Secondary Education v. Ayan Das and Sahiti v. Dr. N.T.R. University of Health Sciences.*

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation.”

9. In the case at hand, the Board only permits re-totalling which has already been done. The petitioner No.2 wants to answer sheets to be re-evaluated which is not provided under the Rules.
10. In view of the law laid down in the matters of **Paritosh Bhupeshkumar** and **Mukesh Thakur** (Supra), this Court sitting under Article 226 of the Constitution of India has no jurisdiction to issue mandamus as prayed for.
11. The Writ Petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve