

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1304 of 2018

IN

Civil Writ Jurisdiction Case No. 15739 of 2018

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Anudan Rajan, Son of R.K. Rajan, Advocate, Resident of Hari
Niketan, Kankarbagh Main Road, Near Choudhary Petrol Pump,
P.S. - Kankarbagh, P.O. - Lohianagar, Patna - 20, District - Patna.

.... Petitioner/Appellant

Versus

1. The Principal Secretary, Human Resources Department, Govt.
of Bihar, Patna.
2. The Bihar School Examination Board, Bihar, Patna through the
Secretary.
3. The Chairman, Bihar School Examination Board, Patna.
4. The Secretary, Bihar School Examination Board, Patna.

.... Respondents/Respondents

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Appearance :

For the Appellant : Mr. R. K. Rajan, Advocate

For the Respondents : Mr. Ashutosh Ranjan Pandey - AAG15

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date: 12-10-2018

Being dissatisfied and aggrieved by the order dated



28.08.2018 passed by a learned Single Judge in C.W.J.C. No. 15739 of 2018, whereby the prayer made on behalf of the appellant for moderating the marks and providing the mean marks to him by giving him pass marks in Physics subject has been rejected, the appellant (original writ-petitioner) has approached this Court by way of present Letters Patent Appeal.

2. From the substance of the pleadings and from hearing the learned counsel for the appellant, it appears that a prayer was made on behalf of the appellant for issuance of a direction to the Bihar School Examination Board (*in short the **Board***) to grant 14 marks to him in Physics subject, which would be the mean marks of what he has obtained in Chemistry and Mathematics (*i.e.* 11 and 17 marks respectively in the aforesaid subjects). The occasion for the petitioner to pray for such mean marks was that he was awarded only 2 marks in Physics subject.

3. A submission has been advanced on behalf of the appellant that considering the marks obtained by the appellant (original writ-petitioner) in other subjects, being awarded only 2 marks in Physics only reflected arbitrary and irrational marking and perhaps the appellant had become the victim of 'Hawk-Dove effect'.

4. The records reveal that in the year 2017 also,



the appellant had appeared in the examination, but was declared failed as he had not appeared in the practical paper of Physics subject.

5. The appellant had applied for scrutiny of his answer-sheets and after the scrutiny, the Board did not find any reason to alter the marks awarded to him in Physics subject.

6. The main ground urged on behalf of the appellant is that moderation was required to be done in relation to the marks obtained by him in other subjects of science, viz., Chemistry and Mathematics.

7. The learned Single Judge refused to accept such a contention of the appellant (original writ-petitioner) on the ground that what the appellant was asking for was to be awarded mean marks of two other science subjects, thereby entitling him to be marked 14 marks in Physics paper. This was different from moderation and such a prayer was untenable.

8. The other ground raised by the appellant is that even with such low marks in Physics, he ought to have been declared "pass" in view of the Regulation in that regard.

9. From the counter affidavit filed by the Board before the learned Single Judge, it appears that for a person to pass the Intermediate Examination, he ought to obtain



30% of total marks in theory portion of each subject and 40% of total marks in the practical of each subject. A candidate failing in one subject only by not more than 8% marks or in two subjects by not more than 4% marks in each, shall be given the marks he/she is short of and result would be declared accordingly and that such Regulation would not be applicable in case of candidates appearing at the improvement/compartmental or qualifying examination.

10. The Regulation further specifies that in a subject or group of subjects where separate passing is necessary, the shortage shall be calculated on the basis of full marks and failure in different parts of the subject, shall be deemed to be failure in one subject only. Since, the appellant (original writ-petitioner) has secured only 2 marks in theory paper of Physics, he would not pass, even if the benefit is given to him under the Regulation. For him to pass in Physics, 30% of the total marks of theory, *i.e.*, 21 marks was required to be obtained by him.

11. What the appellant is asking for is mean of the marks obtained by him in other two subjects, *viz.*, Chemistry and Mathematics, so that he gets 14 marks in Physics. For the aforesaid, he has relied upon the decisions of Supreme Court in ***Sanjay Singh and Anr. Vs. U.P. Public Service Com., Allahabad and Anr.; (2007) 3 SCC 720*** and ***Sujasha Mukherji***



Vs. High Court of Calcutta through Registrar and Ors.;
(2015) 11 SCC 395.

12. The ratio of ***Sanjay Singh*** (*supra*) clearly states that to avoid any non-uniformity and inconsistency in valuation of the answer-scripts of large number of students and to further avoid any 'examiner variability' or 'Hawk-Dove effect', there is a necessity of evolving a procedure to ensure uniformity *inter-se* the Examiners, so that the aforestated effects of 'examiner subjectivity' is minimized. Such procedure to reduce examiner subjectivity or variability is known as moderation which postulates the existence of a Head Examiner, who is usually the paper-setter also. In today's scheme of taking examination, there is no one Head Examiner and questions are selected from a question pool. That apart, moderation is effected across the Board and necessarily affects many applicants/candidates.

13. Similar view has been expressed in ***Sujasha Mukherji*** (*supra*).

14. What the appellant is asking for is to mark him averagely in subject Physics by taking the marks obtained by him in two other subjects, *viz.*, Chemistry and Mathematics. This is no moderation and such a prayer has justifiably turned down by the learned Single Judge.

15. We, for the reasons aforementioned, do not



find any reason to interfere with the order impugned.

16. The present Letters Patent Appeal is, accordingly, dismissed, but with no order as to costs.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

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