

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 26 of 2004**

1. Regional Secretary, Madhyamik Shiksha Mandal, Regional Office, Raipur, District, Raipur (C.G).
2. Secretary, Madhyamik Shiksha Mandal, Raipur (C.G) -- **Appellants**

Versus

1. Yogesh Sai, son of Shri P.L. Sai, aged about 22 years
(Supplementary Examinee of September 1994 in Higher Secondary School Certificate) Roll No.2719885 and Enrollment No.7207785, Resident of Quarter No.2-C, Street No. Avenue C, Sector-6, Bhilai Nagar, Tah. & Distt. Durg (C.G). (*Plaintiff*)
2. Principal, B.S.P. Higher Secondary School No.1, Sector-11, Bhilai Distt. Durg (C.G). (*Defendant No.1*)
3. Collector, Durg, representing State of Chhattisgarh (*Defendant No.4*) --- **Respondents**

For the applicant	:	Mr. H. B. Agrawal, Sr. Advocate with Mrs. Meera Jaiswal, Advocate
For Respondent No.2	:	Mr. B. D. Guru, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Judgment on Board****30.10.2018**

1. This appeal is against the judgment and decree dated 30.09.2003/03.10.2003 passed by the Court of 7th Additional District Judge (FTC), Durg in Civil Suit No. 15-A/2002 whereby the decree of Rs.30,000/- has been awarded by respondent No.1 the plaintiff.
2. As per the case of the plaintiff, the plaintiff had appeared in supplementary examination of Higher Secondary School Certificate in Sept. 1994. Despite appearing in all the examinations, he was shown to be absent in paper of Physics subject and was shown as failed. This fact came to fore

when the result was declared. Subsequently the plaintiff on 17.01.1995 sent a communication with an endorsement to defendant No.3 i.e., Secretary, Board of Secondary Education that the plaintiff had appeared in Physics, however, he was shown to be absent. Despite such communication, the Secretary Education Board came out with the reply that in the check list sent by the Principal of BSP Higher Secondary School the plaintiff was shown to be absent in Part-I paper of Physics. Therefore, because of negligence of the defendant, the valuable time of plaintiff for the academic year 1994-1995 was wasted which has caused agony to the plaintiff. The plaintiff also contended that it had also resulted into damage to the educational career of the plaintiff. Further the plaintiff has stated that he was shown to be absent which resulted in loss of his prosecuting his career prospects and initially a claim was preferred before the District Consumer Forum, Durg.

3. It was stated by the plaintiff that before the District Consumer Forum, Durg, the Principal BSP admitted the claim of the plaintiff and defendants no.2 & 3, the Secretary Board of Secondary Education also primarily accepted the contention of the plaintiff and stated that the case of the plaintiff was placed before the Exam. Result Committee wherein it was decided that the marks would be given according to Part-II examination of the physics. The consumer forum, however, dismissed such claim on the ground that the plaintiff may prefer a civil suit before a competent Court. Consequently the damages claiming Rs.5,25,000/- was claimed by the plaintiff and the new marks

sheet was also claimed.

4. Defendant No.1, the Principal of BSP Higher Secondary School, Bhilai admitted the contention of the plaintiff that the plaintiff appeared in the examination conducted in their School in the month of Sept. 1994 and the attendance sheet along-with answer-sheets were sent to the Board of Secondary Education, Bhopal. It was stated that the valuation of papers will be done by the Board of Secondary Education, Bhopal and once the student appeared in the examination center and thereafter having sent the answer sheets along-with with other documents to the Board, no further liability comes to the principal of the School wherein the student appeared. It was stated that on 28.12.1994, the examination result was declared and on 06.01.1995, the Board sent the mark sheet wherein the plaintiff was shown to be absent and immediately it was given to the plaintiff. The Principal further stated that there was no negligence on the part of the defendant i.e., Principal and no claim can be awarded against him.
5. Defendants 2, 3 & 4, the Regional Secretary and Secretary of the Secondary Education Board and the Collector stated that in the bundle of answer sheets, the plaintiff's answer sheet was not found, therefore, he was declared absent and was declared fail. It was stated that it was the fault of the principal in whose school premises the plaintiff appeared in Examination. Subsequently, it was stated that the documents were manipulated which were doubtful and because of the negligence of defendant No.1, the plaintiff was shown absent, as such, the the plaintiff is not entitled for

any claim against these defendants.

6. The trial Court framed six issues and decreed the suit for Rs.30,000/- against defendants 2 & 3, therefore, this appeal.
7. Learned counsel for the appellant would submit that this appeal is filed by the Regional Secretary and Secretary of Board of Secondary Education who were defendants 2 & 3 against whom the decree was passed. He further submits that no evidence exists on record to decree the suit even for Rs.30,000/- as no negligence was proved as against defendants 2 & 3. It was stated that because of the defendant No.1, the principal, who had given the wrong information about the absence of the plaintiff, the plaintiff was shown as absent. He further submits that the trial Court has failed to appreciate the facts in proper perspective, consequently the decree be set aside.
8. No representation is made on behalf of respondent No.1, the plaintiff student.
9. Mr. B. D. Guru, learned counsel appearing on behalf of respondent No.2 submits that the order is well merited which do not call for any interference.
10. Heard learned counsel for the parties and also perused the records of the court below.
11. According to the evidence of defendant No.1, the Principal, the plaintiff appeared in supplementary examination of Paper-I Physics in the center of their School for which certificates were also issued. Statement of D.W.1 would show that after the plaintiff had appeared in the examinations, his answer sheets were sent to Haridarshan Higher Secondary School, Gwalior by a registered parcel No.1748 on

08.09.1994 which were in the check list. The check list was marked as Ex.D-6. It is further submitted that having sent the check list, the responsibility comes to an end. Subsequently when the marks sheets were received, it is stated that the present applicant was shown as absent in the examination. The witness has further stated that when the mark sheet was tendered, the plaintiff refused to receive the same.

12. A perusal of Ex.D-6 would show that the plaintiff was allotted roll no.2719885 and the same is entered in the check list and the parcel number is also indicated at the bottom as 1478 which was sent on 08.09.1994. As against this, evidence of Sheikh Vazir, was recorded on behalf of defendants 2 & 3. He stated that the examination was conducted in Sector 11 School of BSP. He further stated that after conducting the examination, the information is being sent where the answer sheets are to be sent and according to such information, the answer sheets are directly sent to the valuation centers by the examination center for valuation of papers and the Board of Secondary Education does not receive the answer sheets from the examination centres. He stated that after the evaluation, the answer sheets were received by the Board wherein the answer sheet of the plaintiff was not received, therefore, he was shown as absent and the marks sheet showing the absence of plaintiff was sent. Subsequently, the Head of the Examination Center had reported that the plaintiff appeared in examination whereas he was shown as absent. Thereafter, the case of the plaintiff was placed before Examination Result Committee wherein it

was decided to give same marks to the plaintiff in paper-I of Physics equivalent to marks obtained in paper-II of Physics and accordingly his result was declared.

13. When the statement of the aforesaid witness is examined it would show that a clear admission comes to fore that Board has admitted the fact that the plaintiff appeared in the examination wherein he was shown absent. There is no documentary evidence to show as to when the parcel of answer sheets was received from the concerned examination center and what was roll numbers of the candidates and whether said parcel does not contain the answer sheet of the plaintiff. Naturally when such answer sheets are sent the record must have been maintained and it cannot be an oral one. It appears that despite such documents being sent and are in custody of Board, they were not produced, therefore, adverse inference can be drawn in favour of the plaintiff for want of production of document that the plaintiff though appeared in the examination, was shown to be absent due to negligence of defendants 2 & 3, appellants herein.
14. Now referring to the statement of plaintiff Yogesh, he has stated that he appeared in the supplementary Examination of Higher Secondary School Certificate held in Sept. 1994 to answer the Paper-1 and Paper-2 of Physics and Chemistry subjects. It is stated that he received letter from Board of Secondary Education on 9th Feb. 1995 that the first paper of the Physics was not available and he was shown as absent. It is further stated that when he received the said letter in 1995, the further chance to appear in the examination has elapsed as such he could not appear in the examination of

1995. If such statements are compared to that of Sheikh Vajir, who has been examined on behalf of the Board, he categorically admitted the fact that the decision was taken by the Committee to give same marks to the plaintiff in paper-1 at par with the marks obtained in Paper-II of Physics and accordingly his examination result was declared. It would show that when the decision was taken, the time to appear in examination of 1994-1995 had passed which leads to inference that because of fault of defendant authorities of the Board/appellants herein, the plaintiff lost one academic year of 1994-95.

15. The trial Court further held that in the statement of plaintiff initially the plaintiff has filed complaint before the Consumer Forum claiming an amount of Rs.99,000/-. Subsequently a suit was filed before the court claiming a sum of Rs.5,25,000 as damages. The trial Court has instead of granting damages of Rs.5,25,000 found that because of negligence of Board of Secondary Education i.e., defendants 2 & 3, the plaintiff student has lost one year and has granted Rs.30,000/- as damages. No appeal has been preferred by the plaintiff against such damages. Under the facts and circumstances of the case, in absence of any challenge to such grant of Rs.30,000/- towards damages, no interference would be required as has been held above that due to negligence of defendants 2 & 3, the plaintiff has lost one academic year. Consequently the grant of damages of Rs.30,000/- to the plaintiff cannot be stated as exorbitant or inflated or unnatural.

16. Under the circumstances, after a close scrutiny of the entire

evidence, I am of the opinion that no interference is called for by this Court to set aside the grant of Rs.30,000/- towards damages along-with interest in favour of the plaintiff.

17. Accordingly, the decree of the court below is affirmed. In the result, the appeal has no merit and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**