

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6667 OF 2018

Ku. Nikita d/o Baban Shinde,
age: 16 years, Occ: Education (minor),
through her natural guardian
father Shri Baban s/o Baburao
Shinde, age: 45 years, Occ: Agri.,
R/o Chorpuri, Tq. Georai, Dist.Beed

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary of
Educational and Cultural
Department, Mantralaya,
Mumbai-32.

02 Maharashtra State Board of
Secondary and Higher
Secondary Education,
Divisional Board, Aurangabad,
through its Secretary.

Respondents

Mr.V.B.Sargar, advocate for the petitioner.
Mrs.V.N.Patil Jadhav, A.G.P. for Respondent No.1.
Ms.Surekha Mahajan, advocate for Respondent No.2.

**CORAM : R.M.BORDE &
MANGESH S. PATIL, JJ.**
Reserved on : 24th October, 2018.
Pronounced on:30th October, 2018.

JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioner, a minor student, represented by her natural guardian father, has approached this Court seeking a writ of certiorari or any other writ, order or direction in the nature of writ of certiorari for quashing the decision taken by Respondent No.2-Board imposing punishment of cancellation of her performance at the 10th standard (SSC) examination held in March 2018 and also punishment of debarment / prohibiting the petitioner from appearing for 10th standard (SSC) examination up to July 2018. The petitioner is also seeking a direction to Respondent-board to declare her result of 10th standard examination held in March 2018.

3 The petitioner is a student of Shri Nigamanand Vidyalaya, Talnewadi, Tq. Georai, District Beed and was studying in the 10th standard during the academic year 2017-2018. She appeared for 10th standard examination conducted by Respondent No.2-Board in March 2018. It is contended by the petitioner that she received a notice on 27.04.2018 calling upon her to explain as to how page nos.19 and 20 of the answer sheet of Geometry paper were torn out. She was called upon to appear for the purposes of inquiry on 08.05.2018.

4 It appears that the petitioner gave in writing on 08.05.2018 that, while drawing line on the answer sheet and while

removing answer sheet from writing pad, it got torn in an uneven manner. The petitioner, therefore, straightened the particular page and removed torn portion of the answer sheet. The petitioner contended that she has not committed any intentional misconduct and as such, no action shall be taken against her.

5 The result of the 10th standard (SSC) examination held in March 2018 was declared on 8th June, 2018, but her result was withheld and the petitioner came to know thereupon that she has been debarred from appearing for examination up to July 2018.

6 The petitioner contends that the inquiry conducted by Respondent-Board is vitiated on account of non observance of principles of natural justice. The result of the inquiry was not communicated to her, however, she came to know the result only when results of all students appeared for SSC examination were declared on 08.06.2018. The petitioner contends that the regulations framed by the Board relating to conduct of inquiry have not been observed and the inquiry is vitiated, firstly, on account of non observance of the procedure; and secondly, on account of non observance of principles of natural justice.

7 It is contended on behalf of Respondent-Board that the fact that page nos.19 and 20 of the answer sheet were found in torn condition cannot be denied and has not been denied by the petitioner. It is contended that in the matters of disciplinary inquiry by the board relating to *mal* practices at examination, there shall be no judicial interference. Reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of **Board of**

High School and Intermediate Education Vs. Bagleshwar Prasad, AIR 1966 SC 875; and **Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi**, 1991 AIR SCW 879.

8 So far as instant matter is concerned, examination of Geometry subject was conducted on 12.03.2018. We have perused original record of inquiry. It appears that page nos.19 and 20, which is in fact a single page, has been torn in even manner i.e. by using a scale. The explanation offered by the petitioner on 08.05.2018, *prima facie*, appears to be borne out and found to be correct on perusal of the original answer sheet. It appears that on 20.03.2018, the examiner Shri Dandge, tendered a report to the Moderator that the last page of the answer sheet i.e. page no.19/20 is found to be in torn condition. On receipt of the report, the Moderator, it appears, has forwarded the answer sheet along with report of the examiner as well as note prepared by the Moderator to the Divisional Secretary of the Board on 03.04.2018. The petitioner was issued a notice dated 27.04.2018 informing her that page 19/20 of the answer sheet of the subject Geometry is found in torn condition and she was directed to appear before the Board on 08.05.2018 at 11.00 am. As has been recorded above, the petitioner did appear before the Board on 08.05.2018 and tendered her explanation. The Inquiry Officer has tendered a report on the same day wherein it has been recommended to impose punishment under clause 17 of Schedule "B" i.e. cancellation of performance at the examination and for debarment from appearing in the next examination. There are, at the same time, no reasons recorded in the inquiry report nor there is mention in respect of observations

of the Centre In-charge. The contentions of the examinee i.e. petitioner have not at all been dealt with. There is not a single line reason recorded by the Inquiry Officer as to why the Inquiry Officer deems the examinee i.e. the petitioner guilty of misconduct. The unreasoned report by the Inquiry Officer forms basis for taking action against the petitioner. The report of the Inquiry Officer, it appears, has been placed before the Standing Committee on 25.05.2018 and the punishment, as recommended by the Inquiry Officer, has been approved by the Standing Committee. The petitioner was informed about the punishment imposed against her.

9 We have perused the Procedure For Inquiry, formulated by the Respondent-Board. "Misconduct" is defined in clause 3(f), which provides thus:

3(f) "Misconduct" shall mean any illegal or wrongful act or conduct which is alleged to have been committed by any candidate and/or any member of the staff at, for or in respect of the final examination and, without prejudice to the generality of the foregoing, shall include information of leakage during setting of question papers or translation thereof or distribution of question papers, copying, tampering with answer books, smuggling in of answer books or any part thereof written outside Examination Hall, replacement of answer books or any part thereof written within

the examination hall or block by other answer book or part thereof written outside the examination hall or by inserting answers into answer book otherwise that in the regular courses of examination in the examination hall, impersonation, bribing or otherwise by any other means influencing, affecting or putting pressure on the examiner or the moderator or favouring a candidate at the examination as a guide pro quo for any material or other consideration or tampering with the documents issued by the Board or otherwise howsoever changing a candidate's results in any manner whatsoever and generally acting in such a manner so as to affect or impede the conduct of the final examinations and fair declaration of results thereof.

10 Clauses 5 to 11, relating to Procedure of Inquiry, which are relevant for the purposes of determination of controversy before us, read thus:

5(a) On any inquiry being entrusted to the Inquiry Officer, he shall give notice in writing to the candidate and/or the members of the staff concerned setting out therein the nature of the misconduct alleged against him and calling upon him to show cause within the time to be stipulated by him which shall not be more than

15 days from the issue of the notice as to why penalty, as provided for in clause 14 of the procedure, should be imposed on him. Such notice shall also set out the punishment that may be imposed on the candidate or members of the staff as the case may be. Such notice shall be sent under Registered Post Acknowledgement Due.

(b) The Inquiry Officer shall offer to the candidate concerned by such notice an opportunity to inspect the relevant documents which are proposed to be relied upon during the inquiry and shall give inspection of the said documents in his office on the day and at the time appointed by him in such notice.

(c) In case the candidate and/or the members of staff concerned fails to submit his say in writing within the stipulated time, inquiry shall be completed *ex parte*.

6 The persons against whom inquiry is held shall be entitled to submit his reply in writing to the said show cause notice, to produce his witnesses as well as documentary evidence and to be heard in person if he so desires but shall not be entitled to be represented by lawyer or any other person. Such person shall be bound

to answer truthfully and question relevant to the subject of inquiry that may be put to him by the Inquiry Officer.

7 The witnesses produced during the inquiry shall be subjected to cross examination but the standard of cross examination may not be the same as in the courts of law or in the inquiries before or conducted by person learned in law. Similarly, admissibility and reliability of documents will be considered by the Inquiry Officer with regard to the nature and purpose of the inquiry and with sense of fairness towards the person under inquiry and with due consideration of the public interest.

8 The Inquiry Officer shall maintain a record of the inquiry including statements of witnesses and documentary evidence that may be produced or obtained by him.

9 All documentary or other evidence which may be collected or recorded shall be admissible as an evidence and may be relied upon by the Inquiry Officer. However the person under inquiry shall have an opportunity to refute such evidence and if properly refuted may be rejected by the Inquiry Officer.

10 After considering the facts of the case, the Inquiry Officer shall submit its report in writing including its findings and proposals for punishment, if any, within 6 weeks from the date of issue of the show cause notice to the Divisional Chairman of the Divisional Board for further action.

11 The Standing Committee shall consider the report and decide the case as it may deem fit. The Standing Committee will take the decision in the same meeting.

11 Turning to the instant matter, it does appear that the Inquiry Officer issued a notice to the petitioner informing her the alleged misconduct on 27.04.2018 and further calling upon her to appear before the Committee on 08.05.2018. It has not been informed to the student, who is of a minor age, even to show cause as to why penalty provided in clause 14 of the procedure of inquiry, should not be imposed on her. The notice does not set out punishment that may be imposed on the student. Firstly, the notice issued to the student, though sets out the fact that answer sheet page 19/20 has been found in torn off condition; and calling upon the petitioner to appear before the Board on 08.05.2018, it does not set out that any punishment was proposed against the petitioner nor the notice records nature of the punishment proposed against the petitioner. On perusal of the notice, one gets an impression that the petitioner is only directed to appear for the purposes of inquiry before the Inquiry Officer on 08.05.2018.

Since the petitioner was not made aware that the charge levelled against her amounts to misconduct, which may lead to penalty nor the penalty proposed against the petitioner has been informed to her and as such, notice of inquiry itself being defective and not in consonance with Regulation 5(a) of the Regulations, the whole inquiry is vitiated. The serious lacuna in the notice i.e. failure to inform the minor student that there is any punishment proposed against her and failure to inform the nature of the punishment itself amounts to non observance of principles of natural justice and on this count alone, the inquiry proceedings are vitiated and as such, ultimate penalty imposed against the petitioner is liable to be set aside.

12 Second serious lacuna in the inquiry is referable to breach of clause 10 of the inquiry procedure. The Inquiry Officer is mandated to submit its report in writing including his findings and proposal for punishment. In the instant matter, on perusal of the report of the Inquiry Officer, it is noticed that there are absolutely no reasons recorded for reaching the conclusion. There are no findings recorded by the Inquiry Officer. However, clause 5 of the report records only conclusion. The reply of the petitioner, during the conduct of inquiry, is not reflected in the inquiry report. The inquiry report is absolutely without any reason and as such, it cannot be termed to be an inquiry report at all. The Inquiry Officer is expected to consider the facts, reply of the student/examinee and to record his findings on the basis of charge alleged and reply of the student / examinee. The Inquiry Officer has utterly failed to tender proper report. The report does not set out any finding. There is absolutely no reason as to why the Inquiry Officer has

reached the conclusion that the examinee is guilty of *mal*-practices at examination. The Inquiry Officer was expected to consider the charge alleged against the examinee and his defence and set out the reasons as to why the defence is acceptable or not acceptable and then to proceed to record the conclusion.

13 In the instant matter, the report of the inquiry officer appears to have been furnished in the proforma. Even the proforma has not been completely filled in. The column relating to explanation by the Centre In-charge is kept blank.

14 In our considered opinion, for the reasons set out above, the whole inquiry proceedings are vitiated. The report of the Inquiry Officer is not within the framework of the procedure set out by the Board and as such, the conclusion drawn and punishment imposed against the examinee/petitioner student is vitiated and is liable to be quashed and set aside. In the instant matter, principles of natural justice have been given a go bye. The report of the Inquiry Officer, which is without setting out any reasons for drawing the conclusion, speaks of the mind of the Inquiry Officer and since the Inquiry Officer has not set out the reasons for recording inquiry report, there is serious breach of observance of principles of natural justice.

15 For the reasons recorded above, the writ petition deserves to be allowed and same is accordingly allowed. The decision taken by Respondent No.2-Board as regards imposition of penalty of debarment of the petitioner from appearing for next examination up to July 2018 and cancellation of her performance

at the examination held in March, 2018, is quashed and set aside. Respondent-Board is directed to declare result of the petitioner forthwith.

16 Rule is made absolutely accordingly. There shall be no order as to costs.

MANGESH S. PATIL
JUDGE

R.M.BORDE
JUDGE

adb/