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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1788 OF 2018

Shaikh Mehmoona Abdullah	...Petitioner
Vs.	
State of Maharashtra & Ors.	...Respondents

Mr.Sanjay Jain with Ms.Kanizz Munjee i/b. M/s. L J Law for Petitioner.
 Mr.G.W. Mattos, AGP for Respondent No.1.
 Mr.Anuj Jaiswa i/b. Little & Co. for Respondent No.2.
 Ms.Swati Sharma i/b.Ms.Anjali Yajurvedi for Respondent No.3.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 18th JULY 2018

P.C.:

Rule. Rule made returnable forthwith by consent.

2. The petitioner seeks direction for issuing a fresh mark-sheet in respect of subjects “M-1” and “M-2” in the 12th standard examination conducted in February-March of academic year 2017. It is admitted that the petitioner failed in the said 12th standard examination. The petitioner again attempted for second time and appeared for 12th standard examination conducted in the month of July 2017. She failed in the said examination. There is no dispute that the petitioner is physically handicapped student having 75% low vision.

3. The petitioner approached this Court with necessary directions as prayed for in the petition.

4. The petition was filed on 27th June 2018. The contesting and answerable respondent is the board i.e. respondent No.2. On the last occasion, after hearing the parties, we passed an order on 4th July 2018 directing the committee of the board to take appropriate decision in respect of the claim of the petitioner, keeping in view the observations made by the commissioner (disabilities) who had recommended the case of the petitioner for grant of 20 grace marks in the result of examination conducted in February-March 2017.

5. The board has placed on record a copy of the decision taken, signed by the concerned Secretary.

6. By a resolution No.50, the Committee rejected the request of the petitioner and showed its inability to grant 20 marks to the petitioner's result. The Committee has referred to Rule 102(2) of The Maharashtra Secondary And Higher Secondary Education Boards Regulations, 1977, which is stated to be relevant one and reads as under:-

“102(2) In any case, where it is found that the result of the examination has been affected by error, malpractice, fraud, improper conduct or other matter of what-so-ever nature, the Divisional

Board, on the recommendation of the Standing Committee, shall have power to amend such result in such manner as shall be in accordance with the true position and to make such declaration as it may consider necessary in that behalf, provided that except as provided in clause (3) below, no result shall be amended after the expiration of six months from the date of declaration of the results.”

7. The learned Counsel appearing for the respondent, on instructions, submits that taking into consideration the facts of the case, the petitioner is not entitled to the benefits as claimed in the petition.

8. The learned Counsel appearing for the petitioner submits that some indulgence is required to be shown in the case, in view of the fact that the petitioner is suffering 75% blindness. She is a handicapped student and if 20 grace marks are added to the result of petitioner, she can be declared as “pass” and she will be in a position to study further. The learned Counsel placed reliance on the judgment dated 11th July 2013 passed by this Court (Mohit S. Shah, C.J. & M.S. Sanklecha, J.) in Writ Petition No.5667 of 2013.

9. We have perused the record placed before us and the judgment referred above. In the facts, we find that the petitioner, after accepting the result of examination conducted in March 2017, attempted and appeared for the next examination which was conducted in July 2017. In both examinations, the petitioner failed. A request is made to add 20 grace marks in respect of the result of first examination. It seems that if

20 grace marks are added in the result of second examination, the petitioner would not get any benefit.

10. This is a case where the petitioner's disability is not disputed question. It seems that the petitioner was not aware that the disability column was to be filled in which would facilitate the Board to take necessary steps. We have perused the order passed by the Commissioner dated 16th April 2018. By a reasoned order, the Commissioner recommended the case of the petitioner.

11. In the facts of the case, we find that the purpose of statutory provisions, the policy of the State would be achieved in case the petitioner is allotted 20 grace marks to the result of examination conducted in February/March 2017 by the Board.

12. In the facts of the case, we are of the view that the requirement as contemplated in regulation 102(2) which stipulates that no result shall be amended after the expiration of six months from the date of declaration of the results, needs to be waived. In the peculiar facts and circumstances of the case, in case the said time restriction is not waived, then statutory benefits which are made available to the petitioner under the Rights of Persons with Disabilities Act, 2016 and the policy of the

State Government would be denied. We are therefore, inclined to issue directions to the respondent-Board to add 20 grace marks to the subjects “M-1” and “M-2” in respect of the 12th standard examination conducted in February-March 2017. A fresh corrected mark-sheet shall be issued in favour of the petitioner.

ORDER

1. Petition is allowed.
2. The respondent No.2 is directed to add 20 grace marks to the subjects “M-1” and “M-2” in respect of the 12th standard examination conducted in February-March 2017.
3. A fresh corrected mark-sheet shall be issued in favour of the petitioner accordingly within three weeks from the date of receipt of copy of this order.
4. As order is passed in the peculiar facts and circumstances of the case, the same shall not be treated as binding precedent.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]