

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.17033 of 2018
Date of Decision:31.07.2018

Anoushka Kejriwal (minor) through her natural father

. Petitioner

Vs.

Union of India and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Ms.Munisha Gandhi, Sr. Advocate, with
Ms.Salina Chalana, Advocate,
for the petitioner.

Mr.Nitin Kant Setia, Advocate,
for the respondent-CBSE.

RAKESH KUMAR JAIN, J.

The petitioner, a student of Bhavan Vidyalaya School, Sector 27, Chandigarh, had appeared in Class XII examination conducted by the Central Board of Secondary Education [for short 'the CBSE'] in the month of March-April, 2018 and secured 460 out of 500 marks in the result declared on 26.5.2018. She was not satisfied with her marks in 4 subjects, namely, English Core, Economics, Business Studies and Accounts. As per the procedure provided by the CBSE for re-evaluation, the student has to first apply for re-verification of marks in which marks are only calculated of each question subject to payment of ₹500/- per subject. If the student is not satisfied with the re-verification, he/she can obtain a photocopy of his/her answer-sheet on payment of ₹700/- per answer-sheet but the answer sheet can be obtained only by those students who had applied for re-verification of

their marks. The answer key of each subject is also uploaded on the website of the CBSE for reference of the students and thereafter, the student can apply for re-evaluation in which the answers for the specific questions are re-checked and if it is found to be correct then the marks are accordingly awarded but for the purpose of re-evaluation, the student has to mandatorily apply for obtaining the photocopy of answer-sheet with the payment of ₹100/- per question.

The petitioner had allegedly applied for re-verification of her marks in four subjects and paid requisite fee of ₹2000/- on 1.6.2018. She was informed on 4.6.2018 that no mistake was found in calculation of marks. Thereafter, she applied on 15.6.2018 for obtaining photocopy of answer-sheets and paid requisite fee of ₹2800/- on the same day and received the same on 20.6.2018. She had allegedly compared her answers with the answer-key of each subject, obtained from the website of the CBSE, and when she realized that she had not been awarded correct marks for some of the questions, applied for re-evaluation of answers of three subjects, namely, English Core, Economics and Business Studies and paid ₹2500/- for re-evaluation of 25 questions on 23.6.2018. On 5.7.2018, the petitioner received the result of re-evaluation wherein she was informed that her marks have been revised in two subjects. In the subject of English Core (Subject Code 301), her marks were increased from 86 to 93 and in the subject of Economics (subject Code 030) her marks were increased from 72 to 78 but in regard to the subject of Business Studies (subject Code 054), no mistake was found in the re-evaluation. As a result therefore, the marks of the petitioner were increased from 460/ 500 marks (92%) to 473/500 (94.6%).

The petitioner is still not satisfied with the re-evaluation of her answer-sheet of the subject of Business Studies (subject Code 54) more particularly in regard to questions No.11, 12 & 18. She has given the details of the question and answer of the aforesaid three questions in the writ petition, which is reproduced as under: -

For question No.11:

<i>Answer Key</i>	(a) <i>Democratic style</i> (b) <i>Two positive aspects of communication which Sandhya is using as an intelligent manager are:</i> (i) <i>It carries information rapidly and therefore, may be useful to the manager at times.</i> (ii) <i>It is used by the manager to transmit information so as to know the reaction of his/her subordinates.</i>
-------------------	--

<i>Petitioner's answer</i>	(a) <i>Democratic or participative style of leadership is used by Sandhya.</i> (b) (i) <i>It leads to faster spread of information and provides quick feedback.</i> (ii) <i>It is used by the manager to know the views of the employees regarding different</i>
----------------------------	---

policies, decisions, etc.

*Marking scheme 1 mark for identifying the style
+ (1 x 2 = 2) = 3 marks*

Marks awarded Zero

For question No.12:

Answer Key Option A is better
This is because in this option return on investment (10-12%) is higher than rate of interest (9%). The concept being used in taking decision is trading on equity.
Trading on equity refers to the use of fixed cost sources of finance such as preference shares, debentures and long-term loans in the capital structure so as to increase the return on equity shares.

Petitioner's answer Option A is better as Return on investment is greater than rate of interest on loan.
Thus, it will help to increase the earning per share of the shareholders and further increase the benefits of trading on equity. Trading on equity concept has been used.
It refers to increase in earnings of shareholders due to presence of fixed financial charges like interest.

Marking scheme 1 mark for identifying the

option

1 mark for the reason

*1/2 mark for identifying the
concept*

1/2 mark for the statement

Total : 3 marks

Marks awarded 2 marks

For question No.18:

Answer Key Protective functions of SEBI:

(a) It prohibits fraudulent and unfair trade practices like misleading statements, manipulations, price ragging etc.

(b) It controls insider trading and imposes penalties for such parties.

(c) It undertakes steps for investor protection

(d) It promotes fair practices and code of conduct in securities market.

Petitioner's answer The Securities and Exchange Board of India has been established to protect the interest of investors and provides the following protective functions:

1) It has established fair practices and code of conduct to be followed by the intermediaries.

2) It aims to protect the interest of the investors by

educating them.

3) It aims to protect the investor from misleading statements and manipulations of prices i.e. price rigging. Price rigging, is the manipulation of priced to inflate or depress the market price of securities in order to cheat the investors and ear individual profits.

4) It aims to protect the investors from inside trading practices.

Insiders are the people closely associated with the company and may be a director manager, etc. Insider trading refers to earning individual profits by use of information which the insider alone has access to.

*Marketing
Scheme*

1 mark for each statement

Total marks = 4 marks

Marks awarded 3 marks

It is further averred that as per Instruction No.1 provided in the General Instructions of the Marking Scheme, given in the answer-key, the marks have to be awarded on the basis of expression and not as per verbatim reproduction to the answers contained in the answer key. General Instruction No.1 read as under: -

“The marking scheme carries only suggested value points for the answer. These are only

guidelines and do not constitute the complete answer. The student can have their own expression and if the expression is correct, marks be awarded accordingly.”

The grievance of the petitioner is that there is a mechanical evaluation on the part of the evaluator otherwise her marks originally awarded as 460/500 (92%) were increased to 473/500 (94.6%) whereas she is actually entitled to 478/500 (95.6%) marks. The further grievance of the petitioner is that there is an error on the part of the CBSE/evaluator in not given her proper marks to which she was entitled to in the aforesaid three questions.

Short notice was given in this case to the CBSE to file response.

In the reply filed by the CBSE, It is averred that the re-evaluation is carried by subject experts and it is ensured by the CBSE that there is no error in the final result announced after the re-evaluation is completed. In regard to question No.11, it is submitted by the respondents that the question carried maximum 3 marks. Question No.11(a) carried 1 mark and question No.11(b) which comprised of further two parts carried 1 mark each. It is averred that answer to question No.11(a) given by the petitioner in answer book would reveal that she had initially attempted the said question which was scored off by her and thereafter part (b) was attempted and scored off. The question No.11(a) was attempted in such a manner that it was utterly confusing for the examiner to consider the answer as attempted or not attempted, therefore, no mark was awarded. In respect of question No.11(a) and 11(b), it is submitted that on re-evaluation, the

petitioner has been awarded 1/2 mark each for question 11(b)(i) and 11(b)(ii) keeping in view the standardization marking scheme. In respect of question No.12, it is submitted that the examiner has given 2 marks out of 3 marks as per the marking scheme as the answer was not in the manner in which it should have been attempted. It has further submitted that insofar as the questions, the answers to which are of subjective nature, it would rest upon the wisdom of the examiner to find out whether there can be a better answer than the one being evaluated for the purpose of awarding full marks. It is also submitted that the examiner did not sit to evaluate the answer-sheet of one candidate alone but had to evaluate and award marks in respect of perhaps hundreds of such answer-sheets and therefore, in the process of maintaining proportionality of his discretion in award of marks, the Court may not put itself in the shoes of the examiner and arrive at a conclusion different than the one arrived at by the examiner and change the marks given by the examiner because the examiner is an expert, who alone is best equipped to award the marks and this Court may not take upon itself the task or responsibility of assessing as to whether the marks finally awarded by the examiner were correct or not. Similar is the reply given in regard to question No.18 in which the petitioner has been awarded 3 marks out of maximum 4 marks. The respondents have further averred that the petitioner had secured 74 marks in theory and 20 marks in practical in the subject of Business Studies, therefore, her total score was 94/100 and she has been given 1 mark on account of standardization of marks and in that process she has been awarded 1/2 mark each for Question No.11(b)(i) and 11(b)(ii). Thus she

been awarded 95 out of 100 marks in the said subject and therefore, her result has been declared as ‘no change’.

Learned counsel for the respondents has further explained the term “standardization of marks” by referring to a decision taken by the Result Committee in its meeting held on 24.5.2018 to consider item No.1 in regard to the result of Class XII, 2018 examination. The said decision is as under: -

*“RESULT COMMITTEE MEETING HELD
ON 24.05.2018*

*ITEM 1: TO CONSIDER THE RESULT OF
CLASS XII EXAMINATION, 2018*

DECISION ON ITEM NO.1 IS AS UNDER:

Result Committee after detailed analysis unanimously resolved that the following standardization of marks be awarded to the candidates of Class XII, 2018 examination:

<i>Sub Code</i>	<i>Subject Name</i>	<i>Standardization of marks</i>
<i>007</i>	<i>Hindi Elective</i>	<i>04</i>
<i>041</i>	<i>Maths</i>	<i>09</i>
<i>042</i>	<i>Physics</i>	<i>09</i>
<i>043</i>	<i>Chemistry</i>	<i>09</i>
<i>054</i>	<i>Business Studies</i>	<i>08</i>
<i>055</i>	<i>Accountancy</i>	<i>09</i>
<i>301</i>	<i>English Core</i>	<i>03</i>

The modalities with regard to award of standardization of marks be as under:

- a) *The marks obtained after standardization shall not exceed 95% marks in the concerned subject*
- b) *No standardization marks are to be given if the candidate does not pass in the subject*
- c) *Standardization of marks will precede GRACE MARKS*

Because of the reasons mentioned above, the Committee also considered the question of awarding grace marks to the candidates. Committee has decided that not more than 09 Grace Marks be awarded to the eligible candidates appearing in full subjects and 02 Grace Marks to those candidates appearing in Compartment subjects in Class XII-2018 so as not to put any candidate to a disadvantageous position, as per guidelines given below:-

- (i) *Grace Marks be given to those candidates whose status is changing as a consequence (i) from fail to compartment (ii) fail to pass (iii) compartment to pass*
- (ii) *Grace Marks be given first in the subject in which minimum grace marks are required and in that order in other subjects, if need be. Only one (01) grace mark be given for passing in practical paper.*
- (iii) *In subjects where there are theory and practical papers, grace marks of not more than one (01) mark be admissible to the practical paper and the other admissible grace marks be given in theory."*

Learned counsel for the petitioner has submitted that the respondents have committed an error in applying the principle of 'standardization of marks' in respect of question Nos.11(b)(i) and (ii) by awarding her 1/2 mark each instead of 1 mark each because she herself had secured 74 marks in theory and 20 marks in practical, total 94 out of 100 marks and the respondents have given her 1/2 mark each in re-evaluation in question Nos.11(b)(i) & (ii) in which she was earlier awarded 'zero' mark but the respondents have now awarded 1/2 mark each only on the principle of standardization of marks and has nowhere stated in the reply that she was not entitled to 1 mark each. In respect of question Nos.12 & 18 in which she has been awarded 2 out of 3 marks and 3 out of 4 marks, it is submitted that the petitioner has attempted the question by giving the answer as provided in the NCERT books for which she might have used a different language, therefore, she should have been awarded full marks in the said two questions also i.e. 3 out of 3 and 4 out of 4 marks. She has further submitted that there is also an error on the part of the respondents in not awarding any mark in regard to question No.11(a) which has rightly been attempted by the petitioner.

I have heard learned counsel for the parties and perused the available record.

Insofar as the answer to question No.11(a) is concerned, the respondents have erred in not considering the same for the purpose of awarding marks on the ground that the manner in which the answer has been given is confusing to the examiner as to whether the petitioner has attempted the question or scored it off. I have seen the answer sheet of the petitioner

and found that wherever she was not satisfied with her answer, she has scored it off with diagonal lines, which is evident from pages 65, 66, 71 and 73 of the paper book. Therefore, the said question should have been taken to have been attempted by the petitioner because she has scored off the portion of the answer by putting a bracket on the left side, hence, she is entitled to 1 mark for the same as she has rightly given the answer.

As regards question Nos.12 and 18, since these are subjective type questions, therefore, the Court would leave it to the wisdom of the examiner, who had re-evaluated and the expert to re-evaluate the answer, for the purpose of awarding the marks and would not sit as an appellate authority to re-judge the matter without any expertise. In this regard no error has been found. However, there is certainly an error on the part of the respondents in awarding only 1/2 marks in respect of question Nos.11(b)(i) and (ii) in the name of standardization of the marks.

About the standardization of marks, learned counsel for the respondents has apprised the Court that the said exercise has to be carried out because there are different set of examinees. Insofar as the decision regarding standardization of marks is concerned, there is no challenge in this petition therefore, the Court is not to comment upon it but the respondents had definitely committed an error in applying standardization of marks in the case of the petitioner to deprive her of 1 mark each to question Nos.11(b)(i) and (ii) to which she was definitely entitled to as there was no dispute raised by the respondents in this regard because the marks obtained after standardization of marks cannot exceed 95% but in ordinary course where the student obtains more than 95% marks because of the answers given in

the examination then it cannot be denied to her/him or restricted upto 95% marks. Thus, I am of the considered opinion that the petitioner is entitled to 1 mark each of question Nos.11(b)(i) and (ii) instead of 1/2 mark which has been awarded and therefore, her result will be accordingly changed. The respondents are directed to make the necessary changes in the marks of the petitioner in the subject of Business Studies and thereafter issue the mark-sheet to her within a period of 7 days from the date of receipt of certificate copy of this order.

31.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No