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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 7th December, 2018

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W.P.(C) 10182/2018 & CM APPL. 39661/2018

ANIMESH

. Petitioner

Through: Mr. Ranjit Sharma, Adv.

versus

THE CENTRAL BOARD OF SECONDARY
EDUCATION

..... Respondent

Through: Mr. Amit Bansal, Adv. with
Ms. Seema Dolo, Adv. for CBSE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. The present writ petition relates to the Economics paper given by the petitioner in his 12th class, under the aegis of the Central Board of Secondary Education (hereinafter referred to as “the CBSE”).

2. The paper carried 100 marks, divided into two parts, 80% being allotted for written examination and 20% for practical.

3. Para 5 (a) of the writ petition, sets out the petitioner’s specific grievance, which relates to the marks allotted to him against eight of the questions attempted by him, in the following words:

“That the petitioner had appeared at Delhi in class-XII CBSE, Examination, 2018 with Economics as a subject and Roll No.916935. The paper in Economics carried 100 marks

divided into two parts namely, written and practical of 80 and 20 marks respectively. The petitioner obtained 66 marks in the written paper and is dissatisfied with the marks allotted to questions '8', '10', '12', '20' '17', '19', '23' & '24'. The question paper (Annexure P1) itself provides for instructions to write answers to the point and within the limited words. The answer sheet (Annexure P2) provided to the petitioner through the medium of RTI application justify the contentions of the petitioner. The evaluator, while checking the answer sheet has not stuck to the ill instructions and has given marks generally to the answers. At the same time, he has not given full marks to answers which deserved them.”

4. As a result of having, as he perceives, not been awarded proper marks against the above eight questions, the writ petition avers, that the petitioner could not get admission to the course and college of his choice.

5. The writ petition, therefore, prays for issuance of a writ of mandamus, directing the CBSE to get the petitioner's answer-sheet checked/evaluated by an expert or by a body of experts, and to allot proper marks to the answers given by the petitioner in the abovementioned examination.

6. Mr. Sharma, ventilating the cause of the petitioner, draws my attention to Instructions Nos. 4 and 7 of the General Instructions constituting the marking scheme for the Economics paper given by the petitioner. The said clauses read thus:

“4. Please examine each part of a question carefully and allocate the marks allotted for the part as given in the 'Marking Scheme' below. TOTAL MARKS FOR ANY

ANSWER MAY BE PUT IN A CIRCLE ON THE LEFT SIDE WHERE THE ANSWER ENDS.

7. For mere arithmetical errors, there should be minimal deduction. Only $\frac{1}{2}$ mark should be deducted for such an error.”

7. Mr. Sharma would seek to submit, by comparing the expected answers, suggested by the CBSE against the eight questions, with the answers actually given by his client, that the examiner has awarded lesser marks to his client than were deserved by him. He points out that, in the answer-sheet, the examiner has awarded, omnibus marks against the answers, without specifying the marks against each of the parts in each of the answers.

8. For example, in reference to question no. 8, Mr. Sharma points out that the suggested answer had four parts, each part of which carried one mark. His submission is that the answer given by his client contained the said four parts but, nevertheless, the examiner awarded only three marks.

9. Mr. Bansal, learned counsel appearing for the CBSE, points out that, *vide* notice no. CBSE/Coord/2018/F.11, dated 31st May, 2018, issued by the CBSE, candidates were permitted to apply for re-evaluation of the answer-sheet, but that the petitioner himself did not apply for re-evaluation.

10. Mr. Sharma submits that his client should be permitted, even at this stage, to apply for re-evaluation.

11. In my opinion, as the time for seeking re-evaluation has expired long ago, it is not possible to permit such an exercise, at this stage.

12. The record discloses that, against an application submitted by the petitioner, the CBSE responded by stating that there was “no mistake” found in the paper by the examiner, though Mr. Bansal would submit, however, his instructions are that the petitioner had not applied for re-evaluation at all, but only applied for re-verification of marks, as contained in clause 1 of the circular.

13. Be that as it may, I have, in the interests of justice, also considered the submissions of Mr. Sharma on merits.

14. I am not able to subscribe to the interpretation, placed by Mr. Sharma, on clause 4 of the General Instructions, governing the valuation of the answer-sheet in the Economics paper. As I understand, the said clause is in the nature of a guideline to be borne in mind, by the examiner, while apportioning marks to the various answers given by the candidates, and is intended, obviously, to avoid subjectivity and promote objectivity, in the allocation of marks. For example, with reference to question no.8, which carried five marks, rather than dealing with leaving the mode of marking of answers entirely to the discretion of the examiner, the instructions suggested four components which were required to be contained in the answer, and allotted one mark for each of the components/parts. This, obviously, was intended to guide the examiner, who, while marking the said question, was expected to assess whether the said four

components/parts figured in the answer provided by the candidates and, if they did, to allot one mark to each such component/part.

15. The instruction does not, however, require, anywhere, that the allocation of marks against each such component/part should be reflected in the answer-sheet.

16. As such, it cannot be said, in my view, that in noting, against each answer of the petitioner, only the total marks awarded by him therefor, the examiner acted in violation of the applicable instructions.

17. Once it is found that the examiner has not contravened the instructions, regarding the manner of awarding marks, the jurisdiction of this Court stands foreclosed.

18. It is outside of province of judicial review, in such cases, for this Court to embark into a comparison of the suggested answers to the answers provided by the candidates, and second-guess the marks awarded against the answers by the examiner.

19. Any such attempt would amount to this Court sitting as a re-evaluating authority, which, in my view, the law does not permit. That no vested rights to re-evaluation exists in any candidates, is a position that has been reiterated in several decisions including *Ran Vijay Singh v. State of U.P.*, (2018) 2 SCC 357 and *U.P.P.S.C. v. Rahul Singh*, 2018 SCC OnLine Supreme Court 609.

20. In that view of the matter, I am unable to subscribe to the submission, of the petitioner, that the Economics paper given by him requires to be re-evaluated by any independent examiner.

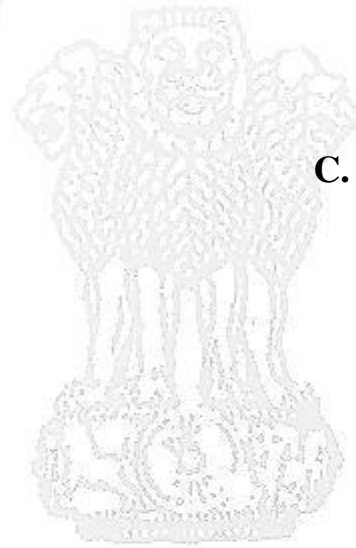
21. For all the above reasons, I am of the view that no case is made out for directing re-evaluation of the petitioner's Economics answer-sheet by any independent examiner, as prayed in the writ petition.

22. The writ petition, therefore, stands dismissed with no order as to costs.

C. HARI SHANKAR, J.

DECEMBER 07, 2018

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