

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.3489 of 2017**

- Kanishka Gabel S/o Prem Shankar Gabel Aged About 18 Years R/o Village And Post Sonthi Tahsil Sakti , District Janjgir Champa Chhattisgarh. , Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh The Secretary School Education Department Mantralaya Mahanadi Bhawan New Raipur District Raipur Chhattisgarh. , Chhattisgarh
2. Chhattisgarh Board Of Secondary Education Raipur , Through Its Secretary Board Of Secondary Education Pension Bada Raipur District Raipur Chhattisgarh. , District : Raipur, Chhattisgarh

---- Respondents**PRESENT:-**

Shri S. Majid Ali, counsel for petitioner/s.
 Ms. Priyanka Shukla, GA for State.
 Shri Alok Bakshi, counsel for respondent No.2.

D.B.: Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Manindra Mohan Shrivastava, Judge

Order on Board**Per P. R. Ramachandra Menon, Chief Justice****14/05/2019**

1. Challenge in this writ petition with regard to virus of the Board of Secondary Education Regulations, 1965, particularly with regard to revaluation of the marks to be awarded.
2. Brief factual matrix is that the petitioner had appeared in the 10+2, Chhattisgarh Board of Secondary Education Examination in the year 2016. According to him, the actual marks, which ought to have been awarded, despite doing well in the subjects of English and Mathematics, were not granted and he was awarded only 90 marks for English and 95 marks for Mathematics, out of total of 100 marks. Since the petitioner was sure to have had more marks, he remitted the necessary fees as prescribed under the Rules and applied for

reevaluation of the answer sheets in the aforesaid two subjects. The petitioner has become aggrieved in so far as marks awarded, pursuant to revaluation in the aforesaid two subjects, were not entered in the mark sheets and proper mark list was not given to him for the reason that there was no minimum difference by 10% between the original valuation and the re-valuation, as per the relevant rules/regulations. Being aggrieved by the said action, the petitioner has moved a representation before the respondent authorities on 21-09-2016 (Annexure P-4), when he was informed as above.

3. Learned counsel for the petitioner submits that such a course is not possible in the case of the petitioner herein, insofar as he was already awarded 90 marks in respect of the subject English and 95 marks for Mathematics, out of the total of 100 marks. Under no circumstance, would it be possible for the authorities to award the petitioner 10% more marks in the subject paper Mathematics, having already scored 95 marks, to constitute the minimum difference. 10% of the 95 marks awarded in respect of the Maths subject, would be 9.5 marks and if it is added, it will be 104.5 marks, which is over and above the total of 100 marks and hence not at all possible. It is in the said circumstance, that the Rules stipulated in this regard are sought to be challenged as ultra virus to the Constitution of India.

4. We have heard learned counsel appearing for the State as well as learned counsel appearing for the Chhattisgarh Board of Secondary Education.

5. The factual position is that the petitioner does not have minimum difference of 10% of marks as a result of revaluation on comparison with the marks already secured, in the process of revaluation. The purpose of revaluation is based on the 'policy' framed by the State Board, so as to extend the benefit to the deserving students/class to the requisite extent and never as a

matter of right for all, irrespective of any criterion. The revaluation result can be accepted and implemented only when there is a 'substantial error', mistake or lapse on the part of the teacher, who already had valued the papers. In the process of revaluation, if there is only a 'marginal error', it could vary from person to person, who is assessing the merit, particularly in relation to the answers given in descriptive form. Revaluation can be permitted only if there is a rule enabling this exercise and in absence of any rule, it is not possible for this Court to direct any authority, in exercise of the discretionary jurisdiction, to cause the papers revalued. Having said so, if there is a rule enabling such an exercise, revaluation is possible and can be permitted only to the extent as envisaged under the Rules.

6. Taking into consideration the afore-stated facts and circumstances, as a matter of policy, the respondent-Board has framed the norms with regard to revaluation stipulating that there has to be a minimum difference by 10% of marks between the marks originally secured and the marks subsequently awarded, so as to constitute a 'substantial error' and to give effect to it in the process of revaluation. Under no circumstances, can it be said, that such stipulation is beyond the rule making power of the authorities concerned or is arbitrary in any manner. But for the vague challenge against the Rules as ultra virus to the Constitution, how such stipulation could be stated as ultra virus is never demonstrated by the petitioner. That apart, there is no plea of any malafides. No tenable ground is raised to call for interference by this Court.

7. In view of above, we find that there is no merit in this petition. Accordingly, this petition is dismissed.

SD/-
(P.R. Ramachandra Menon)
Chief Justice

SD/-
(Manindra Mohan Shrivastava)
Judge