

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 4169 of 2019**

Dipendra Kumar S/o Mani Shanker Sahu Aged About 18 Years R/o Qtr.
No. G-102, Shivam Vihar, Colony, Bilaspur Chhattisgarh., District :
Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Principal Secretary, Department Of School Education, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chairaman Board Of Secondary Education, Vivekanand Nagar, Janta Colony, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Secretary Board Of Secondary Education, Vivekanand Nagar, Janta Colony, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Union Of India Through Secretary, Department Of Higher Education, Ministry Of Human Resource Development, Government Of India, Shastri Bhawan, New Delhi - 110001., District : New Delhi, Delhi
5. Chairperson, National Testing Agency C-20 1a/8, Sector 62, IITK Outreach Centre, Noida - 201309.

---- Respondents

For Petitioner	:	Ms. Aditi Singhvi, Advocate
For State	:	Mr. P. Acharya, PL
For Union of India	:	Mr. B. Gopa Kumar, Advocate
For respondent No.2 & 3	:	Mr. Animesh Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/11/2019**

1. The challenge in the present writ petition is to the notification dated 22.04.2019 Annexure P-1. The challenge is to Clause 5 of the said notification. Clause 5 envisages a situation where a student on applying for re-evaluation would not be issued with a fresh mark-sheet unless he obtains 10% or more marks of the marks obtained by the student in the re-evaluation.

2. According to the petitioner this is arbitrary as 10% of the marks is on a higher side and at times even 5 marks or lesser marks than 10% becomes crucial for the purpose of admission to a Higher Course.
3. The Division Bench of this Court in the case of *Rahul Chandrakar Vs. State of Chhattisgarh & Another* in WPC No.2352 of 2015 vide its judgment dated 04.01.2016 where a similar issue was raised has held as under :-

“2. Learned Counsel for the Petitioner submits that he was a candidate at the Higher Secondary School Certificate Examination, Class XII for the academic session 2014-15. He secured 465 marks out of 500. Re-evaluation of papers was applied for in two subjects, i.e., Hindi and English under the Notification dated 1.4.2013. After re-evaluation, 7 marks were increased in Hindi and 1 mark was increased in English by the Re-Evaluation Committee. The authorities have declined to issue fresh mark-sheet with the enhanced marks. If 8 marks are added, the total marks scored by him would increase to 473 from 465 out of 500. He would then figure in the final top ten students of the Higher Secondary School Certificate Examination. The refusal to issue the fresh mark-sheet unless the average enhancement of marks after re-evaluation is 10% or more, renders the notification dated 1.4.2013 susceptible to challenge as if a person secures more than 90 marks, the notification dated 1.4.2013 would be rendered unworkable as no one can be given more than 100 marks.

3. Learned Advocate General submitted that the Petitioner applied for re-evaluation under the Notification dated 1.4.2013 and the procedure prescribed under the same. No allegations have been made against the two re-evaluators. The fairness on part of the Respondents is evident from the fact that the marks have been enhanced. But if the enhancement of marks by the two evaluators did not increase by 10%, no new mark-sheet could be issued under the notification dated 1.4.2013. The Petitioner cannot be

permitted to approbate and reprobate by accepting the notification dated 1.4.2013, applying for re-evaluation under the same, and then turn around and challenge the notification itself.

4. We have considered the submissions on behalf of the parties.

5. Once the Petitioner applied for re-evaluation under the notification dated 1.4.2013 as it stood, re-evaluation has been done, no allegations have been made against the two re-evaluators, we concur with the contention of the Advocate General that the Petitioner can be permitted to approbate and reprobate.”

4. Applying the same judgment and the principle laid therein, this High Court again in the case of Ku. Sandhya Kaushik Vs. State of Chhattisgarh & Others in WPC No. 2603/2016 decided on 09.03.2017 has dismissed another writ petition wherein also similar challenge was raised.
5. Given the fact that there is already a judgment of the Division Bench of this Court as well as by the Single Bench of this Court on similar set of facts, this Court is of the firm view that present writ petition also falls within the same category and present writ petition also is covered by the judgment rendered in the aforesaid two writ petitions. Accordingly, the present writ petition being devoid of merits so far as challenge to the notification dated 22.04.2019 is concerned stands dismissed.
6. At this juncture, counsel for the petitioner submits that petitioner has another grievance so far as one of the subjects in which the re-evaluation has been sought, was examined only by one teacher whereas, under the guidelines it has to be re-evaluated by at least two teachers.
7. Counsel appearing for respondent No.2 & 3 submits that no such ground has been raised by the petitioner earlier in his objection/representation. Therefore, this aspect could not be considered. The said issue therefore stands open for the petitioner to make appropriate

representation/objection to the respondent No.2 & 3 for consideration in accordance with the guidelines governing the field.

8. Reserving the said right of the petitioner, the present writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rohit