

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ W.P.(C) 7062/2019

Date of Decision: 4th July, 2019

PAAVANI GUPTA

..... Petitioner

Through Mr. V. K. Gupta, Sr. Advocate
with Mr. Ajay Gupta, Sr.
Advocate, Ms. Ruchira Gupta
and Ms. Mona Sinha,
Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION

..... Respondent

Through Mr. Amit Bansal, Standing
Counsel with Ms. Seema Dolo,
Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

1. Mr. Amit Bansal, appears on behalf of the respondent on advance notice.

Heard.

2. Vide the present petition the petitioner seeks that the respondent be directed to re-evaluate the marks obtained by the petitioner, in her class 12th CBSE AISSCE afresh examination from an independent evaluator.

3. During the course of oral submissions that had been now made on behalf of the petitioner it is submitted that the petitioner does not seek appointment of any independent evaluator by the respondent but seeks that the Court may appoint an independent evaluator for re-evaluation of her marks.

4. The petitioner submits through her petition that she has been a meritorious student of the Delhi Public School and has obtained many scholar badges and national and international awards as delineated in paragraph 6 of the petition to the effect :-

“6.

i. ***The Diana Award 2018***”, established in the memory of Diana, Princess of Wales. The Diana Award is the most prestigious accolade a young person aged 8-19 can receive for their social action or humanitarian work. This award is supported by HRH Prince William and Prince Harry.

ii. ***Rotary International Governor’s Elite Award 2018.***

iii. ***PrAmerica National Award*** for one of the Top Student Volunteer-2018, 2017, 2016.

iv. ***No. 1 international Volunteer Award*** by TESF-2017, 2016, 2015.

v. ***Duke of Edinburgh Award*** – 2019, 2016

vi. ***UK- ALMA Award*** - 2015

The petitioner submits that when the CBSE results were declared, her score put forth was to the effect:

“Accountancy 98/100

Economics 98/100

Business Studies 96/100

Mathematics 95/100

English Core 72/100

The total percentage of marks received by the Petitioner came to be 91.8%. However, the best of four subjects including mandatory English Core marks was 91%.”

and the total percentage of marks received by the petitioner came to be 91.8%. However, the best of four subjects including mandatory English Core marks was 91%.

5. The petitioner further submits that being dissatisfied with the marks secured by her especially in the subject of English Core she decided to get her answer sheets re-checked/re-evaluated, and that she applied for Stage-I verification of marks whereby the respondent found no mistake in calculation of marks awarded to the petitioner. Thereafter the petitioner made the Stage II application for obtaining the photocopy of the evaluated answer books in 4 subjects viz. English (Core), Accounts, Economics and Business Studies and thereafter was also provided with the marking scheme on the basis of which the answer sheets of each subject were evaluated/checked as a consequence of which the petitioner on 24.5.2019 after consulting the teachers of her

school who were also the evaluators in the 2019 Class XII examination came to the conclusion that she had been awarded 26 marks less in English Core, one mark less in Accounts and one mark less in Economics.

6. The petitioner submits that on 25.5.2019 the petitioner made the Stage III application for re-evaluation of marks in three subjects being English Core, Accounts and Economics. It is submitted that as per the provisions of the Respondent the applicant in the Stage III is to submit a detailed form wherein the applicant is to provide a specific reason for re-evaluation of the desired question of the particular subject whereafter the re-evaluation of marks was received by the petitioner whereby she was awarded fifteen more marks in English Core subject and her marks increased to 87 from 72, in Accounts one more mark was awarded and her marks in Accounts became 99 marks from 98 marks. No additional marks were awarded in Economics to the petitioner. After addition of the re-evaluated marks, the total percentage of marks received by the Petitioner now came to 95% in the best four subjects including the mandatory English Core marks.

7. The petitioner has further submitted that although after re-evaluation her marks awarded to her have increased in English but still they are not satisfactory and not in accordance with the reasons provided by the petitioner in the re-evaluation form and one mark in Economics has not been granted to her in the re-evaluation and the re-evaluation lacks proper assessment of the petitioner's answers based on merits and both the original marking and the re-evaluation is not as per

the prescribed marking scheme of the subject. The petitioner has further submitted that as there is no rule for an appeal or review against the re-evaluation to be conducted by the respondent, the petitioner has left with no option but to seek justice before this Court.

8. The petitioner has submitted that she had also applied for a copy of the re-evaluated marksheets of English and Economics under the Right to Information from the respondent which till date have been not received by her. The petitioner further submits that she has not made it to any of the top colleges of Delhi University in her desired course in view of the erroneous marking done by the respondent.

9. On behalf of the respondent the prayer made by the petitioner is vehemently opposed placing reliance on the aspect that the re-evaluation has already been done once and in terms of the modalities and schedule for the examination for the process of re-evaluation as per Clause-III(f) no appeal or review against the re-evaluation would be entertained and thus, it is submitted on behalf of the respondent that the prayer made by the petitioner ought not to be granted.

10. On behalf of the petitioner as adverted to hereinabove the submission is to the effect that the petitioner does not seek an appeal or a review against the re-evaluation conducted by the respondent and seeks a redressal before this Court inasmuch as there is no appeal or review against re-evaluation that can be granted as per the scheme of the respondent.

11. On a consideration of the submission that had been made on behalf of either side reliance, has inter alia, been placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***Ran Vijay Singh & Ors. Vs. State of U.P. & Ors.*** 2018(2) SCC 357 wherein it has been observed:

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

and reference has also been made to paragraphs 31 and 32:

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the

examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

12. Reliance has also been placed on behalf of the respondent on the verdict of the Co-ordinate Bench of this Court in ***Aarushi Goyal vs. Central Board of Secondary Education*** in WP(C) No.8552/2017 dated 9.2.2018 vide which it has been observed to the effect that where the experts have already re-evaluated the answer-sheets, it would not be open to the Court to interfere with the result, where the subject experts have already re-evaluated the answer-sheet of the petitioner on two occasions.

13. Learned counsel for the petitioner submits that the facts of the instant case are not in pari materia with the facts in ***Aarushi Goyal*** (supra) inasmuch as there has not been a re-evaluation done **twice** in the instant case.

14. Be that as it may the aspect that the re-evaluation has already been done once and the provisions of the scheme of re-evaluation of the

respondent provide for no appeal or review in relation thereto cannot be overlooked. The verdict of the Hon'ble Supreme Court **Ran Vijay Singh** (supra) makes it apparent that it would not be appropriate to order any further re-evaluation by an independent examiner for conducting re-examination. In as much as there is no glaring error brought forth by the petitioner in the re-evaluation of her marks conducted.

15. The verdict of the Co-ordinate Bench of this Court in **Atul Kumar Verma Vs. Union of India** in WP(C) No.5719/2015 dated 13.7.2015 also makes it categorical that there is no case made out for judicial review in the facts and circumstances of the case.

16. In the facts and circumstances of the instant case, it is not considered appropriate to grant the prayer made by the petitioner.

The petition is accordingly declined.

ANU MALHOTRA, J

July 4, 2019

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