

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8887 of 2020

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Sonalika Rani, aged about (Female), Daughter of Dr. Satish Kumar, Board Roll No- 22657619, re-evaluation application No- 50686R, School No- 65006, Center No- 6670, Admit Card I.D. No- SB616570, Contact No- 7319871177, resident of Mohalla- Soni Bhawan Anand Colony, New Chitragupta Nagar, B.H. Colony, PS- Agumkua, Patna- 800026 at present resident of Flat No- 301, Madhukunj Apartment, New Patliputra Colony, PS- Patliputra, Patna- 800013.

... .. Petitioner/s

Versus

1. The Central Board of Secondary Education New Delhi through its Secretary.
2. The Chairman, Central Board of Secretary Education, New Delhi.
3. The Secretary, the Central Board of Secondary Education, Patna.
4. The Deputy Secretary (Exam) Central Board of Secondary Education, (C.B.S.E) Regional Office, Ambika Complex, Shekhipura, Raja Bazara, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushal Kishor, Advocate
For the CBSE/R1-4 : Mr. Vijay Krishna Tripathy, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 04-03-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Kaushal Kishor, learned counsel for the petitioner and Mr. Vinay Krishna Tripathy, learned counsel for the Central Board of Secondary Education (hereinafter referred to as the 'CBSE').

3. The petitioner has moved the Court for the following reliefs:

“(i) For verification/review of two questions of economics i.e. question No-15 and 23



which has been wrongly assess in order to re-evaluation of marks of application No.-50686R, Roll No.-22657619 for AISSLI/AISSSCE 2020 main exam.

(ii) For issuance of an appropriate writ/ writs for quashing of the letter dated 16.09.2020 sent though email to the petitioner by the CBSE, Regional Office, Patna whereby and whereunder review of re-evaluation of the answer script of economics subject of question No.-15 and 23 has been rejected.

(iii) For any other relief which the petitioner is found entitle in fact and circumstances and for the sake of justice.”

4. The basic contention of the petitioner is that she had been given lesser marks than what she deserved in the subject Economics in the Senior School Certificate Examination, 2020. Thus, she applied for re-evaluation. However, the outcome thereof was not *fully* satisfactory to her.

5. Learned counsel for the petitioner submitted that initially the petitioner obtained 91 marks in Political Science; 97 in Economics and 98 in Physical Education, but upon a request for re-evaluation, the CBSE increased the marks in Political Science from 91 to 99; in Physical Education from 98 to 99, but in Economics, where the request was for re-evaluation of questions no. 15 and 23, there has been no change in the marks given for question no. 15 but with regard to question no. 23, one mark has been increased and thus, the total in Economics has increased from 97 to 98. It was submitted that even the answer for question



no. 15 was fully correct and, thus, one more mark is to be granted, which has not been done.

6. Learned counsel for the CBSE submitted that as per the relevant provisions, there was a request for re-evaluation, which was accepted by the CBSE, and now there cannot be any further review or a second re-evaluation. It was further submitted that the request of the petitioner has been acceded and in fact, 8 marks have increased in Political Science, one mark in Physical Education and even in Economics, one mark has been added, but the claim of the petitioner for another mark is not tenable. It was submitted that there are expert evaluators and the job is required to be left to them and the conduct of the CBSE being fair is sufficiently reflected from the fact that her marks have increased after re-evaluation. It was submitted that prior to re-evaluation, the average marks of the petitioner were 97.6 but after re-evaluation, it has increased to 98.4.

7. The petitioner feels deprived of the one mark in Economics and has approached the Court in this background.

8. It is useful, at this juncture, to refer to the relevant judicial pronouncements. In *University Grants Commission v Neha Anil Bobde (Gadekar)*, (2013) 10 SCC 519, the Hon'ble Supreme Court opined:



'31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] , Tariq Islam v. Aligarh Muslim University [(2001) 8 SCC 546 : 2002 SCC (L&S) 1] and Rajbir Singh Dalal v. Chaudhary Devi Lal University [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887] , has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India.'

(emphasis supplied)

9. Further, admittedly, there is no provision/mechanism for a further review or a second re-evaluation. Could then a Writ Court, if the need so arose, still direct that the same be carried out? The answer lies in the affirmative and can be found in the Hon'ble Supreme Court's decision in ***Tirtha Sarathi Mukherjee***, (2019) 16 SCC 663:



‘19. We have noticed the decisions of this Court. Undoubtedly, a three-Judge Bench has laid down that there is no legal right to claim or ask for re-valuation in the absence of any provision for re-valuation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment [Tirtha Sarathi Mukherjee v. High Court of Gauhati, 2018 SCC OnLine Gau 2060] has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction under Article 226 of the Constitution to direct re-valuation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of re-valuation.

20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the ab-



sence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.'

(emphasis supplied)

10. Additionally, it is settled that a remedy by way of writ, when no alternate efficacious remedy is available, would always lie. Reference in this regard may only be made to Order dated 22.12.2020 passed by this Bench in ***Lalit Narain Mithila University & Anr. v National Council for Teacher Education & Ors.***, CWJC No.9421 of 2020:

‘16.1. In this context, it is appropriate to refer to the Constitution Bench judgement in ***State of Uttar Pradesh v Mohammad Nooh***, 1958 SCR 595, the relevant paragraph reading:

‘10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari



has been issued in spite of the fact that the aggrieved party had other adequate legal remedies...'
(emphasis supplied)

16.2. The aforesaid paragraph from **Mohammad Nooh** (supra) has been approvingly referred to by the Hon'ble Supreme Court in **Maharashtra Chess Association v Union of India, 2019 SCC OnLine SC 932** in the following words:

'24. The principle that the writ jurisdiction of a High Court can be exercised where no adequate alternative remedies exist can be traced even further back to the decision of the Constitution Bench of this Court in State of Uttar Pradesh v. Mohammad Nooh...'
(emphasis supplied)

17. It is not required, in praesenti, to cite further authorities of the Hon'ble Supreme Court on this subject. Suffice it will to state the following settled principles of law:

(i) Powers under Article 226, being discretionary, may not be exercised if there exists an alternative efficacious remedy. However, this is merely a self-imposed restraint.

(ii) In appropriate situations, the High Court in its writ jurisdiction can entertain writ petitions even if there exists an alternative efficacious remedy. There is no, nor can there be, an absolute bar to such exercise of power.

(iii) A fortiori, in the absence of an alternative efficacious remedy, or, where no remedy lies, recourse to writ jurisdiction of the High Court would always be available to an aggrieved party.'

(emphasis supplied)

11. Having considered the facts and circumstances of the case, the submissions of learned counsel for the parties as well as the extant law, this Court finds no occasion to interfere in the matter. Once a request for re-evaluation has been entertained and has also resulted in increase of 10 marks, the same reflects that a



positive and objective exercise of re-evaluation of the answer-sheets of the concerned papers. Thus, the insistence of the petitioner that one more mark be given to her in Economics, through another re-evaluation, cannot be granted by this Court in the exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution. Another aspect which cannot be lost sight of is that the average marks of the petitioner have recorded an increase from 97.6 to 98.4. In these facts and circumstances, the Court does not find any ‘rare and exceptional’ position in the petitioner’s favour.

12. Amidst the backdrop of the discussions made hereinabove, the Court finds that no relief can be granted to the petitioner in the present writ application, which, accordingly, stands disposed off. The Court wishes the petitioner a bright future ahead.

(Ahsanuddin Amanullah, J.)

P. Kumar

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