



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2021

Pronounced on : 02.11.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Writ Petition No.18726 of 2021
and
WMP No.19994 of 2021

S.Joshika

..Petitioner

Vs.

1.The Central Board of Secondary Education
Rep by its Secretary
Shiksha Kendra
2 Community Centre
Preet Vihar
Delhi- 110 092.

2.The Regional Officer
CBSE
New No.3 old No.1630 A
"J" Block 16th Main Road
Anna Nagar West
Chennai- 600 040.

3.The Chief Educational Officer
Kanchipuram District
Kanchipuram
Tamil Nadu.

4.GTA Vidhya Mandir
(Code No.1930281)
Rep by The Principal
GTA Vidhya Mandir Neelankarai Chennai- 600 115.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent pertaining to the publication of result of the petitioner for Standard 12 dated 30.07.2021 along with the impugned reply email



dated 13.8.2021 and quash the same as illegal and direct the 4th respondent to calculate the 12th standard CBSE marks of the petitioner as per the Policy for Tabulation of marks for class XII Board Examination 2021 dated 17.06.2021 and the circular dated 08.08.2021 issued as per the order of the Honble Supreme court in W.P. No.522 of 2021 in the matter of Mamta Sharma Vs CBSE and others and award the scores as per the table II or III of the representation submitted by petitioner's father dated 12.08.2021.

For Petitioner : Mrs.A.Arulmozhi

For Respondents : Mr.G.Nagarajan
Central Government Standing Counsel
for R1, R 2

Mr.A.Selvendran
Government Advocate
for R 3

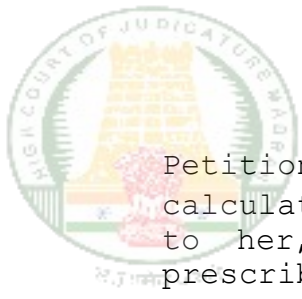
Mr.S.Ashok Kumar
for R 4

ORDER

A student who did her higher secondary course in the 4th Respondent school and who is aggrieved with the marks assigned to her in the class XII board examination in 2021, has knocked the doors of this court, challenging the results published by the 4th Respondent school and for a consequential direction to calculate the 12th std CBSE marks of the Petitioner as per the policy formulated by the 1st Respondent through notification dated 17.06.2021.

2. The brief facts of the case are that the Petitioner underwent higher secondary course in the 4th Respondent school during the academic years 2019-2021 in an integrated batch. Due to the covid 19 pandemic, the CBSE cancelled class XII board examinations through notification dated 01.06.2021 and on 17.06.2021, the CBSE published the policy for calculation of marks for class XII board examinations prescribing the method of assessment and awarding marks to students.

3. The 4th Respondent school adopted the notification issued by the CBSE and declared the results of the students for Class XII. The Petitioner was awarded a score of 76%. The



Petitioner was not satisfied with the manner in which the calculation was made by the 4th respondent school and according to her, it is not in line with the method of assessment prescribed by CBSE. Hence, the father of the petitioner made a representation on 12.08.2021 in this regard. This was forwarded by the 2nd Respondent to the 4th Respondent school. The 4th Respondent school through e-mail dated 13.08.2021 informed the Petitioner that the marks awarded to her are as per the policy of the class XII board examination 2020-21. Aggrieved by the same, the present Writ Petition has been filed before this court.

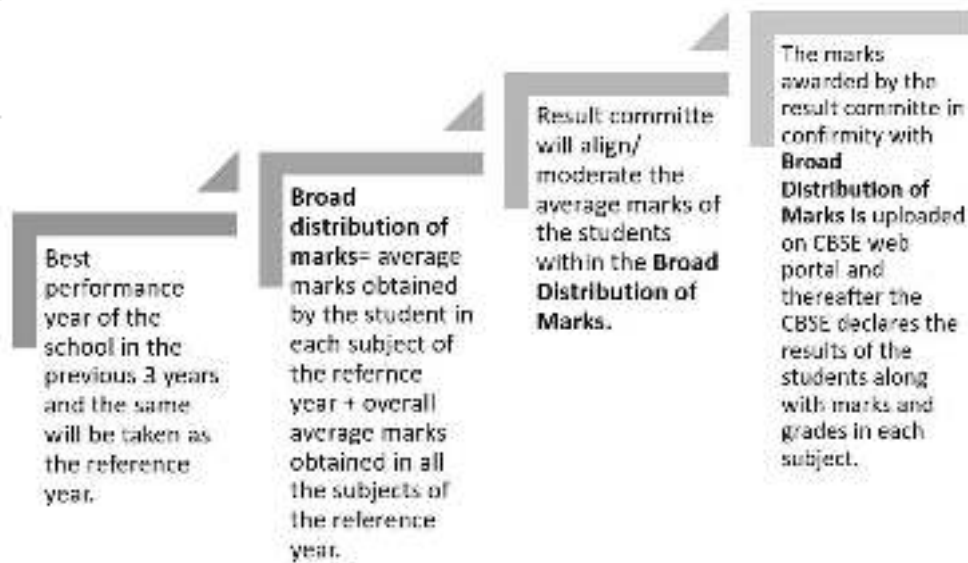
4. Heard Mrs.A.Arulmozhi, learned Counsel for the petitioner, Mr.G.Nagarajan, learned Central Government Standing Counsel for R1, R 2, Mr.A.Selvendran, learned Government Counsel for R 3 and Mr.S.Ashok Kumar, learned Counsel for R 4.

5. The education system and particularly the students who underwent the higher secondary course during the academic year 2020-21, faced a huge challenge due to the covid-19 pandemic. Considering the virulent nature of the virus which spreads very fast through the air, it was decided to confine education during the entire academic year through online mode. The efforts taken to conduct the class XII examination failed since the situation was not under control and the central and state governments decided not to expose the children to the deadly virus. Hence, the CBSE through notification dated 01.06.2021, cancelled the board examinations for Class XII. As a consequence, a notification was issued by the CBSE, dated 17.06.2021 wherein they devised a policy for tabulation of marks for class XII board examinations 2021 and for awarding marks to the students as per the assessment and calculation provided in the notification. In fact, this policy was placed before the Hon'ble Supreme Court in a case that was pending in Mamtha Sharma v. CBSE &Ors and the Hon'ble supreme court on being satisfied with the scheme formulated by the CBSE, directed the CBSE to proceed further to assess the marks and publish the results of the students. The Hon'ble Supreme Court further directed the CBSE to also provide for a dispute resolution mechanism in the policy and notify the policy.

6. Pursuant to the above, the notification dated 17.06.2021 was issued. On a careful reading of the notification, it is seen that the same involves a four step process as described below:-



WEB COPY



The concerned school does not have any control or say in so far as the fixing of historical performance of the school based on the theory marks for previous three years, year-wise average of total marks of main subjects for previous three years and the subject-wise distribution of marks for the highest performance year/ reference year which is 2020 in the present case. These data are made available by the CBSE to the respective schools.

7. On receipt of this data, the result committee that is formed as per the notification will align/moderate the average marks of the students within the broad distribution of marks as provided by the board. It must be borne in mind that the result committee consists of the principal of the school, two senior-most teachers of the school teaching class XII and two teachers from senior secondary schools teaching class XII co-opted as external members. Thus, the result committee consists of totally 5 members. It is made very clear in the notification itself that the process of moderation will be done in the interest of fairness and to ensure that the marks allocated are comparable and there is no adverse impact or undue gain for any student because of the methodology/processes of evaluation that is adopted by the concerned school.

8. The result committee will have to follow the broad distribution of marks which will be based on the performance in the reference year by the concerned school, in the concerned subject. The subject-wise assessment made by the school should be within the range of ± 5 marks obtained by the school in the subject during the reference year. The overall marks for the school assessed in 2021-22, for all the subjects, should not



the Hon'ble Supreme Court in Anand Yadav v. State of Uttar Pradesh reported in 2020 SCC OnLine 823. The relevant paragraph in the said judgment is extracted hereunder:

WEB COPY

37. We say so in view of the fact that matters of education must be left to educationists, of course subject to being governed by the relevant statutes and regulations. It is not the function of this Court to sit as an expert body over the decision of the experts, especially when the experts are all eminent people as apparent from the names as set out. This aspect has received judicial imprimatur even earlier and it is not that we are saying something new.

14. It is also brought to the notice of this court that a similar grievance was raised by a class XII student on the assessment of marks and this issue is pending before the Hon'ble Supreme Court in WP(C) No. 1081 of 2021. In the said case, CBSE has taken a very specific stand in the counter-affidavit to the effect that a special software was developed by the board and the evaluation policy took into consideration the historical performance of the school, subject wise mean, overall school average and moderation criteria and this software was developed and sent to all the schools concerned. Therefore, there cannot be any deviation from the evaluation policy which has been approved by the Hon'ble Supreme Court in the Mamthasharma case.

15. In the present case, the only grievance that has been expressed by the Petitioner is that for the XII standard, the 40% marks was based on the best performance of the Petitioner in the half-yearly examination. According to the Petitioner, there is a reduction of 26 marks and the total marks ought to have been 408 marks and instead the result committee has awarded the total of only 382 marks. To explain the stand taken by the Petitioner, the reply affidavit has been filed by the Petitioner. The Petitioner has complained that there is absolutely no reason adduced by the 4th Respondent school for reducing 26 marks from the total marks of the Petitioner which results in a loss of 5.2% in the total marks and this according to the Petitioner, will impact her from securing seats in professional courses.

16. The learned counsel for the 4th Respondent has filed written submissions and explained the manner in which the result committee calculated the marks. According to the learned counsel for the 4th Respondent, the marks that were awarded to a student cannot be taken as it is and the moderation/ distribution of marks must be in consonance with the broad distribution of



marks. If there is any mismatch, the concerned school will not be able to upload the marks in the board's web portal.

17. On the face of it, the claim made by the Petitioner seems to be persuasive and the Petitioner has straight away taken 40% of the XII std half yearly theory marks and has arrived at a total of 408. Whereas, as per the result committee, the total is arrived at 382. The Petitioner lost sight of one very important factor that has been provided in the policy notification. The moderation of marks is done by the results committee as per the tabulation provided by the board. The result committee at the time of moderating the marks, has to necessarily take into consideration the performance of school in the reference year which will have a direct impact in ascertaining the marks of the students and the moderation will be done in proportion to the performance of the school and it is not based only on the marks secured by the student during the academic year 2020-21. The moderation done by the result committee as explained in the written submission of the 4th Respondent, does not reveal any apparent mistake. If the 4th Respondent school had awarded more marks to the Petitioner while moderating the same, the board's web portal would not have even uploaded the marks. The fact that the marks were properly uploaded in the web portal shows that the moderation was done by the results committee as per the broad distribution of marks provided by the board.

18. The Petitioner has not alleged any malafides or ill-will against the 4th Respondent school. There was no need for the result committee to target the Petitioner and to award her lesser marks. The policy issued by the CBSE sufficiently provided for checks and balances and once the mark awarded by the result committee pass muster and is uploaded in the portal, the same cannot be interfered by the court unless illegality stares on the face of it. This court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot get into the nitty-gritties and indulge in calculation of marks. If the court start doing this exercise, there will be no end to it and the court will be burdened with loads of writ petitions filed by students who will seek for a similar relief. It will virtually open flood-gates and will pave way for further docket explosion.

19. The policy itself makes it very clear that if a student is not satisfied with the assessment, such a student will be given an opportunity to appear in examination to be conducted by the board when the situation is conducive. Such an opportunity sufficiently safeguards the interest of the students. It is also made abundantly clear that the marks



secured by the student in such an examination will be taken as final.

20.The CBSE has come up with a workable model to tide over the situation and the policy was also authorised by the Hon'ble Supreme Court and hence the student has to accept the moderation of marks without any demur. If the student is not satisfied, it is always left open to the student to write the examination as an when conducted by the CBSE. Beyond this, this court does not want to interfere with each and every result that is determined by the result committee.

21.In view of the above discussion, this Court is not inclined to interfere with the decision taken by the respondents and the relief sought for by the Petitioner cannot be granted by this Court

22.In the result, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Secretary,
The Central Board of Secondary Education,
Shiksha Kendra,
2 Community Centre,
Preet Vihar,
Delhi- 110 092.

2.The Regional Officer,
CBSE,
New No.3 old No.1630 A,
"J" Block 16th Main Road,
Anna Nagar West,
Chennai- 600 040.

3.The Chief Educational Officer,
Kanchipuram District,
Kanchipuram,
Tamil Nadu.



+1cc to Mr.S.Ashokkumar, Advocate Sr No.56965
+1cc to the Government Pleader Sr No.57606
+1cc to M/s.A.Arulmozhi, Advocate Sr No.57001

WEB COPY

Writ Petition No.18726 of 2021

SS (CO)
PR (17/11/2021)