

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11623 of 2022

Neusmita Brahma

....

Petitioner

Mr. Sidhartha Swain, Advocate

-versus-

***Board of secondary Education
Odisha, Cuttack***

....

Opposite Parties

Mr. S.S. Rao, Advocate

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No.

Date of hearing: 01.11.2022

Date of order: 25.11.2022

10.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner as well as learned counsel for the opposite parties. Perused the record.
3. The present writ petition has been filed by the petitioner with the following prayer :-

“It is, therefore humbly prayed that, under the above circumstances, this Hon’ble Court may be graciously be pleased to issue RULE NISI, calling upon the Opposite Party to show cause or field insufficient cause on perusal of causes shown make the said Rule absolute and be further pleased to:

- (i) Issue a writ of mandamus or any other appropriate writ or order directing the Opposite Party to award the marks in favour of the petitioner vide Roll No.12121803057, Registration No.519982 in respect of Question No.13 and 142 of Odisha Secondary School

Teacher's Eligibility Test (OSSTET)-2021 (2nd) Paper-I, Set-A (CBZ) and issue fresh mark sheet in her favour within a stipulated period as fixed by the Hon'ble Court by declaring and quashing the Board's Scoring Key under Annexure-6 in respect of aforesaid questions as wrong and illegal;

And /or pass such other order/orders, writ/writs, direction/directions as deem fit and proper in the facts and circumstances of the case;”

4. Learned counsel for the petitioner submits that the petitioner after completing her H.S.C. Examination in the year 2012 in 1st Division, she appeared and passed +2 Science Examination in the year 2014 in 3rd Division. Thereafter, she took admission in +3 Science in the year 2014 and completed the same in the year 2017. After completing her graduation. She completed her B.Ed in the year 2019 with 1st Class with Distinction. It is further submitted by learned counsel for the petitioner that the petitioner belongs to S.E.B.C. Category. After completion of B.Ed Examination, she appeared in Odisha Secondary School Teacher Eligibility Test 2021(2nd) batch Paper-I on 9th February, 2022. After the examination was over, result was published and on verification of the mark-sheet, the petitioner found that she has secured 52 marks. However, after going through the scoring key published, the petitioner came to learn that although she has given right answer to question nos.13 and 142, however, the same has not been properly evaluated and the answer scoring keys are wrong. The counsel for the petitioner does not want to press the Question No.142 and she opts to confine his challenge to Question No.13 only.

5. So far as Question No.13 is concerned, on perusal of the said question, it appears that the petitioner was asked to find out the

correct word out of four options given in vernacular Odia and such options are (A) Swargata, (B) Manmu (C) Otaprata (D) Sakhigopala, i.e. Sakhigopala is the correct word in the said context.

6. Learned counsel for the petitioner referred to the syllabus and various dictionaries in Odia vernacular and upon a careful examination of the materials placed in support of his contention, this Court is of the clear view of prima facie view that is the answer (D) i.e. Sakhigopala is the correct answer. Accordingly, the petitioner has rightly opted for answer (D) in the OMR Sheet.

7. However, on perusal of the scoring key published by the Board of Secondary Education Odisha, it appears that answer to question no.13 has been given “C” not “D”. On careful consideration, this Court is of the considered view that the correct answer is “D”. However, answer given in the scoring key i.e. answer “C” should have been declared incorrect and in its place answer “D” should have been accepted as the correct answer.

8. Leaned counsel for the Board of Secondary Education Odisha, on the other hand, submits that he has filed counter affidavit in reply to the writ petition wherein nothing has been stated on merits of the matter. Further, the assertions made by the petitioner has been specifically dealt and answered by the Board. The Board seems to have shifted the responsibility.

9. On perusal of the said affidavit, it appears that Board has taken only a principal ground that reevaluation is not permissible under the rules/regulations of the Board.

10. On perusal of the consolidated report relied upon by the Board, it appears that the opinion of the experts in respect of candidate's

option in reply to Question No.13 shall be option “C” as has been reflected in scoring key. The reasons given in the report is that due to carelessness and causal approach, in the spelling and writing of Odia words in Odia book many mistakes are found. Therefore, the same cannot be accepted as example to support somebody’s contention. Secondly, the example cited by the candidates while challenging the reply to Question No.13 is not acceptable. Further, it has been stated that in everyday in writing and conversation in Odia many in-correct words are used by people. Finally, relying upon a Odia dictionary written by Pandit K.C. Kar, it was stated that a list of words are to be found in the said dictionary with the view that some Odia words are used frequently in Odia writing as described in list attached to the dictionary cannot be said to be correct.

11. In course of his argument, counsel for the Board of Secondary Education, Odisha relying upon the judgment of this Court in the case of ***Bibhudananda Pratap Hati vs. B.S.E.O. and others*** (W.P.(C) No.20691 of 2020) and a batch of other cases decided on 04.02.2021 submits that this Court while examining the issue relating to exercises its power of judicial review and directing the Chairman to conduct the reevaluation of mark awarded to the candidates in absence of the specific rule, has come to a conclusion that the same is not permissible in the absence of any specific rule to conduct reevaluation of marks.

12. Upon a careful consideration of the judgment cited by learned counsel for the opposite party, this Court is of the considered view that in the said batch of cases which has been disposed of by this court involved an issue as to whether the absence of any specific rule in reassessment of answer/reevaluation of mark is permissible.

Relying upon specific provision of the rule and relying upon various Supreme Court judgments holding that reassessment/reevaluation is not permissible under the rules. However, the judgment in the aforesaid cases is not application to the facts of the present case. So far as the present case is concerned, the issue is very specific and limited to the points as to whether the key answer to Question No.13's i.e. answer "D" is correct or not and further whether suggested scoring key issued by the Board indicating that correct answer to the is above question is answer "C". However, to decide the issue involved in the writ petition, this Court needs not go into correctness and validity of the above referred answer "C" as suggested in scoring key rather option "D" opted by the petitioner in reply to Question No.13 is correct or not is to be tested by this Court.

13. Learned counsel for the petitioner in support his contention relied on the text book down loaded and published by OPEPA filed as Annexure-8 and Annexure-12. Text books used by the Director of Education and State for the students belonging to Class VI to X titled as "Sahitya Sourav", reveals that the word as specified and written under option "D" to Question No.13, which has been opted by the petitioner has also been used in those text books. He further relied upon language published in Odia dictionary, namely, Ajanta Dictionary, Odia Abhidhana, the option "D" is identical words written in the said dictionaries. There are also other supporting documents which supports the contention of the present petitioner. Therefore, this Court is of the considered opinion that the contention of the learned counsel for the petitioner has force in it and backed by some text book and dictionary.

14. Moreover, learned counsel for the petitioner relies upon the

judgment of this Court in the matter of *Saswat Bej vrs. State of Odisha and another* ; reported in 217 (II) OLR 345. On perusal of the said judgment, the facts involved in the reported case are similar to the facts of the present case. After analyzing the facts in the said case, this Court has held that the answer given by the petitioner is in consonance with the syllabus prescribed for NRTC Examination i.e. Odia book “Sahitya Sourav” and the spelling in the vernacular the text prescribed in the said text book is identical to the spelling of the answer given by the petitioner. In that case, this Court held that the counter affidavit filed by the opposite party in that case is contrary to its own syllabus and therefore, same is not maintainable. While disposing of the matter finally, this Court directed the Opposite Party No.2-Board of Secondary Education, Odisha to make necessary correction in consonance with the syllabus prescribed for NRTC Examination 2016 and re-calculate the mark as due and admissible to the petitioner and to complete the exercise within a stipulated period of time.

15. On a careful scrutiny of the facts of the present case, this Court is of the considered view that the facts involved in the above noted cases are similar to the present case and the book which was prescribed in the syllabus is “Ama Sahitya”. Further, option “D” to Question No.13 is in consonance with the word reflected in the text book that was prescribed in the present case. Therefore, the petitioner has not at all committed any error. However, through the consolidated report, relied upon by the Board, the Board is trying to justifying its stand by extraneous materials which were not in the prescribed syllabus. Therefore, this Court has no hesitation to hold that the answer given by the petitioner i.e. option “D” is not

incorrect. As such, the petitioner should have been awarded mark for question no.13.

16. Considering the submissions advanced by leaned counsel for the respective parties as well as upon careful scrutiny of the materials available on record, this Court further taking into consideration the judgment of this Court in the case of ***Saswat Bej vrs. State of Odisha and another*** (supra) directs the Opposite Party-Board of Secondary Education, Odisha to make necessary corrections in the scoring key in respect of the answer to Question No.13 in consonance with the syllabus as well as books prescribed as referred to hereinabove and accordingly, recalculate the marks as due and admissible to the petitioner.

17. Let the entire exercise be carried out within a period of four weeks from the date of production of certified copy of this order and in the event marks are needed to be awarded by the Board of Secondary Education, Odisha, the same be answered in the interest of justice and corrected the mark-sheet be published and be provided to the petitioner within a period four weeks thereafter.

18. With the aforesaid observation, the writ petition stands disposed of

Urgent certified copy of this order be granted on proper application.

(***A.K. Mohapatra***)
Judge