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W.P(MD).Nos.9626 to 9630 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 02.12.2022

ORDER PRONOUNCED ON : 06.12..2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos.9626 to 9630 of 2016

and

W.M.P(MD)Nos.7654 to 7658 of 2016

Minor.S.Yashwanthini
Represented through her Natural Guardian/Father
S.Suthakar

... Petitioner
(In W.P(MD)No.9626 of 2016)

Minor.B.Naveen Kumar
Represented through his Natural Guardian/Mother
B.Madhavi

... Petitioner
(In W.P(MD)No.9627 of 2016)

Minor.M.M.Deepaak
Represented through his Natural Guardian/Father
N.Mathiarasu

... Petitioner
(In W.P(MD)No.9628 of 2016)

Minor.P.Adhithya
Represented through his Mother
P.Ezhilvizhi

... Petitioner
(In W.P(MD)No.9629 of 2016)



W.P(MD).Nos.9626 to 9630 of 2016

Minor.M.Deepan
Represented through his Natural Guardian/Father
N.Manimaran

... Petitioner
(In W.P(MD)No.9630 of 2016)

Vs.

1.The Director,
Directorate of Government Examinations,
DPI Campus,
College Road,
Chennai-600 006.

2.The Regional Deputy Director,
Regional Deputy Director Office,
Government Examinations,
Thiruchirapalli-21.

3.The Principal,
Sowdambika Matric Boys Higher Secondary School,
2-C, Park Street,
Thuraiyur-621 010,
Trichy District.

..... Respondents
(In all cases)

COMMON PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the record relating to the impugned order bearing Na.Ka.No.003413/E4/2016 dated 13.05.2016 and quash the same.

For Petitioner

: Mr.T.Antony Arul Raj
(In all cases)



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For R1 & R2

: Mr.S.Kameswaran
Government Advocate
(In all cases)

For R3

: No Appearance
(In all cases)

COMMON ORDER

These writ petitions have been filed by 5 students, who had appeared for higher secondary examination in March 2016 under the State Board. The 2nd respondent by way of an impugned order has arrived at a finding that the petitioners have indulged in malpractice during the Mathematics examination held on 18.03.2016 and has proceeded to punish them by cancelling all the examinations attended by them, apart from debarring the petitioners from appearing for the examinations in October 2016 & March 2017.

2. According to the petitioners, they had appeared for the higher secondary final year examination, which was conducted in March 2016. They had appeared for the Mathematics examination on 18.03.2016. There was no allegation of any malpractice as against the petitioners on the said date. The petitioners were surprised to receive a show cause notice from the 2nd respondent herein on 29.04.2016 alleging that the petitioners had carried



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forbidden materials into the examination hall and they were caught by the flying squad during the examination. The students were called upon to show cause why action should not be initiated as against them as per the Handbook on Examination Duties and Responsibilities - March/April 2016.

3. The concerned students have sent independent reply to the 2nd respondent herein contending that they have not carried any extraneous/forbidden material into the examination hall and no one had seized any material from them during the examination. The petitioners have further contended that their signature or the statement were not obtained during the alleged incident. No written statement was obtained from the petitioners either by the hall superintendent or by the flying squad member. They had further contended that they have not committed anything, which is contrary to the Examination Rules on 18.03.2016.

4. On receipt of the said explanations, the 2nd respondent herein has passed the impugned order on 13.05.2016 and has rejected the explanations on the ground that the reasons assigned by the students were neither acceptable nor satisfactory. The 2nd respondent proceeded to impose the punishment of cancellation of all the examinations of the writ petitioners in



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March 2016 and also debarred the petitioners from appearing for further examination in October 2016 and March 2017. These orders are under challenge in the present writ petitions.

5. According to the learned counsel for the petitioners, the petitioners have not carried any forbidden materials/bit papers at the time of their appearance in the Mathematics examination on 18.03.2016. He further contended that if really the flying squad had seized any forbidden material during the examination, the students would have been prevented from writing the examination as per the guidelines issued by the Government for the examination.

6. The learned counsel for the petitioners had further contended that the signature of the students was not obtained in the forbidden material/answer sheet/question paper. The statement of the students and the flying squad member, who is said to have detected such an irregularity has not been recorded. The hall superintendent's statement has also not been recorded. Therefore, according to the learned counsel for the petitioners, the petitioners were not even aware that some action has been initiated as against them while they were writing the examination. The students were also



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permitted to appear for the examination on the subsequent dates. After a period of 40 days, they were shocked to receive the said show cause notice.

7. The learned counsel for the petitioners further submitted that each one of the allegations mentioned in the show cause notice has been stoutly denied by the students. However, without considering any one of the objections/explanations, the order impugned in the writ petition has been passed with a finding that the reasons assigned by the students are neither satisfactory nor acceptable. The objections raised by the writ petitioners have not been properly considered by the 2nd respondent and without meeting out the objections/explanations given by the petitioners, the 2nd respondent has proceeded to pass the present impugned order.

8. The learned counsel for the petitioners has further contended that the punishment imposed upon the writ petitioners is stigmatic in nature and has serious consequences. The petitioners are charged with the irregularity of committing malpractice while writing the examinations. Under the impugned order, all the examinations, in which the petitioners have appeared have been cancelled. A further punishment has been imposed that the petitioners cannot appear for October 2016 and March 2017 examinations. This would cause



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serious prejudice to the writ petitioners. When such a serious allegation is being made and a proper explanation has been submitted by the writ petitioners, the 2nd respondent ought to have considered the objections and passed the impugned order. However, the present impugned order is not a reasoned order and hence, the same is liable to be set aside.

9. Per contra, the learned Government Advocate appearing for the respondents 1 and 2 had contended that the petitioners were found to be carrying forbidden material at the time of appearing for the Mathematics examination on 18.03.2016. On 18.03.2016, one of the flying squad members, namely Jeya Samboorana Valluvan had addressed a communication to the Chief Educational Officer, Trichirappalli relating to the incident. The Chief Invigilator has sent a communication to the 2nd respondent herein on 26.04.2016. The flying squad member had sent another communication to the 2nd respondent herein on 26.04.2016. Only based upon the said statement, a show cause notice was issued to the students on 29.04.2016. The show cause notice clearly indicates that it relies upon the report of the Chief Invigilator of the Examination Centre and the Assistant Invigilator of the hall. The show cause notice also refers to the fact that the forbidden materials have been annexed to the report of the Chief Invigilator of the exam centre. Therefore,



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according to the learned counsel for the respondents 1 and 2, all the statements as required under the guidelines issued for the examinations have been strictly followed and only thereafter, a show cause notice has been issued.

10. The learned Government Advocate appearing for the respondents 1 and 2 has further contended that the explanation offered by the writ petitioners have been properly considered and thereafter, the 2nd respondent had arrived at a finding that those explanations are not satisfactory and acceptable. Hence, the order impugned in the writ petitions has been passed. Therefore, the learned Government Advocate appearing for the respondents 1 and 2 had contended that the order impugned in the writ petition may be sustainable.

11. I have carefully considered the submissions made on either side and perused the records.

12. The writ petitioners have appeared for their higher secondary examination in Sowdambika Matric Boys Higher Secondary School at Thuraiyur, Trichirappalli in March 2016. The petitioners belong to



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Mathematics-Bio group. The petitioners have appeared for various examinations from 04.03.2016 to 01.04.2016. The Mathematics examination was held on 18.03.2016. After Mathematics examination, Biology examination was held on 28.03.2016 and Physics examination was held on 01.04.2016. These facts are not in dispute.

13. Let us analyse the procedure to be followed by the examination conducting authority, if they find any student being involved in irregularities at the time of examination.

14. As per the Handbook on Examination Duties and Responsibilities March/April 2016 issued by the Directorate of Government Examinations, Tamil Nadu Government, the following procedures have to be followed while a student is found to be indulging in irregularity while appearing for the examination.

(i) Where a student was found to be carrying any forbidden material/bit papers, the answer sheet, the question paper and the seized forbidden papers should be immediately handed over to the Chief Invigilator and the department officials.

(ii) The candidate should not be permitted to write the examination



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thereafter. However, the candidate may be permitted to write the examination that are held on future dates.

(iii) In the 1st page of the answer sheet, the word "Mal" should be marked in the red ink.

(iv) The Chief Invigilator have to send the following documents to the Regional Deputy Director of Examinations.

(a) The documents seized from the candidate, question paper, answer sheet with the date and signature of the candidate.

(b) The statement of the candidate indicating his or her irregularity.

(c) The statement of the person, who discovered the said irregularity.

(d) The statement of the hall Superintendent.

(e) A rough sketch indicating the seat of the said candidate.

(f) A covering letter/recommendation letter of the Chief Invigilator and the department officials.



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15. In the present case, the official respondents had contended that the candidates were found indulging in irregularity while writing the Mathematics examination on 18.03.2016. However, the candidates have not been sent out after being found to have indulged in malpractices. The candidates' signature has not been obtained either in the forbidden material or in the question paper or in the answer sheet as contemplated in the handbook. No statement has been recorded from the concerned candidates.

16. The documents furnished by the Government Pleader during the argument stage reveals that a letter was addressed by the flying squad member to the Chief Educational Officer on 18.03.2016. Another letter has been addressed by the Chief Invigilator to the 2nd respondent herein on 26.04.2016. The same flying squad member has sent another letter to the 2nd respondent herein on 26.04.2016. Therefore, it is clear that the statement of the person, who discovered the irregularity and the statement of the Chief Invigilator alone have been recorded. The statement of the student or the hall superintendent has not been recorded. No signature has been obtained from the concerned candidates in the forbidden material/answer sheet/question paper.



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17. In the explanation submitted by the candidates, they have specifically contended that they have not taken any forbidden materials into the examination hall and nothing was seized from them. They have also contended that their signature were not obtained in the answer sheet or in the forbidden material. They have further contended that no statement was recorded from them on the said date. A combined reading of the guidelines issued by the Government in the handbook and the explanations submitted by the candidates/writ petitioners will clearly reveal that the procedure contemplated in the handbook has not been followed.

18. The petitioners have received a show cause notice after 40 days on 29.04.2016. On the date of alleged irregularity, namely 18.03.2016, there is only a letter from the flying squad member to the Chief Educational Officer. Other two communications are dated 26.04.2016. On the date of the incident, no statement has been recorded from the candidate or the hall superintendent. The signature of the student or his statement has not been recorded. The student has been permitted to continue to write the same examination, in which he is alleged to have committed irregularity. All the above said facts are clearly in violation of the guidelines issued by the Government of Tamil Nadu for the flying squad members and the Invigilators for the public examinations.



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19. A detailed explanations have been submitted by the petitioners.

However, none of these explanations have been considered and the 2nd respondent herein has proceeded to reject these explanations in a single line stating that the explanations are neither satisfactory nor acceptable. Therefore, it is clear that the objections of the writ petitioners have not at all been considered by the 2nd respondent herein and he has proceeded to pass an order which he has pre-determined. Any order passed by an authority, without considering the explanation of the delinquent is clearly in violation of principles of natural justice. If the authority is not going to consider the explanation offered by the delinquent, the show cause notice would only be an empty formality. In the present case, it could be seen from the records that 3 days before the issuance of show cause notice, a report has been called for from the Chief Invigilator and the flying squad member by the 2nd respondent herein for issuance of the show cause notice. These reports are almost one month later than the incident, which is said to have taken place on 18.03.2016. Therefore, the order impugned in the writ petition suffers from illegality and the same is liable to be set aside.

20. The result of the writ petitioners have been published pursuant to the interim orders passed by this Court in W.A(MD)Nos.946 to 950 of 2016



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on 16.06.2016. The said results will stand validated and shall not be disturbed by the respondents 1 and 2 herein.

21. In view of the above said deliberations, the order impugned in the writ petitions are set aside. All the writ petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.12.2022

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Internet : Yes/No
Index : Yes/No

To

1.The Director,
Directorate of Government Examinations,
DPI Campus,
College Road,
Chennai-600 006.

2.The Regional Deputy Director,
Regional Deputy Director Office,
Government Examinations,
Thiruchirapalli-21.



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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