

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19142 of 2021

=====

Sunita Kumari, W/o Brajendra Tiwari, D/o Dayanand Dubey, resident of East Mohan Bigha, Kali Sthan Dehri, P.S. Dalmia Nagar, District-Rohtas, Bihar, Pin-821307.

... .. Petitioner/s

Versus

1. The State of Bihar represent through its Principal Secretary Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary Education Department, Govt. of Bihar, Patna.
3. Bihar School Examination Board represented through its Chairman, Patna, Bihar.
4. The Chairman, Bihar School Examination Board, Patna, Bihar.
5. The Secretary, Bihar School Examination Board, Patna, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar, Advocate
For the State	:	Mr.Subash Chandra Mishra, SC-16
For the Board	:	Mr. Ajay Behari Sinha, Sr.Advocate
		Mr. Upendra Kumar Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-08-2023 Heard learned counsel for the petitioner and learned senior counsel for the Bihar School Examination Board (hereinafter referred to as 'Board').

2. Petitioner in the present case has moved this Court for the following reliefs:-

“I. For directing the respondents to correct the result of the petitioner who has appeared in STET 2019 Examination.

II. For directing the respondents particularly respondent no.3 and 4 to declare the petitioner successful in STET examination as she has obtained 74.8744 marks out of 150 which is near



to passing marks of 75.

III. For grant of any other relief/reliefs as your Lordships may deem fit and proper.

3. Mr. Sanjay Kumar, learned counsel for the petitioner initially made a submission that despite there being a specific clause in the advertisement that there will be no negative marking, the Board has indulged in negative marking of the answer-sheets, however, this contention was immediately contested by Mr. Ajay Behari Sinha, learned senior counsel representing the Board. Learned senior counsel submits that the Board has not done any negative marking and in fact the petitioner secured less than the qualifying marks because of the application of the normalization procedure.

4. Referring to paragraph '13' of the counter affidavit, learned senior counsel submits that the petitioner claims to have obtained 74.8744 marks out of total 150 but after normalization procedure was applied she got less than 50 in the general category, hence, stood disqualified.

5. This Court finds that in CWJC No.12582 of 2021 (Shambhu Sharan Mandal Vs. the State of Bihar & Ors.), this Court has considered identical matter and has taken the following views:-

“Having heard learned counsel for the petitioner and learned senior counsel for the Board



as also on perusal of the records, this Court finds that the respondent- Board has taken a categorical stand that the petitioner has obtained less than 45%marks, therefore, he has not been declared qualified. The grievance of the petitioner with reference to the grace marks allowed in some of the examinations would not be a ground for him to take a plea that this Court may issue a Writ of Mandamus directing the respondents to continue with such policy of awarding grace marks.

In the opinion of this Court, it is in the domain of the Institution/ Board only to take such policy decisions depending upon the circumstances which in their opinion demand such decision. So far as this Court is concerned, since the petitioner has failed to demonstrate that he has any legal right under which the respondent may be forced to award a grace mark, this Court would refrain from issuing a Writ of Mandamus.”

6. The reasoning and rationale provided by this Court in its order passed in CWJC No.12582 of 2021 would equally apply in the facts of the present case.

7. Before this Court parts with this order, it is worth mentioning that in course of her submissions, learned counsel for the petitioner has placed before this Court a copy of the judgment dated 31.08.2015 passed by Hon’ble Division Bench of this Court in LPA No.1287 of 2015 arising out of CWJC No.21945 of 2014 and other analogous matters. Learned counsel



submits that on a reading of the Hon'ble Division Bench judgment it would appear that in the facts of the said case where the Board was awarding one mark for each incorrect question based on expert suggestion, the learned Single Judge of this Court had taken a view that the Board should evaluate the answer-sheets of the candidates by deleting questions wrongly framed. This view of the learned Single Judge has been accepted by the Hon'ble Division Bench. It is submitted that despite there being a judgment of this Court taking a view that the Board should take evaluation of the answer-sheets of candidates by deleting questions wrongly framed, the Board is not following the said judgment, instead a different method is being adopted and that is giving rise to not only dissatisfaction among the candidates but is also resulting in number of litigations before this Court.

8. Learned counsel though admits that in the said writ application even though the Hon'ble Division Bench has taken note of the earlier practice of the Board to delete such questions and reevaluate the answer-sheets on the basis of remaining questions on pro-rata basis, the Court had not gone into the legality or validity of the said procedure, may be for the reason that the same was not an issue before the Court, however, it is



submitted that the only bonafide approach on the part of the Board would have been to apply the said judgment in all the examinations where it is found that certain wrong multiple choice questions were wrongly framed.

9. This Court finds force in the submission of learned counsel for the petitioner that in order to avoid the litigations, it would have been in the fitness of the things if the Board would have proceeded in consonance with the views expressed by the Hon'ble Division Bench of this Court in LPA No.1287 of 2015. Even learned senior counsel for the Board does not find any reason to justify the departure on the part of the Board in not following the judgment of the Hon'ble Division Bench.

10. Let this matter be placed before the competent authority of the Board to take an appropriate view in terms of the Hon'ble Division Bench judgment of this Court in future.

11. This writ application stands disposed of with the aforementioned observations and directions.

(Rajeev Ranjan Prasad, J)

arvind/-

U			
---	--	--	--

