

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18373 of 2022

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Ankit Kumar, Son of Parsuram Prasad Ram, Resident of Mohall- Panchseel
Nagar Kumhrar, P.S. - Agam Kuan, District - Patna

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Vikash Bhawan, Patna.
2. The Director, Research and Training, Government of Bihar, Vikash Bhawan, Patna
3. Bihar School Examination Board through its Secretary, Sinha Library Road, Patna
4. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna.
5. Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur.
6. The District Education Officer, Bhagalpur.
7. Principal, Primary Teacher Training College, Nagarpara, Bhagalpur.
8. Deepak Kumar, Son of not Known to the petitioner, I/c Principal, Primary Teacher Training college, Nagarpara, Bhagalpur.
9. Rajesh Kumar, son of not Known to the petitioner, Lecturer Examination In Charge, Primary Teacher Training College, Nagarpara, Bhagalpur

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Advocate Mr. Bam Bahadur Jha, Advocate Mr. Sushil Kumar Jha, Advocate
For the Respondent/s	:	Mr. Jitendra Kr. Roy 1, SC-13 Mr. U.K. Singh, AC to SC-13
For the Board	:	Mr. Gyan Shankar, Advocate
For Resp Nos. 8 & 9	:	Mr. Prince Kumar Mishra, Advocate Mr. Vikas Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 08-09-2023 Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the Bihar School Examination Board (hereinafter referred to as the 'Board') and learned counsel for the Respondent Nos. 8 and 9.

2. The present writ application has been filed seeking
issuance of a writ in the nature of Mandamus directing the



respondents to revise the marks of internal evaluation to the extent of subject S-3 and S-9 and further to publish the result of the petitioner of the DL.Ed. Examination 2020-2022. The petitioner further prays to modify his mark-sheet of the DL.Ed. Examination 2020-2022.

3. It is the case of the petitioner that he was admitted in DL.Ed. Course in Primary Teacher's Training College, Nagarpara (hereinafter referred to as the 'Institution') for the Session 2020-2022. The father of the petitioner was a Ministerial Staff in the said College who developed some differences with Respondent Nos. 8 and 9. The petitioner has specifically pleaded that because of the differences between his father and the Respondent Nos. 8 and 9, the petitioner who had successfully completed his training and appeared in the examination has been victimized by failing him in the internal evaluation of the paper S-3 and S-9.

4. It is stated that the petitioner has though passed his First Year Examination successfully, he has been detained for the Second Year Examination. Initially, his admit card was not issued, however, after intervention of the Regional Deputy Director of Education, the admit card was issued but this time, the In-charge, Principal, who is Respondent No. 8 has failed the



petitioner in the internal evaluation which normally includes gardening, cleaning and social environment etc. which is not a written examination.

5. It is stated that out of 144 candidates, only the result of Second Year Examination of the petitioner has been interrupted, the other 143 candidates have passed. In these circumstances, the petitioner has prayed for re-evaluation of S-3 and S-9 Paper of Second Year which is a purely internal evaluation.

6. The petitioner has passed his First Year DL.Ed. Examination, 2021 with 77.9% marks. In so many words, allegations of malafide have been made against Respondent Nos. 8 and 9.

7. The petitioner has been awarded 14 marks out of 50 marks in the internal evaluation of S-3 and 5 marks out of 15 marks in the internal evaluation of S-9 whereas the petitioner has got 23 marks out of 50 marks in the external examination.

8. When this case was taken up for consideration as back as on 16.02.2023, this Court issued notices to Respondent Nos. 8 and 9 and the State was granted time to file reply. Respondent Nos. 8 and 9 have appeared through *Vakalatnama* in this case and filed a counter affidavit in which they have denied



the allegations of malafide.

9. Initially, a plea was taken that it is the discretion of the Teacher to award marks based on the performance of the students throughout the year, however, when this Court noticed that nothing was stated about how the performance of a student is assessed throughout the year for the purpose of internal examination and evaluation, this Court called upon learned counsel representing the Respondent Nos. 7, 8 and 9 to produce the guidelines and the other details governing the curriculum of S-3 and S-9 based on which the evaluation is done.

10. In this regard, the order dated 16.08.2023 passed by this Court reads as under:-

“On the request of Mr. Prince Kumar Mishra, learned counsel for the Respondent Nos. 8 and 9 in order to enable him to seek instruction and file a counter affidavit as also place before this Court the entire records of evaluation and the model on which it is done, this Court directs listing of the matter on 24th August, 2023 under the same heading maintaining its position.”

11. On 05.09.2023, when this writ application was taken up for consideration, no record could be produced showing how internal evaluation has been done. Mr. Prince Kumar Mishra, learned counsel representing Respondent Nos. 8



and 9 has informed this Court that he is not having any material to demonstrate that there is any parameter fixed with which the rationale behind the kind of marks awarded to the petitioner may be justified. In fact, learned counsel submitted that he has discussed the matter with Respondent No. 8 who is the Principal In-charge of the Institution (Respondent No. 7) and in absence of any material to justify the kind of marks awarded to the petitioner alone, he has got instruction to say that Respondent No. 8 would submit a revised marks of internal evaluation in S-3 and S-9.

12. Taking note of the submissions of learned counsel for the Respondent Nos. 8 and 9, this Court recorded in its order dated 05.09.2023 as under:-

“Today, Mr. Prince Kumar Mishra, learned counsel for the respondent no. 8 & 9 has come with a statement on instruction that respondent no. 8 shall submit a revised marks of the subject S-3 & S- 9. Respondent No. 8, has agreed to do this for the reason that apparently there is no parameter fixed to demonstrate the rationale behind the kind of marks awarded to the petitioner in the internal examination. The petitioner has fared well in overall performance having 77.9% marks in 1st Year and 78.8% in IInd Year.

2. In the opinion of this Court, this case is one of those cases in which the victimization of the petitioner writs large on the face of the fact that the respondent no. 8 is unable to demonstrate as to how he has awarded the marks to the petitioner in the internal examination which has failed the petitioner.



The specific case of the petitioner is that he has been victimized.

3. This Court is, however, more concern with the career of the petitioner, therefore, at this stage, wants the stand of the Board to be placed before this Court.

4. Since the respondent no. 8 has shown his willingness to submit a revised OMR sheet in respect of internal evaluation of subject S-3 & S-9, let this Court be informed by the Board whether the respondent no. 8 is required to send a fresh OMR sheet which will be issued by the Board or can directly send the re-evaluated internal marks of S-3 and S-9 to the Board.

5. Let the matter be taken up on 8th September, 2023 at 10.30 A.M.”

13. Mr. Gyan Shankar, learned counsel for the Board was granted time to seek instruction from the Board as to what may be done in such circumstance. Today, this Court has been informed that in fact the Board has got no past experience/precedent of similar situation but the Board is ready to look into this matter and take an appropriate view. It is also informed that the State Government would also be a stakeholder and any corrective measure may be taken only after bringing this issue to the notice of the State Government.

14. Mr. Gyan Shankar, learned counsel for the Board has further submitted that in fact the manner in which the response has come from Respondent no. 8, the Board in consultation with the State Government be granted liberty to



conduct an inquiry into the mode and manner of award of internal evaluation marks to the candidates by this Institution and take suitable action.

15. This Court is of the considered opinion that the Board and the State must do it.

16. Having heard learned counsel for the parties and on perusal of the records, this Court finds that it is a case in which the marks awarded to the petitioner in the internal evaluation of the subject S-3 and S-9 have been questioned by the petitioner. He has alleged that he has been victimized by failing him in the internal evaluation of these two subjects for the reason that his father who was a ministerial staff in the institution had developed some disputes and differences with the Respondent Nos. 8 and 9. Although the allegations of malafide have been denied by Respondent Nos. 8 and 9 in his counter affidavit but there is no denial of the fact that the father of the petitioner was a ministerial staff in the Institution and he had developed some disputes and differences with Respondent No.8.

17. This Court further finds that in his counter affidavit filed before this Court, the Respondent No. 8 does not say a single word as to what is the mode and manner in which internal evaluation is done, who does it and on what basis the



marks are awarded in internal evaluation. Although, the counter affidavit says that the internal evaluation marks is awarded on the basis of performance of the student throughout the year but there is nothing on the record to show that the assessment was being done at regular interval i.e. to say within a period of three months or four months during the year, therefore, the statement made in the counter affidavit of Respondent Nos. 8 and 9 do not inspire confidence of this Court.

18. The fact remains that out of 144 students of the Institution, only this petitioner has been failed in the internal evaluation. The petitioner has secured more than 77% marks in his First Year.

19. At this stage, Respondent No. 8 is ready to submit revised marks of the internal evaluation in subject S-3 and S-9.

20. Normally, this Court does not interfere with the issues of re-evaluation but this seems to be an exceptional case where on the face of the allegations of malafide and the materials placed before this Court are in fact indicating that all is not well in the matter of internal evaluation of the candidate in this case, this Court deems it just and proper to exercise its extraordinary writ jurisdiction.

21. This Court accordingly directs the Respondent



Board to take appropriate steps in consultation with the competent authority of the State within a period of four weeks from today to find out the remedial measures by issuing a fresh OMR sheets to Respondent No. 8 for submission of the re-evaluated marks of the subject S-3 and S-9 of this petitioner within a period of two weeks from the date of issuance of the OMR sheets. The revised OMR sheets shall be submitted by the Respondent no. 8 within three days from the date of receipt of OMR sheet or any other direction from the Board and thereafter the Board shall publish fresh result of the petitioner taking into account the re-evaluated marks of the subject S-3 and S-9.

22. This writ application is being disposed of with the aforesaid directions.

23. Let it be recorded that at this stage, this Court has not gone into issue of award of suitable compensation to the petitioner, however, in case, the petitioner is so advised, it will be open for him to seek his remedy on this score in accordance with law.

(Rajeev Ranjan Prasad, J)

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