

04 06.12.2023

FMA 2015 of 2015

Ct-08

**West Bengal Central School
Service Commission & Anr.
Vs.
Supti Samanta & Anr.**

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Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
... For the Appellants

Mr. Sankarnath Mukhejee
Mr. Niraj Gupta
Mr. Chandranath Chattopadhyay
... For the Respondent no. 1/
Writ Petitioner

1. The affidavit filed by the Assistant Secretary on behalf of the West Bengal Central School Service Commission is taken on record.

2. The said affidavit is filed in terms of our order dated 29th November, 2023 in which we directed the appellants to consider the authenticity of the OMR Sheet of the petitioner as apparently in the first box, the date of examination is mentioned as 8th January, 2008 whereas in the third box, the signature of the Invigilator was on 20th January, 2008. Moreover, the instruction to the candidates in Clause 9 requires that after the examination is over the candidates must submit both OMR Answer Sheet and the Question Booklet to the Invigilator. It is thus presumed that the Question Booklet should be with the Invigilator. In response to such query an affidavit has been filed by the

Commission in which they have referred to Admit Card and stated the examination was held on 20th January, 2008 and not on 8th January, 2008 as it would appear from the Admit Card and the said mistake was committed by the petitioner. However, in spite of such mistake of the writ petitioner, the Commission did not reject the candidate of the writ petitioner.

3. With regard to the Question Booklet it is stated that as per serial no. 9 Question Booklet and the OMR Sheet are to be returned to the Invigilator, it does not cast any duty upon the Commission to fill in the Question Booklet series in the OMR Answer Script of any candidate. Any such attempt would amount to tampering with the OMR Answer Scripts of candidates which is not at all permissible. It was urged that in competitive examination where lakhs of candidates participate, it would be impossible that the examination body will fill up the incomplete OMR Answer Script.

4. Our attention is drawn that in Clause 1 of the Question Booklet it is clearly stated that the candidate has to indicate in the space provided in the OMR Answer Sheet the Series in the Question Booklet under serial no. 11. Under

Clause 10 it is mentioned that if a candidate does not follow the instruction given above it makes difficult to evaluate by computer and any resultant loss to the candidate on the above account shall be of the candidate only. Accordingly, it is contended that even if the candidates are directed to handover both the Question Booklet and the OMR Answer Script to the Invigilator as per Clause 9 of the OMR Answer Script, the question of assessing the same does not arise as from the OMR Sheet of the petitioner it is clear that the petitioner failed to fill up Serial no. 11 indicating his Question Booklet Series.

4. However, in all fairness it has been stated that as a special case evaluation can be carried out by assessing the OMR Answer Script of the petitioner 4 times on the basis of the 4 Question Booklet Series Numbers without creating a precedent.

5. The last submission was, however, without prejudice to the rights and contentions of the Commission with regard to its preliminary objection about the sustainability and maintainability of the petitioner's right for assessment of the OMR Sheet.

6. On 13th February, 2015 Justice Girish Chandra Gupta, as His Lordship then was and former Chief Justice of this Court had passed an order observed that the inadvertent omission on the part of the writ petitioner to indicate the Question Booklet Series Code was an accidental mistake and since the aforesaid omission did not create any difficulty on the part of the respondent nos. 2 and 3 to identify the author of the answer script, the said respondents were directed by this Court to have the answer script assessed and to inform the Court regarding the marks obtained by the writ petitioner. The objection made that the answer script may no longer be available was considered and rejected by the order dated 20th June, 2012. The said order was not under challenge. The respondent nos. 2 and 3 were directed to produce the mark sheet on 11th July, 2012. After a lapse of 30 months the contempt application was filed. In the contempt application an application for recalling the order dated 20th June, 2012 was filed. In dismissing the said application it was observed that the respondent nos. 2 and 3 could have asked the writ petitioner to identify as to which Booklet Series Code she had taken into

account at the time of answering the question or in the alternative they could have assessed the answer script manually in order to carry out the order of the Court. They did not choose to do so and kept the matter hanging for a long period. Justice Gupta was unhappy in the manner the appellants conducted the proceeding and issued rule of contempt in disposing of the contempt application. Justice Gupta had rejected the application for recalling the order dated 20th June, 2012. In fact, the application for recalling was filed after 30 months and without any basis.

7. The appeal has been preferred against the order dated 13th February, 2015 to save contempt. It relates to the dismissal of the recalling application. During the pendency of the appeal, we requested the Commission to explore the possibility of finding out a solution for re-assessment of OMR Sheet. The affidavit filed by the Commission, although, offered an explanation but nonetheless the mis-match between two boxes remained. The candidate admittedly has made an inadvertent error. If the matter would have been attended immediately after the writ petition was filed, it could have been resolved then and there. The solution

which is now being provided by the Commission could have been before the learned Single Judge when the writ petition was heard on 20th June, 2012. The Commission is expected to facilitate and not to create any impediment.

8. We are of the view that the solution provided by the Commission in paragraph 5 of the affidavit filed today shall be accepted. The evaluation must be done by assessing the OMR Answer Script of the petitioner 4 times on the basis of the 4 Question Booklet Series Numbers by giving highest marks on the basis of such assessment, as suggested in paragraph 5. We appreciate the stand taken now by the Commission in addressing the issue. It is needless to mention that in view of the special facts and circumstances of this case we pass the aforesaid direction. The entire process shall be completed within four weeks from the date of communication of this order.

6. In view of the above, the appeal stands disposed of. There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

