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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 11th April, 2023*

+ W.P.(C) 4519/2019

ANUSHKA SHARMA (MINOR) THROUGH HER NEXT
FRIEND AND NATURAL FATHER, SH. JITENDER
KUMAR SHARMA

..... Petitioner

Through: Mr. Ashok Agarwal, Mr.
Kumar Utkarsh, Mr. Manoj
Kumar, Advocates
(M:9811101923)

versus

CENTRAL BOARD OF SECONDARY EDUCATION (CBSE)
AND ANR.

..... Respondents

Through: Mr. Sanjay Khanna, Ms. Pragya
Bhushan, Mr. Karandeep Singh,
Mr. Tarandeep Singh, Mr. Amit
Singh, Advocates for CBSE
(M:9899305640)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed with prayer for directions to the Central Board of Secondary Examination (CBSE) to re-evaluate and rectify the mathematics subject answer book of the petitioner of Class X boards as conducted by the CBSE in the year 2018. There is further prayer for setting aside the notice dated 31.05.2018 issued by the CBSE laying down the modalities and schedule in respect of process of verification and re-evaluation of

answer books for the candidates who had appeared under the CBSE Class 10th and Class 12th examination for the year 2018.

2. As per the facts as given in the petition, the petitioner appeared in Class 10th Board examinations conducted by the CBSE in the year 2018. The petitioner was extremely shocked and disappointed to see the marks awarded to her in mathematics subject. She was awarded 80 marks out of total of 100 marks, which were far below her expectation.

3. Subsequently, the petitioner's father subsequently duly applied for the verification of his daughter's marks in mathematics. Through the online status update on the website of CBSE, the petitioner came to know that no mistakes were found in the marks awarded to her in mathematics.

4. It is submitted that the petitioner and her father bonafidely believed that the process of verification of marks included thorough re-examination of marks awarded in an answer book as per prescribed marking scheme. Therefore, on learning that no mistakes were found in the verification process, they did not apply for the photocopy of the evaluated answer book as per the prescribed time schedule set out by the CBSE.

5. It is the case on behalf of the petitioner that it is only subsequently that the petitioner and her father came to know about the restricted scope of process of verification of marks. It is submitted that the process of verification of marks only entailed re-totalling of marks already awarded by the examiner on the answer book. The said verification did not include verification of marks awarded in answer

book with the prescribed marking scheme supplied by the respondents for the purpose of identifying under/over-evaluation.

6. It is submitted that respondent no. 2 accepted online applications for re-evaluation from 21.06.2018 to 22.06.2018 only, from the candidates who had procured the photocopy of the evaluated answer books as per the schedule prescribed for the same. Since the petitioner was unable to procure the photocopy of the answer book of mathematics examination within the stipulated time frame, she was unable to apply/request for re-evaluation from 21.06.2018 to 22.06.2018.

7. Thereafter, petitioner's father through an RTI application dated 01.07.2018 requested for supply of photocopy of the answer book of petitioner's class X mathematics subject examination. The same was supplied by the CBSE vide letter dated 08.08.2018. It is submitted that immediately thereafter, petitioner's father compared the photocopy of the petitioner's answer book with the marking scheme of mathematics as available on the website of respondent no. 1. It is submitted that serious errors in evaluation were found and that in the evaluation of majority of questions, despite being correctly answered by the petitioner, the evaluator grossly failed to award marks as per the given marking scheme. The questions were either not evaluated correctly or under-marked.

8. The petitioner's father vide email dated 15.08.2018, 16.08.2018 and 17.08.2018 apprised the respondent no. 1 about the patent errors/ discrepancies found in the evaluation of answer book of petitioner's mathematics examination. Written representations were also made by

the father of the petitioner in this regard.

9. The respondents rejected the special appeal for re-evaluation of answer book of petitioner's Class X mathematics subject on the ground that the prescribed procedure as per the modalities has not been followed by the petitioner. Thereafter, vide another letter dated 22.09.2018/10.10.2018 addressed to the petitioner's father, the respondents again reiterated the aforesaid stand.

10. Being aggrieved by the refusal of CBSE to consider the case of the petitioner for re-evaluation, the petitioner's father sent a legal notice dated 22.09.2018 addressed to respondent no. 2. Since no response to the said legal notice was received, the present writ petition has been filed.

11. On behalf of the petitioner, it is submitted that inaction on the part of the CBSE to rectify the incorrect and erroneous evaluation of answer sheet of petitioner's Class X mathematics examination as per the prescribed marking scheme, is illegal, arbitrary and discriminatory.

12. It is contended on behalf of the petitioner that the modalities and schedule in respect of process of verification, obtaining photocopy of the evaluated answer books and re-evaluation of answer books for the candidates, are merely advisory and not mandatory in nature. It is submitted that the respondents are required to examine each and every case, including that of petitioner on its own merit and cannot mechanically reject the case of the petitioner for re-evaluation. It is submitted that the petitioner had no opportunity to apply for re-evaluation as per the prescribed procedure in as much as she had

bonafidely and inadvertently missed the time frame to apply for the copy of answer book post verification process.

13. On the other hand, on behalf of CBSE, it is submitted that the present petition is not maintainable as no fundamental or legal rights of the petitioner have been violated by the respondents. It is submitted that the petitioner has no vested right to seek re-evaluation of her Class X mathematics answer sheet.

14. It is further submitted on behalf of CBSE that the challenge to the notice dated 31.05.2019 preferred by the petitioner is not maintainable in as much as the petitioner having taken recourse to the procedure for verification of marks set out in the said notification, cannot at a later stage be allowed to challenge the same, when the procedure itself has not worked to her disadvantage.

15. It is further submitted that the petitioner belatedly sought re-evaluation of her answer sheet, which was rightly rejected by the CBSE.

16. I have heard learned counsels for the parties and perused the documents on record.

17. The facts on record manifest that the respondent no. 2 issued notice dated 31.05.2018 setting out the modalities and schedule in respect of process of verification, obtaining photocopy of the evaluated answer books and re-evaluation of the answer books for the candidates who had appeared in the CBSE Class X and Class XII examination in the year 2018. It is noteworthy that the notice issued by the CBSE provided for a three tier procedure involving firstly, request for verification of marks; secondly, procurement of photocopy

of evaluated answer books; and thirdly, application for re-evaluation. It is to be noted that for the purpose of making an application of re-evaluation, a candidate is required to follow all the aforesaid steps.

18. Seeing the Scheme as evolved by the CBSE, it is manifest that an inbuilt and interlinked process has been laid down by CBSE for seeking re-evaluation of the answer sheets. For Class X students taking CBSE Board exams in the year 2018, the conditions were laid down by CBSE in its notice dated 31.05.2018. As per the said notice, a student who has applied for verification of marks, is eligible to apply for obtaining photocopy of the answer sheet. It is only thereafter, that such student becomes eligible to apply for re-evaluation of his/her answer sheet. It is also required of the candidates to apply for the same within a prescribed time.

19. Admittedly, petitioner failed to apply for photocopy of her answer sheet and re-evaluation of the same within the stipulated time under the process laid down by CBSE. Accordingly, petitioner is not entitled to relief of re-evaluation of her answer sheet at this belated stage.

20. It is to be noted that in order to achieve transparency in the conduct of the examination, CBSE has adopted an inbuilt procedure of (i) Verification of marks; (ii) Obtaining photocopy of answer sheet and (iii) Re-evaluation of answer sheet. The aforesaid three processes are interlinked and are to be completed in certain specific sequence and time period.

21. The first in the order amongst the three is the process of verification of marks. It involves re-totalling of marks already

awarded to a student. It also ensures that the candidates have been evaluated for every answer they have attempted and for which marks have been awarded by the examiner. In a way, this also affords an opportunity to the examination authority to ascertain error, if any, at their level and to rectify the same at the initial stage itself.

22. On applying for the verification of the marks, the candidate then becomes eligible to apply for obtaining photocopy of his/her answer sheet, which is the second step in the order. It is only on seeing the answer sheet, one is able to ascertain with clarity whether he/she has been evaluated correctly or not. The student has to specify the question and the discrepancy, if any, in the evaluation of it.

23. When one has applied for verification of marks, and thereafter applied for procuring photocopy of the answer sheet, it is only then that one becomes eligible to apply for re-evaluation. It is to be noted that evaluation has already been carried out once. However, an opportunity is granted to challenge the same. On receiving request of re-evaluation, an examiner, other than the original examiner, is appointed to re-assess/ evaluate the challenged answer and to award marks afresh to the objected questions/answers. In other words, the entire process of assessment is carried out again or re-done by the CBSE.

24. The entire procedure mentioned above is online and time bound. A specific schedule has been fixed by CBSE for the process of verification of marks, obtaining photocopy of answer sheet and re-evaluation, as it is in the interest of the students that the outcome of all the three processes reach finality prior to the commencement of the

next academic session.

25. Considering the facts of the present case, it is seen that in terms of the notice dated 31.05.2018, the petitioner only applied, within time, for verification of marks. Result of verification was that there was no mistake found. Outcome of the same was duly uploaded on the website of the CBSE. After having applied for verification of marks, petitioner admittedly did not apply for photocopy of her answer sheet and re-evaluation of answer sheet as provided by CBSE in the said notice. Petitioner procured photocopy of her answer sheet under the Right to Information Act, 2005 in the month of August 2018. By that time, the window period for applying for re-evaluation was already over on 22.06.2018. Thus, when petitioner belatedly sought re-evaluation of her answer sheet, CBSE vide its letter dated 19.09.2018 rejected the said request.

26. Re-evaluation of answer scripts cannot be claimed as a matter of right. It is always subject to the Rules laid down by the examining authority. This Court cannot be oblivious of the fact that the Board Examinations for Class X and Class XII are conducted by the CBSE at an All India Level. If the schedule as prescribed by the examining authority, i.e., the CBSE in the present case, was not to be adhered as per the timelines given, then the whole process of examination would be difficult to be completed in a time bound manner. This would have a cascading effect in that the examination process conducted in a particular year will not attain finality, if the schedule as per the Rules of the examining authority, are not followed. Therefore, when the petitioner failed to apply for re-evaluation within the time granted, this

Court will not interfere to give directions in this regard beyond the time schedule prescribed by the examining authority.

27. It is also to be noted that the Board Examinations conducted by the CBSE are taken by a large number of students. If the process of verification of marks and re-evaluation of examination is not followed strictly as per the timeline, then the whole process will become unworkable. If finality to the results is not given within specific time schedule, then the interests of the students will suffer. This will not only hamper the next academic session, but may also adversely affect the future admission processes that may be based on marks in the said examinations. Therefore, it is imperative that the timelines and the procedure as prescribed by the examining authority is followed strictly.

28. Hon'ble Supreme Court in its judgment dated 29.07.2022 in the case titled as "***The Central Board of Secondary Education and Anr. Vs. Keshav Narayan and Anr.***", ***Civil Appeal No. 4971/2022*** has held as follows:

"It is in the conspectus thereof that we found a prima facie case for staying the operation of the impugned order, more so, as without following the formalities, if re-evaluation has to take place, in such a large examination, it will become unworkable."

29. A procedure for evaluation has been prescribed by the CBSE. Considering the detailed discussion above, it is clear that an examining authority has the autonomy to lay down Rules pertaining to conduct of an examination, re-evaluation, etc. Any claim for re-evaluation, as raised in the present case, would be subject to the Rules

laid down by the examining authority. The petitioner having failed to adhere to the procedure and timelines for re-evaluation as laid down by the CBSE, no relief can be granted to the petitioner.

30. The petition is dismissed accordingly.

APRIL 11, 2023

c/au

MINI PUSHKARNA, J



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