

Board of Secondary Education

v.

Pravas Ranjan Panda & Another

R.C. LAHOTI,CJI.,C.K. THAKKER,J.,

(Supreme Court Of India)

C. A. No. 5413 of 2004, 5414 of 2004 | 13-08-2004

1. Leave granted.

2. We have heard learned counsel for the appellant. Despite service of notice, no one has appeared on behalf of the respondents.

3. Respondent 1 Pravas Ranjan Panda appeared in High School Certificate Examination, 2003 conducted by the Board of Secondary Examination, Orissa as a regular candidate from a recognised high school. He passed the said examination securing about 90% marks. Thereafter, he filed a writ petition under Art.226 of the Constitution alleging that he had answered all the questions correctly without committing any mistake and, therefore, deserved full marks in each paper, but due to carelessness and negligence of the Board in appointing inexperienced and unqualified examiners in certain papers low marks had been awarded to him due to which he lost his chance of being within the first ten examinees in the HSC Examination, 2003. A prayer was accordingly made for reevaluation of his answer books. The High Court disposed of the writ petition with the following directions:

"In that view of the matter, we dispose of this writ petition with a direction to opposite party, the Board to scrutinise and recheck, the answer scripts of examinees securing 90% and above marks in aggregate in HSC Examination, 2003 in the manner directed in para 11 of Bismaya Mohanty case (1996 (1) OLR 134) and if there is any change or variation in the marks, the petitioner shall be informed accordingly within a period of six weeks from the date of communication of the order.

It goes without saying that so far "as the candidates securing less than 90% of marks in aggregate, who have applied for rechecking or readdition of marks in certain answer papers by depositing the fees, or apply for the same, their cases have to be considered in accordance with the Board's resolution for rechecking of marks and such candidates be intimated the result thereof within a reasonable time which should not be beyond three weeks hence,".'

4. In *Bismaya Mohanty v. Board of Secondary Education*<sup>1</sup> a Division Bench of the High Court had issued a direction, relevant part of which is being reproduced below:

... Let a committee of three Chief Examiners examine all papers of candidates securing marks 636 or above. Their papers shall be independently examined and the average of marks of three Chief Examiners shall be taken to be the marks secured by the candidate "concerned. However, in case difference of marks between two Chief Examiners exceeds 5 in paper, it shall be sent to another Chief Examiner, whose opinion shall be sent to another Chief Examiner, whose opinion shall be final. In case the marks given by the fourth examiner is less than the average of other three, the average marks shall prevail. It shall be ensured by the Board authorities that a Chief Examiner does not belong to the school to which the candidate belongs. All possible care and caution should be taken to keep the identity of the candidate and the school secret."

5. A review petition was subsequently filed by the Board of Secondary Education, wherein it was submitted that the Board shall face immense difficulties in scrutinising and examining all answer sheets after publication of results and communication of marks to the examinees, on the basis of which most of the students had already taken admission to prosecute their higher studies. It was further submitted that 217 examinees had secured 90% and above marks in HSC Examination, 2003 and 27 examiners of the status of Chief Examiner would be required for reexamination of the answer books and some more examiners would be necessary to examine the subject of third language. However, the review petition was dismissed.

6. The High Court though observed that the writ petitioner who has taken the examination is hardly a competent person to assess his own merit and on that basis claim for reevaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation in marks. It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for reevaluation of answer books of the students. The question whether in absence of any provision to that effect an examinee is entitled to ask for reevaluation of his answer books has been examined by us in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission* (2004 (6) SCC 714 : AIR 2004 SC 4116) decided on 6-8-2004. It has been held therein that in absence of rules providing for reevaluation of answer books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for reevaluation of the answer books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for reevaluation of the answer books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside.

7. The appeals are accordingly allowed and the impugned judgment and order dated 28-8-2003 of the High Court is set aside.