

THE PRESIDENT, BOARD OF SECONDARY EDUCATION, ORISSA AND ANR. A

v.

D. SUVANKAR AND ANR.

NOVEMBER 14, 2006 B

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Education—Conduct of examination by Board of Education—Mistakes in mark sheets issued—Plea of revaluation of answer sheets by examinee—High Court holding that Board's Regulations do not provide for revaluation but imposed cost for the negligence of the Board—On appeal held: It is imperative on the Board to issue correct mark sheet to each candidate—Board's Regulation does not provide for any revaluation but provides for addition of the marks—First mistake occurred due to wrong entry made by computer firm but the second correction was on the basis of prayer for addition of marks—Thus, along with Computer Firm, Assistant Examiner and Scrutinizer negligent for their acts—However, Board cannot escape its liability—Order of High Court imposing cost on the Board upheld but major amount to be recovered from, computer firm. D C

Education—Examination by Board of Education—Conduct of—Selection of examiners by Board and evaluation of answer sheets by examiners—Guidelines stated. E

Respondent No. 1 appeared in the examination conducted by the appellant-Board of Secondary Education. Results were declared and respondent No. 1 secured 654 marks out of 750 marks. Respondent no. 1 was doubtful over the marks secured and made a representation to the Board. On verification of the answer scripts, it was found that in one paper respondent No. 1 secured 65 marks instead of 35 as shown in the mark sheet due to the wrong entry made in the computer. The error was rectified and fresh marks sheet was issued. F G

In *Bismaya Mohanty and Ors. v. Board of Secondary Education, Orissa* represented by its Secretary and Ors. High Court directed that the answer sheets of the students who had scored more than particular number of marks

A were to be re-examined by Committee of three examiners to avoid the possibility of injustice on account of marginal variation in marks. Pursuant thereto, Board constituted a Committee. The cut off mark was fixed at 682. Respondent No. 1 filed writ petition praying for revaluation of answer sheet by the appellant-Board as was done in the case of candidates who had score more than 682 marks. The checking was carried out. It was found that the petitioner had secured 71 and not 65 and the total marks secured by the candidate were 690. High Court dismissed the writ petition holding that there was no provision under any Rules or Regulations for revaluation but awarded Rs. 20,000/- for the negligence of the Board. Hence the present appeal.

C Appellant-Board contended that the High Court was justified in rejecting the prayer of respondent No. 1 for re-valuation and as such the imposition of cost for initial mistake which was later rectified was impermissible; that the Computer Firm and the Assistant Examiner and the Scrutinizer were responsible for wrong entry of the marks; and that due proper care was taken in the matter of selection of examiners.

D Disposing of the appeal, the Court

E HELD: 1.1. It is not in dispute that the Board's regulation do not provide for any revaluation. What is provided is for the addition of the marks. The Board had set up a Committee pursuant to the direction given in *Bismaya Mohanty's* case. Initially, candidate's case was not covered. But on account of corrections his case was to considered. His total marks were 690, whereas the cut off marks fixed by the Board were 682. [1140-G-H; 1150-A]

F 1.2. Appellant-Board is certainly not blemishless. Undisputedly, lesser marks were shown in the marks sheet supplied to the respondent no. 1. In the first marks sheet the total marks indicated were 654. Finally, marks sheet was issued showing the aggregate marks to be 690. Except putting the blame on the Computer Firm, Assistant Examiner and the Scrutinizer, nothing further has been offered by the appellant Board as explanation. The first mistake was of the computer firm but the second correction is clearly on the basis of the prayer for re-addition of marks. It was found that the marks actually secured were 71 while on the cover page of the answer sheet the marks noted as 65. For this the blame has to be fixed on the Assistant Examiner and Scrutinizer. But that does not provide an escape route to the Board.

[1150-A-C]

H 1.3. Ultimately, it is the Board, which has to ensure that the correct

marks sheet is issued to the candidates since candidates who appear at the High School Certificate are of tender age. If by mistake the Board indicates to the candidates' incorrect marks, it is bound to have adverse effect on the mind of the candidates of tender age. Therefore, it is imperative on the part of the Board to ensure that errorless marks sheet is issued to each candidate. The plea of the computer firm that considering the large number of candidates the mistake is not serious, cannot be accepted. The computer entries are made to ensure accuracy and to do away with defects which arise from manually recording of marks and to ensure accuracy. The Assistant Examiner and the Scrutinizer appear to have taken their jobs, casually unmindful of the consequences which resulted from, their negligence, acts. Therefore, the sum of Rs.20,000/- has to be paid to the respondent No. 1 by the Board out of which it would recover Rs. 15,000/- from computer firm. The action taken by the Board against the Assistant Examiner and Scrutinizer for their negligence is upheld. [1150-C-F]

1.4. Though on the basis of marks secured by him (i.e.690) respondent No. 1's case ought to have been considered by the Committee, no useful purpose would be served by giving direction to do so at the present juncture. [1151-A-B]

Bismaya Mohanty and Ors. v. Board of Secondary Education, Orissa represented by its Secretary and Ors., (1996) 1 OLR 134; *Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kumarsheth, etc.*, AIR (1984) SC 1543; *Board of Secondary Education v. Pravas Ranjan Panda and Anr.* C.A Nos. 5413-5414 of 2004 decided by SC on 13.8.2004, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4926 of 2006.

From the final Judgment and Order dated 20.7.2005 of the High Court of Orissa at Cuttack in W.P. (C) No. 7709 of 2004.

Janaranjan Das and Swetaketu Mishra for the Appellants.

Sanjay Kumar Dubey, A.S. Bhasme, Amlan Kumar Ghosh and K. Sarada Devi for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Challenge in this appeal is to the judgment rendered by a Division

A Bench of the Orissa High Court. While holding that there was no provision under any rule or regulations of the Appellant-Board for revaluation, a sum of Rs.20,000/- was awarded for wrong intimation about the total marks actually received by the respondent No.1.

Background facts in a nutshell are as follows:

B Respondent No.1 appeared at the High School Certificate Examination 2004 conducted by the appellant-Board. Result of the said examination was published on 25.6.2004. Initially, respondent no.1 was declared to have passed in the 1st Division securing 654 marks out of 750 marks. Respondent no.1 made a representation pointing out that the marks appear to have been wrongly mentioned in the marks sheet. Answer scripts were verified, and it was found that the marks awarded in one paper i.e. SSH were wrongly shown as 35 though respondent No.1 had really secured 65 marks. It was pointed out that the mistake occurred due to the wrong entry made in the computer. The error was rectified in the Tabulation Register and fresh marks sheet was issued on 7.7.2004. The revised marks sheet was sent to the Zonal Officer, at Balasore for onward transmission to the Headmaster, N.S. Police High School where the petitioner had prosecuted studies. In September, 2004 respondent no.1 filed writ petition. It is to be noted that Board had constituted a Committee pursuant to the direction given in *Bismaya Mohanty's case* (supra). The cut off mark was fixed at 682. As at that time the respondent no.1's marks were taken to be 654, his papers were not examined by the Committee. As the candidate had deposited requisite fees for checking of addition of marks, the exercise was undertaken and it was noted that in the SSH paper he had secured 71 and not 65 as was posted in the cover page. In other words, the actual marks secured by the candidate were 690 and not 654 as was originally recorded.

The High Court dismissed the writ petition holding that there is no scope for revaluation but directed payment of Rs.20,000/- for the negligence of the Board. Main prayer in the writ petition was to direct the appellant-Board to revalue answer sheet as was done in the case of candidates who had secured more than 682 marks. Earlier the High Court in the case of *Bismaya Mohanty & Ors. v. Board of Secondary Education, Orissa represented by its Secretary and Ors.* (1996) 1 OLR 134 had directed that the answer sheet of the students who had secured more than particular number of marks were to be re-examined by the Committee of three examiners to avoid the possibility of injustice on account of marginal variation in marks,

considering power given to Chief Examiners in certain specified cases. A

The Board is in appeal against the cost imposed. As observed by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kurmarsheth. etc.* AIR (1984) SC 1543, it is in the public interest that the results of Public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one were to be propounded. In the above premises, it is to be considered how far the Board has assured a zero defect system of evaluation, or a system which is almost fool-proof. B C D E

Award of marks by an Examiner is to be fair, and considering the fact that revaluation is not permissible under the Statute, the Examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping-stone on career advancement of a student. Absence of a provision for revaluation cannot be a shield for the Examiner to arbitrarily evaluate the answer script. That would be against the very concept for which revaluation is impermissible. F

The learned counsel for the Board has stated that due proper care is taken in the matter of selection of Examiners. Procedure followed by the Board was stated to be as follows: G

Names of teachers teaching different subjects are obtained from the schools in a prescribed form named Teachers Index Form. The data supplied by the schools in the Teachers Index Form are entered in the Computer. Circle-wise/subject-wise seniority list of Chief Examiners/ Assistant Examiners/ H

- A Scrutinisers is prepared. After the Unit Chart of the valuation centre is finalised, allotment of Chief Examiner/Asst. Examiner/Scrutiniser made by the Computer basing on the guidelines framed by the Examination Committee, keeping in view the distance of schools from valuation centre. After selection of Examiners, the Computer print of the subject-wise and Unit-wise list of Chief Examiners/Asst. Examiners and Scrutinisers is finalised, and thereafter the appointment orders are issued. Criteria fixed are stated to be as follows:
- B
- (i) Minimum teaching experience for Chief Examiners and Asst. Examiners is stipulated.
 - (ii) Chief Examiners are appointed on rotation and Asst. Examiners on seniority basis.
 - (iii) In case of shortage, the experience restriction can be relaxed.
 - (iv) Scrutinisers are appointed from among the subject- teachers with particular years of teaching experience.
- C
- D It has to be ensured that the Examiners who make the valuation of answer papers are really equipped for the job. The paramount consideration in such cases is the ability of the Examiner. The Board has bounden duty to select such persons as Examiners who have the capacity, capability to make valuation and they should really equipped for the job. Otherwise, the very purpose of evaluation of answer papers would be frustrated. Nothing should be left to show even an apprehension about lack of fair assessment. It is true that valuation of two persons cannot be equal on golden scales, but wide variation would affect credibility of the system of valuation. If for the same answer one candidate gets higher marks than another that would be arbitrary. As indicated above, the scope for interference in matters of valuation of answer papers is very limited. For compelling reasons and apparent infirmity in valuation, the Court step in. Care should be taken to see that the Examiners who have been appointed for a particular subject belong to the same faculty. It would be a mockery of the system of valuation of a teacher belonging to Arts stream is asked to evaluate answer papers of Science stream. It may be that a teacher had Physics. Chemistry or Biology at the Intermediate Level, but at Graduation stage he had special paper in Zoology. To ask such a teacher to evaluate Botany paper would not be proper. Similarly in the case of a teacher having Mathematics in Intermediate Level while he took his high studies in Physics, or Chemistry, or Botany at the Graduation Level, evaluation of answer paper in Mathematics by him would not be proper. May be that he has working knowledge in the subject. But the valuation should be done by
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an Examiner who is well equipped in the subject. That would rule out the chance of variation improper valuation. Board authorities should ensure that anomalous situations as pointed out above do not occur. Additional steps should be taken for assessing the capacity of a teacher before he is appointed as an Examiner. For this purpose, the Board may constitute a Body of Experts to interview the persons who intend to be appointed as Examiners. This process is certainly time-consuming but it would further the ends for which the examinations are held. The Chief Examiner is supposed to act as a safety-valve in the matter of proper assessment.

One thing which cannot be lost sight of is the marginal difference of marks which decide the placement of candidates in the merit list.

The High Court in another case has directed that answer scripts of all the candidates who had secured more than 90% of marks should be re-checked. The said decision of the High Court was assailed before this Court in *Board of Secondary Education v. Pravas Ranjan Panda and Anr.* Civil Appeal Nos.5413-5414 of 2004. This Court by order dated 13.8.2004 held that since there is no provision for re-valuation, the High Court's direction was not sustainable.

In the instant case the High Court was of the view that the earlier view in *Bismaya Mohanty's* case (supra) was not approved by this Court in said Civil Appeals.

According to the learned counsel for the appellant-Board the High Court was justified in dismissing the writ petition rejecting the prayer of the respondent No.1 for re-valuation. Having held that the writ petition was to be dismissed the imposition of cost for initial mistake which was later rectified is clearly impermissible.

By order dated 5.9.2005 by issuing notice it was directed that the Computer Firm and the Assistant Examiner and the Scrutinizer who were responsible for wrong entry of the marks were to be noticed. Stand of the computer firm was that since entries were made for several lakhs of students, mistake of this nature should not be given importance.

It is not in dispute that the Board's regulations do not provide for any revaluation. What is provided is for the addition of the marks. The Board had set up a Committee pursuant to the direction given in *Bismaya Mohanty's* case (supra). Initially, candidate's case was not covered. But on account of

A corrections his case was to be considered. His total marks were 690, whereas the cut off marks fixed by the Board were 682.

B The appellant-Board is certainly not blemishless. Undisputedly, lesser marks were shown in the marks sheet supplied to the respondent No.1. In the first marks sheet the total marks indicated were 654. Finally, marks sheet was issued showing the aggregate marks to be 690. Except putting the blame on the Computer Firm, Assistant Examiner and the Scrutinizer, nothing further has been offered by the appellant-Board as explanation. True it is the first mistake was of the computer firm but the second correction is clearly on the basis of the prayer for re-addition of marks. It was found that the marks actually secured were 71 while on the cover page of the answer sheet the marks noted as 65. For this the blame has to be fixed on the Assistant Examiner and the Scrutinizer. But that does not provide an escape route to the Board.

D Ultimately, it is the Board which has to ensure that the correct marks sheet is issued to the candidates since candidates who appear at the High School Certificate are of tender age. If by mistake the Board indicates to the candidates' incorrect marks, it is bound to have adverse effect on the mind of the candidates of tender age. Therefore, it is imperative on the part of the Board to ensure that errorless marks sheet is issued to each candidate. The plea of the computer firm that considering the large number of candidates the mistake is not serious has no substance. The computer entries are made to ensure accuracy and to do away with defects which arise from manually recording of marks and to ensure accuracy. The Assistant Examiner and the Scrutinizer appear to have taken their jobs casually unmindful of the consequences which result from their negligence acts. Therefore, the sum of Rs.20,000/- has to be paid to the respondent No.1 by the Board out of which it shall recover Rs.15,000/- from computer firm. It appears that the Board has taken action against the Assistant Examiner and Scrutinizer for their negligence. While affirming action taken against them, we express our displeasure for their careless and negligent acts which have led to unnecessary litigation.

G The High Court has erroneously held that this Court did not approve the directions given in *Bismaya Mohanty's* case (supra). It is to be noted that in Civil Appeal Nos.5413-5414 of 2004, the correctness of the decision in *Bismaya Mohanty's* case (supra) was not under consideration. The High Court in the impugned judgment in the said case had departed from the directions given in the *Bismaya Mohanty's* case (supra) and in that background

this Court set aside the order of the High Court. No opinion was expressed A
about the correctness of the decision in *Bismaya Mohanty's* case (supra).
Additionally, the Board itself on the basis of said decision had constituted
the Committee in the year under consideration.

Though on the basis of marks secured by him (i.e. 690) respondent B
No.1's case ought to have been considered by the Committee, we feel no
useful purpose shall be served by giving direction to do so at the present
juncture.

The appeal is accordingly disposed of. No costs.

N.J.

Appeal disposed of. C