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Court No. - 81

Case :- WRIT - C No. - 19615 of 2020

Petitioner :- Manoj Kumar Tiwari
Respondent :- Union Of India And 3 Others
Counsel for Petitioner :- Dhirendra Singh,Ajay Pratap Rao
Counsel for Respondent :- A.S.G.I.,Dhananjay Awasthi

Hon'ble Yashwant Varma,J.

Heard learned counsel for the petitioner, Sri Dhananjay Awasthi who appears for respondent Nos. 2 and 3 and Ms. Suman Jaiswal for the first respondent.

The petitioner seeks the issuance of a writ commanding the respondents to undertake a revaluation of his answer script submitted in respect of the subject- *"Community and Elementary Education"*. The issue itself arises in the backdrop of the petitioner having participated in an entrance examination conducted by the second respondent for granting admission to its D.EL.E.D. course. Being unsuccessful in obtaining admission to that course, he has petitioned this Court for reevaluation of the answer script in question.

It becomes pertinent to note that prior to approaching this Court the petitioner has not obtained a copy of the answer script from the respondents, a procedure that could have been adopted and is permissible in law in light of the law as declared by the Supreme Court in **Central Board of Secondary Education Vs. Aditya Bandhopadhya and others**[1]. The Court is thus left to consider the reliefs claimed in the petition solely on the basis of the following averments as made in paragraphs 9 to 12 of the writ petition which read thus:-

> 9. That the petitioner has solved the question paper to the best of his ability but when the statement of marks

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1. (2011) 8 SCC 497

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> awarded to the petitioner in Sub Code No. 507 he was shocked.
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> 10. The the petitioner apprehends that answer book of the subject Community and Elementary Education on (Subject Code No. 507) has not been properly checked/evaluated.
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> 11. That possibility of errors in calculation of marks, cannot be ruled out, but unless any direction to ensure rechecking or scrutiny is issued the Institute may not take any step.
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> 12. That the petitioner has good academic career, he awarded 199/500 in Purva Madhyama, 323/600 in Uttar Madhyama, 1199/2200 in Shashtri Pariksha and 590/900 in Acharya Pariksha and in result of D.EL.Ed. Course subject Nos. 501 to 514 except Code No. 507 he awarded good marks and he hopes that he will get more than 28 marks."

The practice of approaching this Court directly without obtaining copies of the answer scripts or seeking directions requiring examining bodies to produce answer books cannot but be deprecated in the strongest terms, discouraged and curbed. The conduct of examinations by educational authorities cannot be lightly interfered with unless the petition rests on a strong foundation and it is at least prima facie established that there has been an apparent and evident mistake in the process of evaluation. The onus and burden on this aspect lies solely on the petitioner and is one which must be discharged at the threshold. In order to establish a stark or glaring mistake in the process of evaluation it is imperative for the petitioner to establish from the record that an apparent illegality has been committed by the examiner. That cannot possibly be done unless a copy of the answer script has been obtained and the petitioner upon a perusal thereof finds a manifest error or illegality in the evaluation undertaken. The burden to prove that a fair evaluation was in fact undertaken cannot stand shifted or placed upon the examining body unless this primary fact is established by the petitioner. This essentially since the examining body cannot be commanded to prove a fact in the negative.

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An evaluation undertaken by examining bodies should not be viewed with suspicion unless it is prima facie established that it was not fair or transparent. Courts must necessarily be wary of entertaining such challenges unless it be well substantiated and found to rest on a strong pedestal which is likely to succeed. In any case a foray like the present cannot be entertained simply on the basis of a stated apprehension or the candidate's own assessment of performance in the examination. A challenge to an evaluation undertaken by examining bodies, in any case, on a mere allegation that *"possibility of errors in calculation of marks cannot be ruled out…"* cannot be countenanced. It must necessarily, for reasons aforenoted, stand on sounder footing.

More fundamentally the Court takes notes of the submission of Sri Awasthi who submits that no provision for reevaluation exists in terms of which a direction as claimed by the petitioner may be issued. While the absence of a provision for reevaluation may not completely denude the Court from examining a challenge to an evaluation process under Article 226 of the Constitution, its powers may be invoked in rare and exceptional cases and where the error or illegality is patent and manifest. The Court deems it apposite to notice the following conclusion as ultimately pronounced in **Ran Vijay Singh Vs. State of U.P.**[2]

> **30.2.** If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

The above position was again explained in **High Court of Tripura v. Tirtha Sarathi Mukherjee**[3] with the Supreme Court observing: -

> **20.** The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances

2 (2018) 2 SCC 357
3 (2019) 16 SCC 663

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> which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.
>
> **21.** Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional."

As is evident from the above exposition of the law on the subject, there must be a demonstrable illegality in the evaluation undertaken and only in such rare and exceptional cases would the Court be legally justified in invoking its jurisdiction. The petitioner here has miserably failed to meet the tests as evolved and noticed above.

The writ petition consequently fails and is **dismissed**.

Order Date :- 8.12.2020
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(Yashwant Varma, J.)