

## **The Secretary, West Bengal Council Of ... vs Ayan Das & Ors on 28 September, 2007**

**Equivalent citations: AIR 2007 SUPREME COURT 3098, 2007 AIR SCW 5976, (2007) 4 JCR 217 (SC), (2007) 4 ESC 607, (2007) 7 SUPREME 9, (2007) 4 SCT 462, (2007) 4 MAD LW 841, (2008) 1 MAH LJ 537, (2008) 105 CUT LT 200, (2008) 1 MPLJ 229, (2008) 1 MAD LJ 866, 2007 (11) SCALE 560, 2007 (7) SUPREME 625, 2007 (8) SCC 242, (2008) 1 CAL HN 17, (2007) 59 ALLINDCAS 263 (SC), (2007) 4 KER LT 535, (2007) 69 ALL LR 494, (2007) 11 SCALE 560, (2008) 1 CALLT 1**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, P. Sathasivam**

CASE NO.:

Appeal (civil) 4560 of 2007

PETITIONER:

The Secretary, West Bengal Council of Higher Secondary Education

RESPONDENT:

Ayan Das & Ors

DATE OF JUDGMENT: 28/09/2007

BENCH:

Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:

**J U D G M E N T** CIVIL APPEAL NO. 4560 OF 2007 (Arising out of SLP (C) No. 14258 of 2005) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. The challenge in this appeal is to the order passed by the Division Bench of the Calcutta High Court directing re- examination of answer script of respondent No.1 in English Paper 1.

3. The brief facts in nut shell are as follows:

Respondent No.1 passed the Madhyamik (Secondary) Examination conducted by the West Bengal Council of Higher Secondary Education in 2004. Respondent No.2 is the father of respondent No.1. As a matter of Post-Publication Scrutiny of results of

Higher Secondary Examination 2004 the marks of respondent No.1 in Physics (Theory) Paper-II were increased by two marks. A Writ Petition was filed by respondent No.1 for a direction to the Council-Appellant to produce the answer scripts of respondent No.1 in several papers. The said such answer scripts were produced before the court pursuant to the direction given on 21.12.2004, on respondent No.1 depositing a sum of Rs.5,000/- with the Council. The matter was adjourned to 27.1.2005, and opportunity was given to learned counsel for respondent No.1 to inspect the answer scripts. On 27.1.2005, learned Single Judge directed to preserve the answer scripts and directed to issue fresh marksheet incorporating in English Paper-I, the additional marks which, it transpired during the inspection, were not awarded to him for correct answer. In terms of this direction, fresh marksheet was issued to respondent No.1. Further supplementary affidavit was filed by respondent No.1 in terms of liberty granted by learned Single Judge. It appears that learned Single Judge directed that paper, in question, be re-assessed by another examiner. The objection of the Council- Appellant that there is no such provision for re-examination was overruled by learned Single Judge. The Council-Appellant pointed out that no specific error in assessment was pointed out by respondent No.1, though he had been granted liberty to do so. It was pointed out that there is no provision in any statute permitting such inspection, but in view of the direction given by learned Single Judge, inspection was granted.

An appeal was filed by the Appellant-Council questioning the direction given by learned Single Judge. The Division Bench by the impugned order dismissed the appeal holding that Judges themselves have looked the answer script and were satisfied that there was scope of re-assessment.

4. Learned counsel for the appellant submitted that course adopted by learned Single Judge, as affirmed by the Division Bench, is without legal sanctity.

5. Learned counsel for respondent No.3 - State supported the stand of the appellant. Learned counsel for respondent Nos. 1 and 2 submitted that they have nothing further to submit and do not want to contest than what was noted by the High Court.

6. The permissibility of re-assessment in the absence of statutory provision has been dealt with by this Court in several cases. The first of such cases is Maharashtra State Board of Secondary and Higher Secondary Education & Anr v. Paritosh Bhupeshkumar Sheth & Ors. reported in (1984 (4) SCC 27). It was observed in the said case that finality has to be the result of public examination and, in the absence of statutory provision, Court cannot direct re-assessment/re- examination of answer scripts.

7. The courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the court that model answer is different from what has been adopted by the

Board. Then only the court can ask the production of answer scripts to allow inspection of the answer scripts by the examinee. In *Kanpur University and Ors. v. Samir Gupta and Ors.* (AIR 1983 SC 1230) it was held as follows:-

"16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it would not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong".

8. Same would be a rarity and it can only be done in exceptional cases. The principles set out in *Maharashtra Board' case* (supra) has been followed subsequently in *Pramod Kumar Srivastava v. Chairman Bihar Public Service Commission, Patna & Ors.* (2004 (6) SCC 714), *Board of Secondary Education v. Pravas Ranjan Panda & Anr.* (2004 (13) 714) and *President, Board of Secondary Education, Orissa and Anr. v. D. Suvankar and Anr.* (2007 (1) SCC 603).

9. In view of the settled position in law, the orders of learned Single Judge and the Division Bench cannot be sustained and stand quashed.

10. In *Suvankar's case* (supra) it was inter-alia observed as follows:

"5. 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 another v. Paritosh Bhupesh Kurmarsheth. etc.* (AIR 1984 SC 1543), it is in the public interest that the results 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".

11. The appeal is allowed. There will be no order as to costs.