

GAHC010006942021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/449/2021

ISWAR PRASHAD BORAH
S/O LATE TRILOKESHWAR BORAH
A RESIDENT OF VILLAGE TELIA GAON, NEAR IRRIGATION COLONY, PO
ITACHALI, PS NAGAON SADAR, NAGAON, ASSAM 782003

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION DEPARTMENT, DISPUR, ASSAM,
GUWAHATI 781006

2:THE CHAIRMAN
OF THE BOARD OF SECONDARY EDUCATION ASSAM
BAMUNIMAIDAM
GUWAHATI 781021

3:THE SECRETARY
OF THE BOARD OF SECONDARY EDUCATION ASSAM
BAMUNIMAIDAM
GUWAHATI 781021

4:THE CONTROLLER OF EXAMINATION
OF THE BOARD OF SECONDARY EDUCATION ASSAM
BAMUNIMAIDAM
GUWAHATI 78102

Advocate for the Petitioner : ALHAJJ INAM UDDIN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 05.02.2024

Heard Mr. A. I. Uddin, learned counsel for the petitioner. Also heard Ms. D. D. Barman, learned Addl. Senior Government Advocate, appearing on behalf of respondent No. 1; and Mr. T. C. Chutia, learned standing counsel, Board of Secondary Education, Assam, appearing on behalf of respondents No. 2, 3 & 4.

2. The petitioner by way of instituting this writ petition, has raised a grievance with regard to the manner in which the answer scripts of his daughter's HSLC Examination 2020 were evaluated by the Examiners of the Board of Secondary Education, Assam.

The petitioner's daughter had appeared in her HSLC Examination 2020 under the Roll: B20-637 No. 1061. The examinations were held on various dates between 10.02.2020 to 29.02.2020. The result of the HSLC Examination 2020 came to be declared on 06.06.2020. The petitioner's daughter had scored 567 marks out of 600 marks with a percentage of 94.50. On perusal of the mark-sheet, the petitioner's daughter not being satisfied with the marks scored by her in the Subjects viz. Assamese, English and General Science, the petitioner proceeded to apply for a re-evaluation of the answer scripts of the above 3 Subjects. The petitioner also sought for being provided with the copies of the answer scripts of his daughter's HSLC Examination 2020, pertaining to Assamese, English and General Science subjects.

3. It is the contention of the petitioner that on 03.07.2020, a text message was received by the petitioner informing that his application for rechecking of the marks as submitted by him, was processed and there has been no change of marks scored by his daughter. Thereafter, the petitioner towards the end of July, 2020, received the copies of the answer scripts of the Subjects viz. Assamese, English and General Science. On examination of the answer scripts of the above-noted Subjects, several discrepancies were noted therein. The discrepancies with regard to various questions is reproduced in tabular form, as under:

TABLE : A

Subjects	Question No.	Full marks of the Question	Result of evaluation	Marks awarded
Assamese	15	1	'X'	0
English	2	1	'X'	0
	4	2	'X'	0
General Science	28(b)	2	'X'	0

TABLE : B

Subjects	Question No.	Full marks of the Question	Result of evaluation	Marks awarded
Assamese	4(Ga)	2	Full marks not awarded	1 out 2
	11(Kha)	3	Full marks not awarded	2 out 3
	14	5	Full marks not awarded	4 out 5
	17	8	Full marks not	7 out 8

			awarded	
	19	6	Full marks not awarded	3 out 6
	4(part:C)	3	Full marks not awarded	2 out 3
English	3	2	Full marks not awarded	1 out 2
	15	2	Full marks not awarded	1 out 2
	17(b)	5	Full marks not awarded	4 out 5
	18	5	Full marks not awarded	4 out 5
	24	2	Full marks not awarded	1 out 2
	29	6	Full marks not awarded	5 out 6
	30	5	Full marks not awarded	4 out 5
	31A	5	Full marks not awarded	3 out 5
	31B	5	Full marks not awarded	3 out 5
General Science	16	2	Full marks not awarded	1 out 2
	17	3	Full marks not awarded	2 out 3
	21(alternative)	3	Full marks not awarded	2 out 3

	22	3	Full marks not awarded	2 out 3
	24	3	Full marks not awarded	1 out 3
	25	3	Full marks not awarded	2 out 3
	29	5	Full marks not awarded	3 out 5
	31	5	Full marks not awarded	3 out 5

4. It is also the contention of the petitioner that had the Examiners given to his daughter the full marks against the questions identified hereinabove, in Table A and B; she would have scored 590 marks instead of 567 marks and the same would have placed her in 4th rank marks amongst students clearing the HSLC Examination 2020. It is the stand of the petitioner that on account of an erroneous evaluation made by the Examiners of the Subjects viz. Assamese, English and General Science, his daughter was denied her due marks and resultantly, deprived of getting admission in top ranking institutions in the next level of education.

5. The respondent Board of Secondary Education, Assam, by way of filing an affidavit-in-opposition, has brought its stand on record and therein, it was contended that as per the regulations of the Board in force; re-evaluation is not permissible and only a rechecking is to be carried-out. The rechecking to be carried-out as per the regulations in force, was limited to re-totalling of the marks awarded by the Examiner and/or assessment of the answer(s) which has/have been left unevaluated and/or correction of wrong entry of marks of any

manner/nature. It was highlighted by the Board that the rechecking of the answer scripts of the petitioner's daughter of the Subjects viz. Assamese, English and General Science were initially evaluated by the experienced teachers and she has scored against the answers so given basing on the merit of the same. It was further contended that the initial evaluation and subsequent rechecking of the answer scripts of the above 3 Subjects was so done in terms of the norms of the Board in place. The Board contends that in the rechecking exercise, there been no increase in the marks in the petitioner's daughter in all and/or in any of the 3 Subjects viz. Assamese, English and General Science, reflects that the initial evaluation was correct. The Board has also brought on record, a report of rechecking of the answer scripts of the above 3 Subjects with regard to the questions set-out in Table A hereinabove, which was done by Subject Experts.

6. The learned counsels appearing for the parties to the present proceeding, have advanced their rival submissions on the pleaded lines.

7. I have heard the learned counsels for the parties and also perused the materials brought on record.

8. Before proceeding to examine the contentions raised by the petitioner in the present proceeding, it is to be examined as to the power of this Court to direct for a re-evaluation of the answer scripts and/or to get examined such answer scripts on its own. The said issue is no longer *res integra* and had been settled by a decision of the Hon'ble Supreme Court in the case of ***H.P. Public Service Commission v. Mukesh Thakur & anr.***, reported in **(2010) 6 SCC 759**, wherein, the Hon'ble Supreme Court has held that in the absence of a provision for re-

evaluation existing in the regulations of the Body conducting the examination involved, no direction for any re-evaluation can be issued by the Court.

The conclusions of the Hon'ble Supreme Court in the above noted case being relevant to the issues arising in the present proceeding, is extracted hereinbelow for ready reference:

"24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmarsheth etc.etc. AIR 1984 SC 1543, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under:

".....It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act..."

.....The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act....."

25. This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors, AIR 2004 SC 4116 observing as under:

"Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re- evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks."

26. A similar view has been reiterated in *Dr. Muneeb Ul Rehman Haroon & Ors. Vs. Government of Jammu & Kashmir State & Ors.* AIR 1984 SC 1585; *Board of Secondary Education Vs. Pravas Ranjan Panda & Anr.* (2004) 13 SCC 383; *President, Board of Secondary Education, Orissa & Anr. Vs. D. Suvankar & Anr.* (2007) 1 SCC 603; *The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das & Ors.* AIR 2007 SC 3098; and *Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors.* (2009) 1 SCC 599."

9. The regulations of the Board as noted hereinabove, does not permit for any re-evaluation and/or re-scrutiny of the answer scripts.

10. It is to be noted that as reflected from the question papers, which have been made a part of the record in this writ petition, the questions against which the answers of the petitioner's daughter have been contended to have not been properly evaluated and/or re-evaluated by the Examiners, are all descriptive in nature and accordingly, the evaluation process being a subjective one; the marking style and manner of evaluation of different Examiners cannot be equated as in the case of an objective type question where only one answer out of possible options, would be correct.

11. The decision rendered in the case of ***Mukesh Thakur***(supra) was considered with approval in a recent judgment by the Hon'ble Supreme Court in the case of ***Dr. B. R. Ambedkar University Agra v. Devarsh Nath Gupta & anr.***, reported in ***2023 SCC Online SC 970***.

12. Having noted the regulations as applicable of the Board to the HSLC Examination 2020, applying the decision of the Hon'ble Supreme Court in the case of ***Mukesh Thakur***(supra) to the facts of the present proceeding; it is not open for this Court to direct the authorities of the Board to carry-out a re-evaluation of the

answer scripts of the petitioner's daughter pertaining to the subjects of Assamese, English and General Science of her HSLC Examination 2020. As such, the said prayer of the petitioner cannot be accepted by this Court.

13. At this stage; it is also required to examine the grievance of the petitioner that his daughter was arbitrarily not awarded marks for the questions as set-out in Table:A above.

As already noted-above; the answers given by the daughter of the petitioner to the questions in the Subjects viz. Assamese, English and General Science as placed in Table:A was examined by the Board through Subject Experts and on such examination, the respective Subject Experts, have, by giving reasons, held that evaluation of the said questions by the initial Examiner was justified. The report of the Subject Experts examining the questions as set-out in Table:A was made part of the records of this proceeding.

14. In view of the categorical opinion rendered by the concerned Subject Experts, this Court is not in a position to take a contrary view thereof and the opinion as expressed by the Subject Experts, have to be accepted.

15. This now brings this Court to examine the grievance raised by the petitioner in this proceeding with regard to the manner of evaluation of the answers given by the petitioner's daughter to the questions set-out in the Subjects of Assamese, English and General Science in her HSLC Examination 2020, as set-out in Table:B above.

16. On perusal of the connected question papers; it is revealed that all the questions are of descriptive nature and not of objective character having multiple possible options of which one is only correct. Amongst the questions placed in Table:B above; only Question No. 4 of Part 'C' of the Assamese Subject, is in the nature of a fill in the blank question. The grievance of the petitioner is that although his daughter had given correct answers but the Examiners have not given the maximum marks as available in each of the said question.

17. The questions being descriptive in nature, this Court does not have the expertise to examine as to whether the petitioner's daughter had given due and proper answers requiring her to be scored with the maximum marks as provided for each of the questions. The very contention of the petitioner that his daughter was marked for the questions of the said 3 Subjects, placed in Table:B above; demonstrates that the said questions were evaluated by the Examiner but not given the full marks. Such questions being duly evaluated and marked, following the decision of the Hon'ble Supreme Court in the case of **Mukesh Thakur**(supra), this Court is not in a position to issue any direction for a re-evaluation of the same when the Regulations of the Board holding the field, do not permit for such re-evaluation.

18. It is to be noted here that the petitioner has in the present proceeding, not presented any challenge to the Regulations of the Board applicable to the issues arising in the present proceeding.

19. In view of the conclusions reached hereinabove with regard to the prayers of the petitioner in this writ petition, this Court is of the considered view that the

Board authorities had not committed any error in the process of evaluation/re-checking of the answer scripts of the petitioner's daughter in respect of the answers as given by her to the questions in her Assamese, English and General Science papers of HSLC Examination 2020 and as set-out in Table:A and Table:B above. Accordingly, the contentions as raised by the petitioner in this connection; cannot be accepted.

20. The writ petition is, therefore, held to be devoid of merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant