



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9192 OF 2022

Omkar s/o Dnyaneshwr Chavan,
Age : 19 years, occu : Education,
R/o. Rampuri (Kh.), Tq. Pathri,
Dist. Parbhani.

...Petitioner

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2) Maharashtra State Board of Secondary
And Higher Secondary Education, Pune
Aurangabad Divisional Board, Aurangabad
Through its Divisional Secretary.
- 3) The Principal,
Mahatma Basweshwar Junior College,
Rametakli Tq. Manwat,
Dist. Parbhani.

...Respondents

Advocate for Petitioner : Mr. Vivek J. Dhage
AGP for Respondents-State : Mr. S. K. Tambe
Advocate for Respondent No.2 : Mr. U. S. Mote

CORAM : RAVINDRA V. GHUGE &
ARUN R. PEDNEKER, JJ

Date of Reserving the Judgment : 15/09/2022
Date of Pronouncing the Judgment : 07/10/2022

JUDGMENT : (Per ARUN R. PEDNEKER, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties heard finally.
2. We have heard Mr. V.J. Dhage, learned advocate for the petitioner, Mr. S.K. Tambe, learned AGP for respondent/State and Mr. U.S. Mote, learned

advocate for respondent No. 3.

3. By this petition, the petitioner is praying for a writ of mandamus directing the respondent No.2, Maharashtra State Board of Secondary and Higher Secondary Education, Pune, Aurangabad Divisional Board, Aurangabad, to issue the original statement of mark sheet bearing Seat No.RO77782 of Standard 12th Science Examination held in February/March 2022.

4. The petitioner had appeared for 10th Standard examination held in March/April 2018 from the Shantabai Nakhate High School, Rampur (Kh), Tq. Pathri, Dist.Parbhani. The examination is conducted by respondent No.2 Maharashtra State Board of Secondary and Higher Secondary Education, Pune Aurangabad Divisional Board, Aurangabad. The petitioner successfully passed the said 10th Standard examination by obtaining 83.20 % marks.

5. Thereafter, the petitioner prosecuted his further study in respondent No.3 Mahatma Basweshwar Junior College, Rametakli, Tq. Manwat, Dist.Parbhani, for the academic year 2018-2019 and 2019-2020.

6. The petitioner submitted his examination form from respondent No.3 Mahatma Basweshwar Junior College, Ramtakli, for appearing in February-March 2020 examination of Standard 12th Science. The petitioner succeeded in the said examination held in February 2020 and was issued a mark sheet. However, the petitioner got less than 50% marks and was unable to compete/apply for NEET examination.

7. The petitioner thus applied for first improvement examination in the month of October-November 2020 and this time again, he was not able to score the required 50 % marks for appearing in NEET examination.

8. The petitioner, thereafter, again applied for the second improvement examination in March 2021. Due to COVID, the examination was delayed and was held in the month of September-October 2021. He was declared passed for October, 2021 examination and his mark sheet was uploaded on the website. However, in October 2021 examination also the petitioner was not able to score the required minimum 50% marks to compete for NEET examination.

9. The petitioner thereafter submitted his application form for the third improvement examination to be held in the month of February-March 2022, through the respondent No.3 Mahatma Basweshwar Junior College, Ramtakli. Hall ticket bearing Seat No.RO77782 was issued to the petitioner by the College permitting him to appear for the examination to be held in February-March 2022. The petitioner was declared passed for March 2022 examination and had obtained 73.67% marks in the said examination. Accordingly, marks sheet was uploaded on the website.

10. The petitioner, however, was not given his original mark sheet. In view of the same, the petitioner has filed the present writ petition seeking directions to respondent Nos.2 and 3 to issue the original mark sheet.

11. The petitioner contends that once the petitioner is permitted to

appear for the examination and his result being declared, it is not permissible for the respondent authorities to withhold his original mark sheet. He relies on the Judgments of the Hon'ble Supreme Court in the case of *Shri Krishan Vs. The Kurukshetra University, Kurukshetra, AIR 1976 Supreme Court 376; Syed Abdul Qadir and Ors. Vs. State of Bihar and Ors. 2009 AIR SCW 1871* and the judgment of Division Bench of this Hon'ble Court in the case of **Samruddhi Sambhaji Padwal and others Vs. The State of Maharashtra and others in Writ Petition No. 13928/2021 decided on 1st March, 2022.**

12. The respondent Board in their reply submitted that the petitioner is entitled for two improvement examinations and the petitioner having exhausted both these options earlier, he is not permitted or allowed to take his third improvement examination. Respondent No.2 Maharashtra State Board further submitted that there is an apparent error on the part of respondent No.3 College to issue hall ticket to the petitioner for the third attempt. Respondent No.2 Maharashtra State Board further submits that the petitioner was aware that no third option is available for improvement examination. The respondent No. 2, Board submits that the respondent No.3 has not either verified or has acted in collusion with the petitioner in granting him the third opportunity, and as such, the Board is entitled to reject the third improvement examination result.

13. The respondent No. 2 – Board also relied upon communications marked as X-1 (letters dated 08/07/2022 and 02-05/12/2016 respectively, by Secretary, State Board, Pune to Divisional Secretary, Maharashtra State

Board of Secondary and Higher Secondary Education), X-2 (Application for Admission to H.S.C. Examination of Feb-Mar/Jul-Aug 20...), X-3 (Circular No.Ra.Ma/Pariksha-8/4218/ dated 4-5/06/2008), which were tendered across the Bar to contend that the petitioner although being aware of the guidelines in relation to improvement examination has answered the same for the third occasion. The respondents have also produced on record the Circular dated 4-5/06/2008 (X-4) and letter dated 14/07/2020 (X-5), wherein the policy of providing two improvement examinations is provided. The petitioner has utilized these opportunities in terms of the said Circular and has exhausted all the available options of improvement examination.

14. Having considered the rival contentions, we note that in the case of **Samruddhi Sambaji Padwal** (supra), the respondent No. 2 - Board had permitted third attempt for improvement examination to the petitioner therein, although it was not available and the petitioner in the present case seeks parity of the same for giving third improvement examination.

15. However, the Division Bench, at paragraphs 12 and 13 of **Samruddhi Sambhaji Padwal's** case has observed as under :-

"12. We make it clear that considering the scheme of the Board, these petitioners were not entitled to this 3rd attempt, but for the fact that the concession of the Board was recorded in the order dated 02/09/2021 in paragraph 3 in Writ Petition Nos. 8928/2021, 8938/2021 and 9303/2021.

13. We make it clear that this order shall not be treated as a precedent and shall not be cited since this order rests on the concession given by the Board in the earlier round of litigation."

16. In view of the concession made in Padwal's (supra) case and the specific observations of the Division Bench, not to treat the order as a precedent, we hold that the the said order cannot be called in aid of the present petitioner.

17. In the case of *Kurukshetra University* (supra), the Hon'ble Supreme Court after noticing the mandatory provisions relating to conduct of examination has held that once the appellant was allowed to appear at LL.B. Part II examination held in May 1973, his candidature could not be withdrawn for any reason whatsoever, in view of the mandatory provisions of Clause 2 (b) of the Kurukshetra University Calendar Vol. I, Ordinance X under which the candidature could be withdrawn before the candidate took the examination.

18. Thus, the Hon'ble Supreme Court, in view of the mandatory provisions held that the the petitioner's candidature cannot be withdrawn once the examination is over. In the instant case, the petitioner has not pointed out any such mandatory provision, whereby the candidature cannot be withdrawn after appearing for examinations and thus no directions can be given in this regard. Rather, as per the prescribed norms, there can be no third attempt for improvement in examination.

19. We have also noticed the GR dated 2nd July 2021 issued by the School Education and Sports Department, State of Maharashtra, regarding declaration of evaluation procedure for the Higher Secondary Certificate Examination (Standard 12th) for the academic year 2020-21. The said GR

dated 2nd July 2021 also provides for granting of two opportunities for improvement examination. Paragraph (E) (ii) is relevant in this regard, which reads thus :-

" इ) श्रेणीसुधार योजनेअंतर्गत प्रविष्ट विद्यार्थी

श्रेणीसुधार योजनेअंतर्गत उच्च माध्यमिक प्रमाणपत्र (इ. १२ वी) परीक्षा सन २०२१ साठी प्रविष्ट झालेल्या विद्यार्थ्यांसाठी मंडळाच्या प्रचलित पध्दतीनुसार श्रेणीसुधार योजनेअंतर्गत असलेल्या दोन संधींमध्ये उपरोक्त रद्द झालेल्या परीक्षेची गणना करण्यात येणार नाही. त्यामुळे त्याला उर्वरित एक किंवा दोन संधी उपलब्ध असतील.

i.

ii. उच्च माध्यमिक प्रमाणपत्र (इ. १२ वी) परीक्षा नोव्हेंबर — डिसेंबर २०२० मध्ये सर्व विषयांसह प्रविष्ट होउन उत्तीर्ण झालेल्या विद्यार्थ्यांना एप्रिल — मे २०२१ मधील परिक्षेत प्रथम संधी उपलब्ध होती तथापी सदर परीक्षा रद्द झाल्याने आता यानंतर मंडळामार्फत आयोजित करण्यात येणा—या लगतच्या पुढील दोन परीक्षांच्या संधी अशा विद्यार्थ्यांना उपलब्ध असतील."

English translation of aforesaid portion is as under :-

E) The students entered in the Grade Improvement Scheme :

For the students appearing for Higher Secondary Certificate Examination, 2021 (Std. 12 Examination) under the Grade Improvement Scheme, the cancelled examination shall not be counted in the two opportunities which are available to the students as per the prevailing practice of the Board. Therefore, a student will have the remaining one or two opportunities.

i.

ii. The students who had admitted and passed the Higher Secondary School Certificate (12th Standard) Examination held in November-December 2020 with

all subjects had the first opportunity in April-May 2021 Examination. However, as the said examination came to be cancelled, such students shall have the opportunity for appearing to two subsequent examinations.

20. The next judgment relied upon by the petitioner in the case of **Syed Abdul Qadir** (supra) deals with entirely different subject matter and has no applicability to the facts of the present case.

21. Thus, in view of the specific stand of the Maharashtra State Board that only two improvisation attempts are permissible and petitioner having exhausted the same, we cannot direct the respondent Board to issue mark-sheet of the third improvement examination which was an impermissible attempt. Only because the petitioner was illegally allotted an admit card, would not legitimise the 3rd attempt. Hence, we dismiss this writ petition.

22. Rule discharged.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

ssc/-.