

Vinay Kumar Vs. Central Board of Secondary Education and anr.

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Court : Delhi

Decided On : Jul-29-1991

Reported in : 45(1991)DLT279

Judge : Malik Sharief-ud-Din and; V.B. Bansal, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Appeal No. 3572 of 1990

Appellant : Vinay Kumar

Respondent : Central Board of Secondary Education and anr.

Advocate for Def. : Shri. Anil Kumar

Advocate for Pet/Ap. : Makul Rohatgi,; Vipin Sanghi and; Anil Kumar, Advs

Judgement :

V.B. Bansal, J.

(1) Rule D.B.

(2) On a request by Counsel for the parties and keeping in view the nature of the dispute we have heard the writ petition at this stage.

(3) Master Vinay Kumar petitioner has by way of this writ petition under Article 226 of the Constitution, of India prayed that the memo dated 8th August, 1990 by Central Board of Secondary Education respondent No. 1 thereby cancelling the examination of the petitioner for Senior School Certificate Examination, 1990 and debarring him from appearing at the Board Examination to be held in the years 1991 and 1992 who, thus, could appear in full subjects in the examinations to be held in March/April 1993 and further for a direction to respondent No. 1 to allow the petitioner to appear in the examination for XIIth Standard (Accountancy paper only) so that the petitioner's result for 1990 examination already held is published.

(4) Briefly stated the facts leading to the filing of this writ petition are as follows:

(5) Master Vinay Kumar has been a student of Govt. Boys Senior Secondary School No. 1, Guru Teg Bahadur Nagar, Delhi wherefrom he passed the XIth Standard Examination in April 1989. He appeared in the Delhi Senior Certificate Examination, 1990 conducted by respondent No. 1 in March 1990. The petitioner was allotted Roll No. 351716 and his centre was in the Govt. Boys Senior Secondary School, C.C. Colony, Delhi.

(6) On 20th March 1990 he appeared in the Economics paper while on 22nd March 1990 he took examination of Commerce. Accountancy paper was on 24th March, 1990 and he also appeared in English Course, Hindi Course and Mathematics on 28th March, 30th March and 2nd April, 1990 respectively. On 24th March, 1990 as usual after finishing his paper 1.30 P.M. Vinay Kumar signed the attendance sheet with the Assistant Superintendent of his having handed over the answer sheet and went away to his house.

(7) S/SHRI Pradeep Kumar and Gulab Singh both teachers of the Govt. Boys Senior Secondary School C.C. Colony, Delhi were appointed as Asstt Superintendents who had collected the answer sheet from the petitioner.

(8) On that day at about 3.30 P.M. the petitioner received information from three students that police was searching for his residential address upon which he went to the school in the Examination and met the Principal and came to know that police has gone away after taking his residential address and he was informed

about the allegations against him that he ran away from the examination centre taking along with him the answer book without handing it over to the Invigilators. Late in the evening of the same day the petitioner and his father came to know that a report has been lodged with the police by the Superintendent of the Examination Centre about the petitioner having run away with the answer sheet.

(9) The petitioner lodged a report dated 26th March, 1990 with Police Station Model Town in which he gave the details stating therein that after the examination was over he left the centre after the answer sheet was handed over to the Invigilator. A number of representations were made by the petitioner and his father to respondent no. 1 and he even filed a civil suit with a prayer that his answer book may be searched and result declared. Without getting any reply the petitioner received a notice dated 18th July, 1990 for appearing in the office of respondent no. 1 on 19th July, 1990. Petitioner's father was not permitted to appear before a Committee in the office of respondent no. 1 but the petitioner was called and an enquiry was made from him for a few minutes. During the period available with the petitioner he had explained to the members of the Committee that he had been good student and had left the Centre after handing over the answer sheet to the Invigilator.

(10) On 28th March, 1990 after appearing in the examination petitioner had obtained signatures of 17 students who had also appeared in the third paper of Accountancy along with him at the same centre on 24th March, 1990 and it was also submitted to respondent no. 1. However, without due application of mind and in a routine manner the impugned order has been passed by respondent no. 1 which has been challenged in this writ petition.

(11) Respondent No. 1 has contested this writ petition, It has, inter alia, been pleaded that S/Shri Pradeep Wadhwa and Gulab Singh were Invigilators (Asstt. Superintendents) at the Govt. Senior Secondary School, C.C. Colony, Delhi where Shri D.C. Gupta was the Centre Superintendent. It has further been stated that the petitioner did appear in the examination for Accountancy paper on 24th March, 1990 and his seat was next to the door in room no. 15. It has also been pleaded that at about 1.30 P.M. when the Invigilators were collecting the answer books at

the end of the examination petitioner ran away with the answer book regarding which a report was lodged by the Invigilators with the Superintendent Examination the same day and the matter was reported to the police also the same day by the Superintendent of the Centre. It has further been pleaded that on 26th March, 1990 Superintendent had sent a detailed report about this incident. It has further been pleaded that the case of the petitioner along with the other cases of alleged use of unfair means were put up before the Result Committee of the Board who after hearing the petitioner and after going through the relevant papers made a suggestion on the basis of which the impugned order has been passed. It has also been pleaded that there has not been any violation of the rules or procedure and neither the Superintendent Examination Centre nor the Invigilators (Asstt. Superintendents) had any animus against the petitioner and that the decision has been taken after giving an opportunity to the petitioner of being heard and, thus, prayer has been made that the writ petition may be dismissed.

(12) A suggestion was made by the Court that the matter about the quantum of punishment awarded to the petitioner could be placed before the Disciplinary Committee (Result Committee) to reconsider if the quantum of punishment could be reviewed. In pursuance of this suggestion respondent no. 1 constituted a Result Committee and filed a copy of the minutes dated 29th April 1991 indicating that respondent no. 1 was not inclined to reduce the quantum of punishment awarded to the petitioner.

(13) We have heard Shri Mukul Rohatgi learned Counsel for the petitioner and Shri Anil Kumar learned Counsel for respondent No. 1.

(14) Counsel for the respondent has raised a preliminary objection with regard to the maintainability of this writ petition. It has been submitted that the petitioner filed a civil suit in the Courts at Tis Hazari which is still pending trial and that the reliefs claimed in the said suit are similar to the reliefs claimed in this writ petition. In these circumstances, it has been submitted that the Court should not entertain the writ in exercise of extraordinary jurisdiction when the disputed question of fact would be gone into by the civil Court. This submission has been controverted by learned Counsel for the petitioner who has submitted that the reliefs claimed in the

suit are not identical and in fact the suit was filed much prior to even the giving of show cause notice to the petitioner and the relief of getting the impugned order set aside could not be claimed in the said suit. A copy of the plaint and the suit filed by the petitioner has been brought on record which shows that the plaint is dated 3rd May, 1990. The reliefs claimed by the petitioner in the said suit have been:

(A) direction to the respondent to search out misplaced answer book of accountancy of the petitioner at the earliest and to declare the result.

(B) to allow the plaintiff to undergo the accountancy examination afresh before declaration of the result to enable him to get the admission in first year in College/University.

(C) to declare the plaintiff passed in the examination of accountancy as per the previous performance of the plaintiff.

(15) The plea specifically raised by the petitioner in the said suit has been that his paper after having been delivered in the examination centre was misplaced by the concerned authorities. The petitioner has in this writ petition challenged the memo dated 8th August, 1990 whereby he has been debarred from appearing in the Board's Examination up to the year 1992 and directing respondent no. 1 to permit the petitioner to sit in the Accountancy paper and thereafter to declare his result. A perusal of the reliefs claimed in the two different Courts makes it abundantly clear that the reliefs claimed in the present writ petition are not the subject matters of the suit and so the petition cannot be non-suited on this account.

(16) Learned Counsel for the petitioner has submitted that the petitioner appeared in the XIIth Class examination of respondent no. 1 in the centre at Government Boys Senior Secondary School, C.C. Colony, Delhi where Shri D.C. Gupta was the Superintendent while S/Shri Pradeep Wadhwa and Gulab Singh were appointed as Invigilators (Asstt. Superintendents). He has submitted that these two Invigilators were the teachers of the same school and they were appointed in the said centre against the rules and regulations. Reference in this regard has been made to Regulation 6.4.3 of the Examination Bye-laws, 1988 of the Central Board of Secondary Education, New Delhi. It has specifically been provided in

these Bye-laws that Assistant Superintendents so appointed must not be from the school where the examinations are being conducted.

(17) Learned counsel for the respondent has submitted that these are the executive instructions which were being amended and it was not necessary to follow these instructions in Delhi since the students in a given centre are from another institution and not from the same school. Without going further into this matter I am clearly of the view that no decision is required on this submission as we are not concerned with regard to the appointment of Asstt. Superintendents in accordance with rules and regulations. If there is any lapse respondent No. 1 would take action of its own but no finding is required on this point in the present writ.

(18) Learned Counsel for the petitioner has submitted that as per the bye-laws of respondent no. 1 no candidate could go out of the examination centre without handing over the answer book to the Assistant Superintendent at the exit of the room-in which he was taking the examination. He has also submitted that a candidate appearing in the examination was required to sign the attendance sheet at the time of going out of the centre and the moment he complies with this instruction responsibility for loss of the answer sheet would fall on the Assistant Superintendent. He has, thus, submitted that after appearing in the Accountancy Paper on 24th March, 1990 the petitioner had signed the attendance sheet at 1.30 P.M. and had gone out after handing over the answer sheet to the Assistant Superintendent. He has further submitted that it is only after the Invigilators having lost/misplaced the answer book of the petitioner that they have made up a false story of the petitioner having run away along with the answer book. He has further submitted that the petitioner was not afforded proper opportunity of pleading his case nor was he permitted to be represented by a Counsel or even by his father. He has, thus, submitted that there has been violation of principles of natural justice and the impugned order thereby cancelling the result of the petitioner for the year 1990 and declaring him from appearing in the examinations till March/April 1990 cannot be sustained.

(19) Learned Counsel for the respondent has, on the other hand, submitted that the Invigilators and the Superintendent at the Govt. Boys Senior Secondary School C.C. Colony, Delhi where the petitioner appeared in the examination for XIIth Class had no enmity with the petitioner and that immediately after the petitioner ran away along with the answer book an effort was made to apprehend him but he escaped and immediately thereafter report was made by the Assistant Superintendent to the Superintendents of the Centre and a case was got registered with the police. He has further submitted that an opportunity was given to the petitioner of being heard by the Result Committee and it is only after following the procedure and the principles of natural justice that the impugned order has been passed. A prayer has, therefore, been made that the petition may be dismissed.

(20) Is it necessary for the appropriate authorities to permit a student to have the assistance of an advocate or even his father to represent his case before the Results Committee Admittedly, the petitioner is a minor and he was called by the Results Committee to have his Explanationn in respect of the allegations against him. Each case has to be decided on its own facts but assistance of an advocate or of another person to a delinquent at a domestic enquiry is not a part of the principles of natural jvstice. It would depend upon the nature of the enquiry and the peculiar circumstances and facts of a particular case. The petitioner is not entitled to get the relief claimed merely on account of he being not permitted the assistance of an advocate or even of his father nor can there be any violation of principles of natural justice on this account. Reference in this regard can be made to the case Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Others : [1991]1SCR773 .

(21) At this stage it would bs appropriate to refer to the documents relied upon by respondent no. 1 against the petitioner and the report of the Results Committee. It is the admitted case of the parties that the petitioner appeared in six papers of the Delhi Senior Certificate Examination, 1990 having roll No. 351716. There was an attendance sheet in respect of the petitioner in which the signatures of the petitioner were obtained at the time of handing over to him the answer book and also as and when he obtained an extra sheet. The signatures were also obtained

at the close of the paper at the time of receiving the answer book from him.

(22) A copy of the attendance sheet has been produced by the respondent which indicates that on 24th March, 1990 the petitioner signed it at 1.30 P.M. mentioning the time also. The signatures of the Invigilator (Asstt. Superintendents) appear on the line while in the column (signatures of the Asstt. Superintendents) there are no signatures but a writing that after signatures he ran away with the answer sheet. Respondents have also produced photocopy of statements of candidates appeared at the said centre to the effect that the petitioner gave answer sheet in the examination centre and they discussed the paper out side the examination centre which was submitted by the petitioner. Respondents have also produced a copy of the report dated 24th March 1990 by S/Shri Pradeep Wadhwa and Gulab Singh and addressed to the Centre Superintendent of the said Centre in which it was, inter alia, stated that on that day the examination of Accountancy subject was held and that the seat of Vinay Kumar with roll no. 351716 was next to the door of the examination room and he ran away with the answer sheet from the room. It was also mentioned that efforts made to apprehend the boy failed. There is yet another document, i.e. the statement of the two invigilators attested by the Superintendent of the Centre in which it was, inter alia, stated that at the close of the examination signatures of the students were taken and on checking the answer sheet of the petitioner it was found that the supplementary answer sheet was not enclosed with the main answer book and that the student was asked to attach the supplementary answer sheet with the main answer book and thereafter they began to continue work of collecting the answer books from other students and in the meantime the petitioner ran away with the answer sheet who could not be apprehended. Statement of Mohinder Singh, Chowkidar, has also been produced showing that he also tried to apprehend the student who, however, escaped after getting mixed up with the other students. Another document very material for the decision of this case is the report of the Results Committee. The name of the petitioner appears at S. No. 268 and the allegations against him shown in it is that he ran away from the centre along with the answer sheet. The recommendation of the Results Committee was :-

'NOT admitting. Keeping in view the documentary evidence his result of higher Secondary Examination is cancelled and further debarred from taking Board's Examinations in 1991 and 1992.'

(23) It is not disputed that the petitioner did appear before the Results Committee. The question, however, for consideration is as to whether the petitioner was given proper opportunity to explain the facts alleged against him and whether documents relied upon against the petitioner were given to him for inspection and whether copies of such documents were supplied to him. It is also to be considered as to whether the petitioner was given any opportunity to cross-examine the witnesses on whose evidence reliance has been placed by respondent no. 1 for imposing the penalty on him vide impugned order.

(24) Placing a reliance upon the case *Master Vibhu Kapoor v. Counsel of Indian Senior Certificate Examination and Another* 1985 Delhi 142 learned Counsel for the petitioner submitted that it is a fit case where the impugned order is liable to be set aside as the facts of the said case are similar to the facts of the present case. It would, thus, be appropriate to refer to the facts of the said case to find out if the facts of the two cases are similar and can the petitioner get any benefit out of this judgment.

(25) The petitioner was a student of Cambrian Hall School at Dehra Dun. He took the Indian School Certificate Examination conducted by respondent no. 1 at Centre No. 353 at Dehra Dun. There was no complaint of unfair means by anyone during the examination. However, a memo dated 26th April, 1984 was received by the petitioner from Principal of Cambrian Hall School requiring him to report to the school office at 9.00 A.M. and to make a signed explanatory statement. It was alleged that there was a suspicion about the use of unfair means in English paper I by him and another student, namely, Vaneet Mago. Petitioner while accompanied by his father went to the Principal and gave a signed statement in which it was, inter alia, written that he did not help Vaneet Mago in any way and, in fact he hardly came in contact with him since he was residing in the hostel while Vaneet was a day scholar. It was, however, stated by him that Vaneet may have over-looked into his paper when he was busy writing the answer. Vibhu Kapoor

and his father met many persons including the Principal of the school and had made a complaint regarding the interests shown by some of the teachers in the other boy involved in the incident, namely, Vaneet Mago. Neither the petitioner nor his father received any communication and result card was received showing that the pass certificate has not been awarded to him because of his having secured Grade 8 in English. The petitioner failed to get redressal from the respondent and so he filed the writ petition. In these circumstances, Full Bench of this Court came to the conclusion that the impugned decision was liable to be struck down as being in violation of the rules of natural justice inasmuch as neither the petitioner nor his father was given any charge nor were they heard. It was further held that no enquiry was conducted as to how the answer of two copies were more or less similar and that the action was taken on a mere suspicion by the Awarding Committee. The Court also came to the conclusion that it appeared to be a case in which Vaneet Mago either copied from the petitioner's copy book or was helped to copy and that there was no detailed enquiry. It was in these circumstances, that the writ petition was allowed holding the impugned action to be arbitrary.

(26) The question now for consideration is as to whether the facts of the present case are similar to the aforesaid case. The case of the petitioner has been that he was not permitted the assistance of an Advocate or of his father. There is nothing on record on behalf of the respondents to show that the petitioner was at any time supplied with the copies of the documents relied upon against him or that he was at any time permitted the inspection of the documents. It is also pertinent to note that in the first report made by the Asstt. Superintendents the allegation was that the boy had his seat near the door and that he ran away taking along with him the answer book. However, in the subsequent statement it has been pleaded that the student had signed the attendance sheet, and on getting the answer book from him it was noticed that the additional sheet had not been tagged with the answer book and that it was returned to him for doing the needful and it is only thereafter that he ran away. There appears to be a clear deviation from the earlier story contained in the first report. It was incumbent upon the respondent to have made available to the petitioner all the documents relied upon to enable him to give proper Explanation and, if need be, even to produce evidence. I have already referred to the report of the Results Committee which is silent and does not

indicate that any such opportunity was given to the petitioner. In these circumstances, I am clearly of the view that there has been violation of the principles of natural justice on account of which the impugned order cannot be sustained.

(27) Learned Counsel for the respondent has submitted that mere omission to record reasons could neither be illegal nor violative of the principles of natural justice. He has also submitted that in fact proper opportunity was given to the petitioner to represent his case and that no fault could be found in the conclusion arrived at by the Results Committee. He has, thus, prayed that the order may be held to be perfectly valid and placed reliance upon the case *Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi and others* (supra). It would be appropriate to refer to the facts of this case in some detail so as to find out as to how far this judgment helps the respondents. Maharashtra State Board of Secondary and Higher Secondary Education appellant conducted secondary examination in March 1990 and the marks awarded after the formalities of valuation of the examiners of the answer sheets. In each subject, the random counter-check by the moderators and further recounting at the Board, moderators' mark sheets were sent to Pune for feeding the computers to declare the results. These were found to have been tampered with. It was found that the mark sheets relating to 283 examinees including 53 respondents were tampered with in many a case in more than 2 to 8 subjects while in two cases only in one subject. On account of this tampering 214 examinees who were otherwise to fail would pass, while the remaining 69 examinees improved their ranking. It was in these circumstances that the declaration of the results of these persons was withheld pending further enquiry. Show cause notices were issued to the students on July 30, 1990 informing them of the nature of tampering, the subjects in which the marks were found tampered with, the marks initially obtained and the marks increased due to tampering and also indicated the proposed punishment if in the enquiry it would be found that the marks were tampered with the knowledge or connivance or at the instance of the candidates or parents or guardians. Information was also given to them that they would be at liberty to inspect the documents at the Divisional Board at Bombay and they were entitled to adduce documentary and oral evidence at the hearing. They were also informed that they

would be permitted to cross-examine the witnesses of the Board but would not be permitted to be represented by an Advocate. The Explanations were submitted by the candidates denying the tampering. Each student inspected the records and before the Enquiry Officer a questionnaire was given which was filled up by each student after having seen his answer book, marks awarded in the given subject and the tampered marks in the moderators' mark sheets. All the candidates had admitted that the marks initially awarded by the examiner were tampered with in the moderators mark sheets on account of which the marks were increased and the increased marks were to their advantage. They denied that they or their parents or guardians were party to such tampering. It was after considering the whole of this evidence that the Enquiry Officers submitted their report holding that the moderators' mark sheets have been fabricated and considering the report and getting legal opinion the Standing Committee resolved to withhold as a measure of punishment the declaration of the results of their examinations and to debar the 283 students from appearing in the supplementary examination of October 1990 and March 1991. On behalf of the students submissions were made that from the side of the Board no one acquainted with the facts was examined as to how the moderators mark sheets were dealt with after the Board considered the marks and before entrusting them to person to feed the computer. It was further submitted that no proper opportunity was given to the students to cross-examine such witnesses and the students were minors having no assistance either from their parents or from the advocates. It was, thus, submitted that there was in fact no evidence before the Standing Committee for coming to the conclusion and the High Court was justified in reaching the conclusion that the Board have not established that the fabrication was done at the behest of the examinees/parents/guardians. Submission made on behalf of the Board was that all the examinees had admitted in answer sheet questionnaire that tampering was done it was to their advantage and that proper enquiry was conducted giving reasonable opportunity to the candidates informing them all the material facts on which the Board intended to place reliance. It was held that it was not open to the High Court to evaluate the evidence to come to its own conclusion and the High Court committed many such errors in interfering with the order of the Standing Committee.

(28) Another question for consideration is as to whether it is always incumbent for the Enquiry Officer to record reasons. Natural Justice demands that the reasons for coming to a conclusion by an Administrative Body should be reflected in the records at least if not in the decision. If the conclusion reached by the Enquiry Officer can be fairly supported by the evidence on record then the High Court has to uphold the decision though while hearing appeal it could take a different view. However, the applicability of the principle of natural justice is not a rule of thumb or a Strait jacket formula as an abstract proposition of law. It would depend upon the facts of each case, nature of the enquiry and the effect of the order or decision on the right of the person and attending circumstances. Thus, if the facts are disputed it would be incumbent upon the enquiry officer to record reasons in support of the conclusion reached after considering the material placed before him. However, if the facts are admitted the omission to record reasons may not be very material. The material before the said authority must be germane and relevant to the facts in issue. It was also held that when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proved beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. To the question as to whether this judgment helps the respondent my answer is in the negative. The plea of the Invigilators was that the seat of the petitioner was near the door and he ran away which was subsequently changed to the one that he signed the attendance sheet and that the answer book was returned to the candidate so as to enable him to tag the additional sheet and thereafter he ran away. No material has been shown to indicate that the petitioner was given opportunity of going through these documents or that these were supplied to him at the time of giving hearing by the Results Committee. Thus, the facts are distinguishable from the facts of the above referred 'to case in which the Court was of the view that in view of the admitted facts the necessary conclusion that could unerringly be drawn would be that either the examinee or the parent or guardian obviously was a party to the fabrication and that the forgery was committed at his or her or parent's or guardian's behest.

(29) Learned Counsel for the respondent has also placed reliance upon the case *The Board of High School & Intermediate Education U.P. v. Bagleshwar Prasad & Others*, : [1963]3SCR767 . In the said case the respondent Bagleshwar Prasad appeared in the High School Examination held in 1960 and was declared to have passed the said examination in IInd Division. He thereafter joined Intermediate first year class at Allahabad. He received a letter from the Principal, Adarsh Higher Secondary School, Kora Jahanabad wherefrom he had appeared for the examination with a direction to appear before a Sub-Committee to answer the charge of having used unfair means in English, Mathematics and Hindi papers. The charge was given to him and his Explanationn was obtained. Bagleshwar Prasad was having roll no. 94734 while the roll number of another candidate sitting adjacent to him was 94733. The allegation against him was that in Hindi 3rd paper of the said examination he had given wrong answer to question no. 4 in precisely the same form in which the said answer was given by the other candidate. Both the answer papers mere shown to him and when he admitted that the wrong answer appeared to be identical but he denied having used any unfair means. The Sub Committee being not satisfied with the Explanationn gave its report that both the candidates had used unfair means. It was on the basis of this report that the result of the petitioner and the other candidate was cancelled. The petitioner filed a writ petition which was allowed and the order cancelling the result of Bagleshwar Prasad was set aside. This judgment was challenged in the Supreme Court by way of an appeal. It was observed that High Court has not sitting in appeal over the decision of the authority regarding the use of unfair means by the student and that High Court would be justified to quash an order not supported by any evidence but the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. It was also observed that enquiries by domestic tribunals must be fair and the students against whom charges are framed must be given adequate opportunities to defend themselves and the tribunal must follow rules of natural justice.

(30) There can possibly be no dispute with regard to the above proposition. It was, however, observed that after perusal of the incorrect answers in the two answer books the Court was not prepared to hold that the identical answers were given by

the two students either by accident or by coincidence and that some of the incorrect answers, and, particularly the manner in which they were given notice clearly suggest that they were the result of either one candidate copying from the other, or both candidates copying from a common source. It was also observed that the translation of the charge before the High Court was, in fact, not the correct charge against the candidate which perhaps was responsible in the High Court giving the two different conclusions. Thus, as a matter of fact this judgment also does not help the respondent in view of my conclusion that proper opportunity of defending himself was not given to the petitioner to explain that he in fact had handed over the answer sheet to the Asstt. Superintendents before leaving the centre.

(31) It is not disputed that once a candidate is proved to have handed over answer book to the Invigilator he is not responsible for the loss, if any, and the responsibilities lies on the Assistant Superintendent.

(32) It may be noted that on a suggestion by this Court the respondent agreed to reconsider the quantum of sentence awarded to the petitioner. A copy of the report dated 29th April, 1991 was filed showing that the Results Committee has maintained its decision holding that as in the case of others it was necessary to maintain the punishment awarded.

(33) Learned Counsel for the respondent has submitted that it was in fact again a mere formality inasmuch as in spite of a request having been made by the petitioner he was not permitted to be assisted by his father and no proper opportunity was again given to him of either leading evidence or to cross-examine the witnesses whose statements were relied upon by the Results Committee. A perusal of the report indicates that neither the petitioner was supplied with the copies of the documents nor was he given the inspection of the documents. He was also not made aware of his right to call witnesses for cross-examination whose statements have been relied upon. In these circumstances, I am clearly of the view that the subsequent report again cannot be of any help to the respondent.

(34) During the pendency of this writ petition on an application moved by the petitioner he was permitted to appear in the Accountancy Paper on 3rd April,

1991. It is, thus, admitted case of the respondent that the marks obtained by the petitioner in five subjects in the examinations in March 1990 are available and so is the case regarding the Accountancy Paper in which the petitioner appeared on 3rd April, 1991. In these circumstances, it would, thus, be appropriate to direct the respondents to declare the result of the petitioner by considering the marks in 5 papers obtained in March 1990 and in Accountancy paper held on 3rd April, 1991 and then to declare his result.

(35) As a result, the writ petition is allowed. The impugned order dated 8th August, 1990 is set aside. The respondents are directed to declare the result of the petitioner forthwith considering the marks obtained in 5 papers in March 1990 and in Accountancy paper held on 3rd April, 1991.

(36) I fully agree with the reasoning and the conclusion of my learned brother.

(37) Petitioner shall also be entitled to costs.

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