

***CONSTITUTIONAL WRIT***

**Present: The Hon'ble Mr Justice Jayanta Kumar Biswas**

**Judgment on: June 14, 2010**

A.S.T. No.408 of 2010

**Anamika Bhaduri**

**v.**

**West Bengal Council of Higher Secondary Education & Ors.**

**POINTS**

Production of Answer Script – Prayer For Reassessment of Marks – Petitioner Claim to be meritorious student – If an order for production of answer script can be passed on the basis thereof – Constitution of India, Article 226.

**FACTS**

The petitioner took the Higher Secondary Examination, 2010 conducted by the West Bengal Council of Higher Secondary Education. The council issued the mark sheet and she failed in mathematics and physics. The petitioner's case is that as will appear from the mark sheet of her secondary examination she took in 2008 she is a good student and hence it is unbelievable that she would not pass the mathematics and physics subjects in the higher secondary examination. By this writ Petition she prayed Production of answer script and for an order of re-assessment of the same .

**HELD**

According to rules, regulations and orders of the council the petitioner was entitled to apply for scrutiny, but not for review. Admittedly the petitioner did not apply for scrutiny. She could apply for review provided she obtained the requisite marks in the subjects. Since she did not obtain the requisite marks she is not entitled to apply for review. Benefit that she cannot get according to law, cannot be given by the court. Para 7

**CASES CITED :-**

- 1) State of Orissa & Ors. v. Prajnaparamita Samanta & Ors., (1996)7 SCC 106

- 2) President, Board of Secondary Education & Ors. & Anr. v. D. Suvankar & Anr., (2007)1 SCC 603
- 3) West Bengal Council of Higher Secondary Education v. Ayan Das & Ors., (2007)8 SCC 242

Mr Subrata Mukhopadhyay and Ms Basabi Rai Chowdhury,  
advocates, for the petitioner.

Mr Biswaroop Bhattacharyya and Mr Tanoy Chakraborty,  
advocates, for the council.

**THE COURT:** - 1) The petitioner in this art.226 petition dated June 9, 2010 is seeking a mandamus commanding the respondents to cancel the mark sheet already issued, act according to law, produce her mathematics and physics scripts of the Higher Secondary Examination, 2010 so that the answers may be assessed by independent examiners.

2)The petitioner took the Higher Secondary Examination, 2010 conducted by the West Bengal Council of Higher Secondary Education. The council issued the mark sheet, Annexure P2 at p.21, recording that she failed in mathematics and physics.

3)The petitioner's case is that as will appear from the mark sheet of her secondary examination she took in 2008 she is a good student and hence it is unbelievable that she would not pass the mathematics and physics subjects in the higher secondary examination. This is the basis on which she has brought this petition seeking the reliefs noted hereinbefore.

4)Relying on the State of Orissa & Ors. v. Prajnaparamita Samanta & Ors., (1996)7 SCC 106 and President, Board of Secondary Education & Ors. & Anr. v. D. Suvankar & Anr., (2007)1 SCC 603, Mr Mukhopadhyay, counsel for the petitioner, submits that on the facts of the case an order should be

made directing the council to produce the petitioner's mathematics and physics scripts of the higher secondary examination so that an order may be made directing their reassessment by independent examiners.

5) Relying on Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das & Ors., (2007)8 SCC 242, Mr Bhattacharyya, counsel for the council, submits that there is absolutely no scope for ordering reassessment of the petitioner's scripts simply because according to her she could not be shown failed in the subjects.

6) I do not find any reason to entertain the petition based on the petitioner's own assessment of her merits. She took the examination conducted by the council and her merit was to be assessed by the examiners appointed by the council. That she believes that she is a meritorious student and hence could not fail in mathematics and physics is of no consequence at all because the examiners appointed by the council did not find her so meritorious as to give her sufficient marks to reach the pass mark. There is no case that the examiners have acted mala fide or in violation of the notified norms.

7) According to rules, regulations and orders of the council the petitioner was entitled to apply for scrutiny, but not for review. Admittedly the petitioner did not apply for scrutiny. She could apply for review provided she obtained the requisite marks in the subjects. Since she did not obtain the requisite marks she is not entitled to apply for review. Benefit that she cannot get according to law, in my opinion, cannot be given by the court. I am unable to see how the two decisions relied on can be of any assistance for making an order directing the council to produce the scripts for their assessment by independent examiners.

8) For these reasons, the petition is dismissed. No costs. Certified xerox.

**(Jayanta Kumar Biswas, J.)**

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