

GAHC010202922021



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

Case No. : WP(C)/6457/2021

HILAL UDDIN TAPADAR
S/O. LT. MAIYOB ALI TAPADAR, VILL. CHARARPAR, P.O. BHAIROB
NAGAR, DIST. KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE BOARD OF SECONDARY EDUCATION (SEBA)

ASSAM
REP. BY ITS SECRETARY
BAMUNIMAMDAM
GUWAHATI-781021.

3:THE DIRECTOR

DEPTT. OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DEPUTY COMMISSIONER

KARIMGANJ
PIN-788710.

5:THE ADDL. DEPUTY COMMISSIONER

(EDUCATION)

KARIMGANJ
PIN-788710.

6:THE INSPECTOR OF SCHOOLS

KARIMGANJ
PIN-788710.

7:THE DIST. LEVEL REDRESSAL COMMITTEE

KARIMGANJ
HSLC EXAMINATION-2021 REP. BY ITS CHAIRMAN C/O. THE INSPECTOR
OF SCHOOLS
KARIMGANJ
PIN-788710.

8:THE DIST. LEVEL SCRUTINY COMMITTEE

KARIMGANJ
HSLC EXAMINATION-2021 REP. BY ITS CHAIRMAN C/O. THE INSPECTOR
OF SCHOOLS
KARIMGANJ
PIN-788710.

9:THE SCHOOL EVALUATION COMMITTEE

KARIMGANJ
HSLC EXAMINATION-2021
REP. BY ITS CHAIRMAN C/O. THE INSPECTOR OF SCHOOLS
KARIMGANJ
PIN-788710.

10:BHAIRAB NAGAR HIGH SCHOOL

REP. BY HEADMISTRESS P.O. BAIRAB NAGAR
P.S. RAMKRISHNANAGAR
DIST. KARIMGANJ
PIN-788152

Advocate for the Petitioner : MS. R CHOUDHURY
Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner: Shri AHMR Choudhury

Advocates for the respondents: Shri R. Mazumdar, SC-SED
Shri DK Roy, SC-SEBA
Shri AK Purkayastha, R-10

Date of hearing : **25.05.2023**

Date of Judgment : **25.05.2023**

JUDGMENT & ORDER

Before going into the merits of the dispute, a pertinent question which will also have to be answered in connection with this writ petition is that whether the extraordinary jurisdiction of this Court can be invoked for resolution of each and every so called dispute, howsoever trivial.

2. Before going to the issue raised and also the ancillary question which has been mentioned above, it would be convenient to narrate the basic facts of the case in brief.

3. The petitioner is the father of a student who was eligible for appearing in the HSLC Examination held in the year 2021. The daughter of the petitioner Ms. Hena Begom Tapadar was a student of Bhairab Nagar High School in the district of Karimganj and passed her Class-IX examination in the year 2019 and was accordingly promoted to Class-X. As regards the HSLC examination scheduled for the year 2021, the candidate was found eligible and was issued admit card to appear in the same. Though the HSLC examination was scheduled to commence from 11.05.2021, due to the peculiar situation of Covid-19 pandemic, the examinations were initially postponed and eventually cancelled with a decision to declare the results based on the marking / evaluation in the previous examination of Class-IX and certain other criteria. Accordingly, a set of guidelines were issued for such evaluation.

4. When the results of the HSLC examination, 2021 was declared on 30.07.2021, the candidate was shown to have failed. The petitioner alleges that the evaluation of

the marks for his daughter was not in accordance with the guidelines and accordingly, the present writ petition has been filed.

5. I have heard Shri AHMR Chodhury, learned counsel for the petitioner. I have also heard Shri R. Mazumdar, learned Standing Counsel, Secondary Education Department as well as Shri DK Roy, learned Standing Counsel, SEBA and Shri AK Purkayastha, learned counsel for the respondent no. 10 - School. The materials placed before this Court have been carefully examined.

6. Affidavits-in-opposition have been filed by the SEBA (respondent no. 2) and the School (respondent no. 10) denying the allegations and the case projected by the petitioner.

7. Shri Choudhury, learned counsel for the petitioner has referred to the marks obtained by the candidate in Class-IX and the Pre-Board examination. He has also referred to the guidelines issued for evaluation of the theory marks which have been annexed as Annexure-2 to the writ petition. Reference has been made to the part of the guidelines laying down the formula and procedures for awarding marks against the theory portion of each subject. He submits that as per the said guidelines, the marks are to be evaluated in the following manner:

- a. 40% weightage on marks secured by the student in the theory portion of each subjects in the Annual Examination of Class-IX, of the year in which he/she has appeared and promoted to Class-X.
- b. 40% weightage on marks secured by the student in the theory portion of each subject in the Pre-Board Examination.
- c. 20% weightage on marks secured by the student in the theory portion of each subject in the Unit Test.

8. By drawing the attention of the relevant portion of the marks-sheet, learned counsel for the petitioner has submitted proper assessment has not been as per the

guidelines and therefore grave prejudice has been caused to the petitioner.

9. *Per contra*, Shri Mazumdar, learned Standing Counsel for the Department has submitted that projection made by the petitioner is incorrect both factually as well as legally. He submits that the primary ground of violation of the guidelines is not at all substantiated and therefore the present case is liable to be dismissed.

10. Shri AK Purkayastha, learned counsel for the School while endorsing the submission of the learned Standing Counsel of the Department has submitted that assessment is done by a duly constituted Committee and the projection made by the petitioner is wholly unsubstantiated.

11. Shri DK Roy, learned Standing Counsel, SEBA submits that the Board does not have the major role in the present dispute.

12. To appreciate the rival submissions, this Court has examined the marks secured in the various subjects by the daughter of the petitioner. The results-sheet would reveal that the following marks were secured:

Subjects	Class – IX	Class - X
English	20	24
Mil (Bengali)	15	23
General Math	18	20
General Science	30	32
Social Science	20	23
Elective	28	30

13. This Court is of the opinion that in view of such poor performance in the earlier examination which is evident from the marks secured in the above pattern, whether at all this writ petition should be entertained and the allegation of error in assessment be gone into is itself become questionable.

14. However, for the interest of justice, this Court has proceeded to take up one of the subjects to have an idea and to examine the grounds of challenge projected by the writ petitioner.

In the paper of MIL (Bengali), the daughter of the petitioner had secured 15 marks in her Class-IX exams and had secured 23 in the Pre-Board examination. As per the guidelines, 40% of each of the marks secured in Class-IX and the Pre-Board examination have to be taken and 20% of Unit Test, if any. In the instant case, since admittedly, no Unit Test was conducted, average of the marks obtained in Class-IX and the Pre-Board examination have been taken. By making the calculation, the daughter of the petitioner could secure a total of 19 marks. The breakup of the same is given as here under:

$$40\% \text{ of } 15 = 6$$

$$40\% \text{ of } 23 = 9.2$$

$$20\% \text{ of } 19 \text{ (average of } 15 \text{ and } 23) = 3.8$$

15. However, it is seen from the records that the marks assessed by the authorities for the paper subject of Bengali is 23.

16. Sri Mazumdar, the learned Standing Counsel submits that there is a discretion to enhance the marks by 20% of the marks secured which has already been done in the instant case and with the grace marks, the assessment comes to 23. The learned Standing Counsel accordingly submits that the assessment done in the other papers also would show that the same has been done strictly according to the guidelines and in fact by use of discretion, the highest possible marks have been allotted to the petitioner's daughter. The learned Standing Counsel accordingly submits that the

entire writ petition is misconceived.

17. In view of the aforesaid discussion, this Court is of the unhesitant view that the present challenge is not only misconceived but is also an abuse of the process. Accordingly, the writ petition is dismissed.

18. This brings us to the question which this Court had posed at the beginning of the judgment. It is unfortunate to notice that a trend has been set to file applications under Article 226 of the Constitution of India at the drop of a hat. Numerous cases have been seen to be filed with imaginary or very trivial causes of action. This Court is of the opinion that such trend has to be nipped in the bud and filing of writ petitions of the present nature has to be discouraged.

19. As stated above, the instant writ petition, apart from lacking any genuine cause of action by demonstrating infringement of any fundamental or legal rights, or for the enforcement thereof, the background facts would reveal that there is no cause of action at all which requires any adjudication, that too by this Court exercising extraordinary powers under Article 226 of the Constitution of India. Therefore, while dismissing this case, a cost of Rs.10,000/- (Rupees Ten Thousand) only is imposed upon the petitioner. The cost is required to be deposited in favour of the Lawyers Benevolent Fund, Gauhati High Court bar Association, Gauhati.

JUDGE

Comparing Assistant