(1981) 01 AHC CK 0043

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 548 of 1981

Harish Chandra Tewari and Others		APPELLANT
	Vs	
The Board of High School and Intermediate Education, Uttar Pradesh, Allahabad		RESPONDENT

Date of Decision: Jan. 22, 1981

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1981 All 144

Hon'ble Judges: M.N. Shukla, J; K.M. Dayal, J

Bench: Division Bench

Advocate: Gyan Chandra Dwivedi, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Partly Allowed

Judgement

M.N. Shukla, J.

Thirteen petitioners have joined together and filed this writ petition challenging the action taken by the respondent and have prayed for a mandamus directing the respondent to announce the results of the petitioners. After the petition was presented the respondent was directed to produce in this Court the answer books of the petitioners for our perusal. Accordingly the answer books were produced in Court when the hearing commenced today. The learned Standing Counsel raised a preliminary objection that the cases of the petitioners were different from each other, the adverse action taken against each of them furnished a distinct cause of action and hence a single petition on behalf of them was not competent. It is not disputed that they were all aggrieved by a single order which was in the shape of a composite order with a schedule, mentioning each one of them by name and indicating the action taken against them, namely, withholding of the result for the

High School examination, held in 1980. Where the action taken against several petitioners is identical and is embodied in a single order, all of them can legitimately combine together and file a single writ petition. A hyper-technical view with regard to the joinder of parties for filing a writ petition in such circumstances has not been judicially approved. Therefore, we overrule the preliminary objection.

2. The learned Standing Counsel requested us for time to file a counter affidavit. Since we have scrutinised the answer books of each of the petitioners ourselves when they were produced in Court today, there appears to be no necessity of filing a counter affidavit in order to establish any factual allegations. The only controversy which arises is as to whether there was evidence in the case to support the allegation of copying by all the petitioners. Needless to say that it is not for this Court to enter into the question of sufficiency or otherwise of the evidence to support the charge levelled against the petitioners. Nevertheless, the petitioners would be entitled to relief if the action complained of offends against certain well-established canons. For instance, if there is denial of the principles of natural justice, or there is complete absence of evidence or any other similar ground, this Court can always interfere in the exercise of its writ jurisdiction and quash the impugned order. See Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others, . It is this touchstone which has to be applied in coming to the conclusion as to whether these writ petitions should be allowed or dismissed. Since no useful purpose will be served by postponing the case to another date for hearing, we have considered it expedient to hear the parties finally today and dispose of the writ petition.

3. It is a somewhat delicate task to determine as to whether in a particular case it can be said that there is complete lack of evidence or that the case involves any one of those features to which we have adverted above which alone would warrant interference by this Court. Except where there are material allegations of a factual nature about the surrounding circumstances, the ultimate decision in most of such cases is bound to turn on the intrinsic material contained in the answer books themselves. In the instant case, it is only from a meticulous perusal of the answer books produced before us that an inference can legitimately be drawn as to whether copying has been resorted to or not. The learned Standing Counsel laid great stress on the striking similarity which was evinced in the answers written by the various petitioners. He emphasised that it was remarkable that no variation at all could be discerned in the answers written out in the various answer books. In our opinion, this is too facile argument on which the conclusion whether there has been copying or not can be rightly founded. The question of novelty in the answers is in a great measure dictated by the very nature of the subject matter. In certain cases the subject may be so trite and commonplace as not to permit any novelty or variety of expression. In such circumstances the answers are bound to be more or less identical. On the other hand, the subject matter may be inherently such as to afford multiple modes of expression and in such cases if variety is altogether absent and instead there is nothing not stale similarity, then it may be inferred that in all probability there was

copying. In the instant case the allegation of copying rested mainly on the circumstances that the two translation pieces, one from Hindi to English and the other from English to Hindi were at- tempted by the various petitioners and their answers so remarkably tallied with each other that they must be regarded as the result of copying. We are unable to accede to this submission because the matter contained in the pieces given for translation was of such type that there was no room for differences, or variety and the answers were expected to be cast in a common mould. Therefore, the apparent similarity of pattern found in the answers of the examinees in the instant case cannot lead to the sure conclusion that they had resorted to unfair Weans.

4. There is, however, another test which may be regarded as more dependable in ascertaining whether there was copying and that test is the nature of the common mistakes shared. Here again it must be immediately added that a single common mistake found in the answers and that too of a casual nature would not justify a presumption of copying but if there are numerous mistakes which appear to be of an uncommon character, amounting to absurdity and they are found identically occurring it the various answer books, surely there would justification for saying that they flow from copying. In other words, if the magnitude of the mistakes committed is such that the answers written by the candidates sound like as "howlers", to use a colloquial expression, it would make the conclusion irresistible that copying had been done. To assert that such bizarre mistakes were spontaneous or that the resemblances were accidental is to travel beyond the realm of probabilities. When identical absurdities synchronise in abundant profusion one cannot but hold that there was copying. It is this test which we have applied to the answer books produced before us. Having carefully scrutinized them we were unable to discover anything in the answer books of the petitioner No. 1, namely, Harish Chandra Tewari, Petitioner No. 4, Narendra Singh, Petitioner No. 5 Rakesh Kumar Pathak, Petitioner No. 6, Ram Chandra Pandey, petitioner No. 7, Om Prakash Upadhya, petitioner No. 8, Radhey Shyam Pandey, petitioner No. 9, Jeet Narain Pandey, petitioner No. 10. Salik Ram Pandey, petitioner No. 11, Jeet Bahadur Singh and petitioner No. 13, Prem Shankar Misra, which may suggest copying. So far as they were concerned we found absolutely no evidence of the alleged copying and consequently the charge levelled against them could not be sustained. Those petitioners are entitled to a direction commanding the respondent to declare their results for the High School examination held in the year 1981. Their writ petition, therefore, must be allowed.

5. There are, however, three petitioners still left, namely, petitioner No. 2, Krishna Bali Pandey, petitioner No. 3, Lallan Singh and petitioner No. 12, Ram Ujagir Dubey, whose cases are different from those of the other petitioners whom we have already discussed. Thus, Ram Ujagir Dubey (Roll No. 545333) is alleged to have copied from the answer book of another candidate bearing Roll No. 545337. In both answer books the word "here" is misspelt as "hear". The original passage in English for translation into Hindi contained a dialogue between a fox and a goat. One of the sentences ran as to what the fox was doing there. This was translated identically in a palpably wrong way by both

candidates, who wrote "what are doing there". The original passage further contained an invitation on behalf of the goat that the fox should also share the grass and taste it Both candidates rendered it into English in a fantastic way like this; "come you also take it taste". Such freakish answers in one answer book after another cannot be the result of mere accident. They are; surely very relevant and strong evidence of copying and, therefore, so far as these petitioners are concerned, it cannot be said that there was no evidence at all on the basis of which the charge of copying could be levelled against them, Similarly, we have also carefully examined the answer book of petitioner No. 2, Krishna Bali Pandey (Roll No. 545319) and petitioner No. 3, Lallan Singh (Roll No. 545321). and they also bristle with absurdities which are identical. We are, therefore, not prepared to accept that in the cases of these three petitioners there was any ground on the basis of which the impugned action could be justifiably struck down. It is, of course, beyond our province in writ jurisdiction to assess the sufficiency or otherwise of the evidence found in the case in order to sustain the charge. Hence, these petitioners are not entitled to any relief from this Court under Article 226 of the Constitution.

6. In the result, this writ petition partly succeeds and is allowed on behalf of the ten petitioners, whom we have already enumerated. A mandamus is issued to the respondent-Board directing it to declare the results of those petitioners for the High School Examination held in the year 1980. As regards the other three petitioners, mentioned above, their writ petition is dismissed. No order is made as to costs.