
(1985) 09 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 3561 of 1984

Anju Mishra (Ku.)

APPELLANT

Vs

Kulpati Ravishankar University, Raipur

RESPONDENT

Date of Decision : 04-09-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1986) JLJ 350

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : Rajendra Tiwari, for the Appellant; P.P. Naolekar, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.—In this petition under Articles 226 and 227 of the Constitution the petitioner is seeking a writ of mandamus directing the University to declare the petitioner successful at the Master's degree examination in English in First Division instead of Second Division given to her.

2. The petitioner did her M. A. course in English in the final examination held in April, 1984. In her paper the dissertation the internal examiner awarded her 45 marks while the external examiner awarded 29 marks to her. Since there was difference in the valuation by more than 20%, the matter was referred to a third examiner who gave her 33% marks. According to the petitioner, the ordinance requires that the average of the two out of three marks has to be taken into account which is to the best advantage of the candidate. So the petitioner should have been awarded 78 marks instead of 62 marks given to her. If she got 78 marks in that paper she would have obtained more than 60 percent marks in the aggregate in all papers and should have been declared as passed in the examination in First Division instead of Second Division given to her. In the return filed by the University, the respondent contended that as per paragraph 18 of Statute No. 29 if there was a difference of marks awarded by Internal and External examiners exceeding 20 percent, the matter was referred to a third

examiner, who gave the petitioner 33 marks. Under that provision, the aggregate of the two marks nearest to each other will be taken as a correct valuation and if the lowest and the upper limit between the three is the same then the best advantage will be given to the candidate, i. e., if the candidate secured marks 20, 25 and 30, then the aggregate of 25 and 30 and not 20 and 25 has to be taken because that is to the best advantage of the candidate. Therefore, the petitioner has been rightly awarded 62 marks in the dissertation paper.

3. Shri G. P. Singh in his book Principles of Statutory interpretation Page 104 has the following comments to make :

It has largely been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provision in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts, to avoid a head on clash between two sections of the same Act and whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. *Raj Krishna Bose Vs. Binod Kanungo and Others*, . It should not be lightly assumed that Parliament had given with one hand what it took away with the other. *Dormer v. New castle-on-Tyne Corpn.* (1940) 2 All. ER 521 . The provisions of one section of a statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, . The same rule applies in regard to sub-section of a section. In the words of Gajendragadkar, J. : The sub-section must be read as parts of an integral whole and as being interdependent : an attempt should be made in construing them to reconcile them if it is reasonably possible to do so and to avoid repugnancy *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*, . As stated by Venkattarama Aiyar, J : The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both This is what is known as the rule of harmonious construction *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, .

4. It will be useful to quote paragraph 18 of Ordinance No. 71 :

18. In the case of a subject for M. A., M. Sc, M. Com. and M. P. E. Examination, where thesis is permissible in lieu of a paper there shall be a Board of two examiners for reading the thesis. The maximum number of marks for the thesis shall be equally divided between the two examiners each of whom shall mark the thesis independently. If the valuation of these two examiners differ by 20% the thesis shall be referred to the third examiner (other than a teacher of the University) who shall award marks out of half of the maximum marks for the thesis. The aggregate of two (of the three) awards nearest to each other and to the best advantage of the candidate shall be taken as the correct valuation.

This provision requires that there shall be a Board of two examiners for reading the thesis, the maximum number of marks for the thesis shall be equally divided between the two examiners each of whom shall mark the thesis independently, if the valuation of these two examiners differ by 20%, the matter shall be referred to the third examiner, who shall award marks out of half of the maximum marks for the thesis, the aggregate of two (of the three) awards nearest to each other and to the best advantage of the candidate shall be taken as the correct valuation. Therefore, this provision requires that the aggregate of two awards nearest to each other and to the best advantage of the candidate shall be taken as the correct valuation. Tb2 petitioner is laying emphasis on the second condition, i. e., "to the best advantage of the candidate" while the University is emphasising on the first condition, i. e. "the aggregate of two awards nearest to each other." The benefit of the second condition can only be given if the difference between lowest and the highest mark and the middle mark is the same. For example, if the candidate gets 20, 25 and 30 marks though 20 and 25 and 25 and 30 are nearest to each other, the candidate would get the aggregate of 25 and 30 because it is to his best advantage. According to us, in view of the principle of interpretation, the two conditions have to be harmoniously construed. If the interpretation given by the petitioner is accepted then the first condition become redundant, but, the two conditions can be reconciled if it is interpreted in the manner suggested by the University. The wording of paragraph 18 of the said Ordinance is not very happily worded and required further clarification by the University but we have to harmoniously construe the provision so that no part is rendered redundant. In that event a candidate is entitled to aggregate of the two marks out of the three, which are nearest to each other and in case the middle mark is equidistance from the lowest and highest marks, then the average of the middle and highest marks has to be given to the candidate. We may here quote the provisions of paragraph 8 of Ordinance No. 71 of the Rani Durgawati University, Jabalpur, which is as under :

8. If the marks awarded in the paper by any of the two examiners varies from the marks given by the original examiner by more than 10% of the maximum marks in the paper, the average of the marks awarded by two of the examiners, the original examiner and the two re-valuer, and nearest to each other, will be taken to represent the correct valuation. This average of marks will be awarded to the candidate for the revision of his result. Provided that subject to the condition that at least one of the variation from the original marks is more than 10% of the maximum marks in the paper, of two differences in marks allotted by the three examiners are equal, the two marks to the best advantage of the candidate should be taken into account for arriving at the correct valuation.

Provided further that if the average of the marks thus arrived at is lesser than the original marks, the original marks will not be reduced and the result shall remain unchanged. The result of revaluation shall be communicated to the candidate even if there is no change in the marks.

The first proviso to this paragraph provides that if the marks allotted by the three examiners are equal, the two marks to the best advantage of the candidate should be taken into account for arriving at the correct valuation. There is a rational behind this provision about revaluation. When there is a difference between the marks given by two examiners are more than a particular percentage, it is referred to the third examiner and then the average of the two which are nearest to each other has to be taken. The University will take average of the two which are nearest to each other and will leave out of consideration the marks given by the 3rd examiner as there is wide divergence in the marks given by him and the marks given by the other two examiners.

5. Accordingly the petition fails and it is dismissed. There shall be no order as to costs. The outstanding amount of security be refunded to the petitioner.