
(2009) 07 SHI CK 0012
In the High Court Of Himachal Pradesh

Apurav Chandel

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Himachal Pradesh Board of School Education Regulations, 1970 — Clause 13.2.10

Citation : AIR 2010 HP 1 : (2009) 3 ShimLC 418

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—By means of this Writ Petition the petitioner has challenged the validity of Clause 13.2.10 of the Himachal Pradesh Board of School Education Regulations, relating to Re-evaluation framed by the respondent No. 2 H.P. Board of School Education in so far as the Regulations deny the benefit of the marks obtained in re-evaluation for the purpose of drawing up the merit list and for grant of scholarship/awards/freeship/medals etc. The said Regulation reads as follows:

13.2.10

(i) Whatever be the change in awards after re-evaluation the same shall be conveyed to the candidate.

(ii) A candidate who applies for re-evaluation shall not be entitled to claim any retrospective benefit such as admission/promotion to any course/class, eligibility to sit for any entrance test, or the grant of Scholarship/award/freeship/medal etc. on the basis of declaration of the result of re-evaluation. Further that the declaration of the result of re-evaluation shall not be considered as time bound process and as such the candidate should plan his future programme in accordance with his original result till it is actually superseded.

(iii) The merit list shall be determined and notified on declaration of the original result and shall not be subjected to any modification or alteration as a result of re-evaluation of answer books.

(iv) In case the re-evaluation results is received after the commencement of the subsequent examination which the applicant has taken, out of the two result i.e. one on the basis of reevaluation and the other on the basis of his performance in the subsequent examination, the result that is advantageous to the applicant will be conveyed to him.

2. The petitioner has also prayed that on the basis of the marks awarded to him in re-evaluation he should be declared to have topped the matriculation examination held in April/May, 2006 and he may therefore be granted all other benefits being the topper of the said examination.

3. The facts leading to the filing of the present petition are that the petitioner appeared in the matriculation examination under Roll No. 306999. This examination was held in March, 2006 and was conducted by the Board of School Education Himachal Pradesh. The result of the examination was declared and the petitioner was awarded 647 marks out of 700. He was ranked 7th in the merit list. The respondent No. 4 was declared to have topped the said examination as she had been awarded 654 marks out of 700. The petitioner, not satisfied with the marks awarded to him in Science, applied for Re-evaluation. He had originally obtained 83 marks in Science and after reevaluation the same were increased to 97. Resultantly his total aggregate came to 661 marks. According to the petitioner after he was awarded 661 in total marks he should have been declared the topper in the merit list and should have been awarded all consequential benefits. He sent communications in this behalf to the Board of School Education but his claim was rejected on account of Regulation 13.2.10 quoted herein above. Hence, the present writ petition.

4. We have heard Sh. Trilok Jamwal, learned Counsel for the petitioner, Sh. R.K. Bawa, learned Advocate General for the State, Sh. Lovneesh Kanwar, learned Counsel for the Board and Sh. T.S. Chauhan, learned Counsel for respondent No. 4.

5. The stand of the respondents is that there must be finality attached to the original result and no benefit can be given to a candidate who gets higher marks on the basis of re-evaluation. According to the respondents, the Rules clearly provide that the merit list cannot be changed on the basis of the marks obtained after re-evaluation.

6. The Board has laid down a procedure where any examinee not satisfied with the result can apply to the Board for re-evaluation of marks. Re-evaluation has been made an integral part of the examination. The effect of the re-evaluation is that the paper is re-checked and the marks awarded again. The candidate is not allowed to attempt the paper again. All that is done is that his paper is again corrected and marks awarded. Once re-evaluation takes place and the marks are increased we fail to see any reason why such marks should not be considered for drawing up the merit list and giving benefits to the concerned candidate. The candidate is not at fault. When higher marks are granted on re-evaluation, these

per se show that the answer sheet was not checked properly on the earlier occasion.

7. A candidate will ask for re-evaluation of the result only if he is of the view that he should have got higher marks. His request for re-evaluation is based on the premise that he has been awarded lower marks than were due to him. The Board has accepted this method to be a legitimate method. By making a provision for re-evaluation the Board has implicitly admitted that there can be times when there are mistakes committed by the examiner while evaluating the papers and therefore a provision for re-evaluation has been made. In case a candidate obtains higher marks after re-evaluation, the entire benefit of reevaluation should be available to him. He cannot be denied the benefit of a higher position on merit or other consequential benefits only on the ground that his higher marks were obtained during re-evaluation. A failed candidate can be declared to have passed after re-evaluation. A candidate who has been awarded a compartment can be declared pass after reevaluation. Therefore, we see no reason to deprive the candidate of the benefit of re-evaluation only for the purpose of giving him a place in the merit list or award of medals. If this proposition is accepted only meritorious students would be denied the benefit of re-evaluation whereas candidates who have failed or have been placed under compartment would get the benefit of re-evaluation.

8. In *Bhagat Ram Sharma Vs. The Himachal Pradesh University and Others*, a Division Bench of this Court was considering the proposition as to whether a student whose marks were increased after re-evaluation was entitled to grant of scholarship and gold medal. In that case the University had relied upon a similar provision in its Ordinances but this provision had been incorporated only on 31.10.1974 and the High Court held that this provision did not have retrospective effect. It however did not deal with the question as to whether such a provision was legal or valid. The observations of the Division Bench which are very pertinent read as follows:

16. ...In view of the above accepted position and to be fair to the candidates, if after re-valuation the marks of a candidate increase or decrease then it cannot be said that the increase or decreased in the marks was due to the fault of a candidate. The real fault in fact was of the examiner who had awarded less or more marks to the concerned candidate at the earlier stages. The result after re-valuation will be binding on the candidate and in these circumstances, this final result should be considered to have been declared on the date when the result of all the candidates was declared. If this position is not accepted then it can lead to absurd results. There can be cases where an examiner may award more marks and thus allow a person (who otherwise is not entitled to get the scholarship as well as the gold medal, or he may award less marks to a deserving candidate of the scholarship or the gold medal. There can also be genuine mistakes committed by the examiners in evaluating the papers and due to these genuine mistakes of the examiners a candidate may be getting less or more marks. To

deprive a candidate of his legitimate right due to the mistakes/mistakes of the examiners who are duly appointed by the university and in whose appointment the candidates have no say will be doing great injustice to the concerned candidate. In these circumstances the just, fair and reasonable criteria is that the result of an examination whether before the re-valuation or after the re-valuation should be taken to have been declared only once....

9. A Division Bench of the Madhya Pradesh High Court in *Manoj Kumar Jindal Vs. Ravishankar University, Raipur and Others*, while dealing with a question as to whether the University had to issue a fresh merit list incorporating the changes brought out as a result of re evaluation or not, held as follows:

13. ...there is no reason why after revaluation, if the petitioner is found to have obtained "first position", he should be continued to be ranked in "third position". This would be rank injustice to a student devoted to studies with meritorious performance. The object behind revaluation is that every man should get his due which he deserves. That is the rule of law and also equity. This appears to be a case where the position in the Merit-List entails consequential benefits also. Generally the toppers have further benefits not only of Division and Merit, but often Medals and Prizes. If that be so, it is all the worst that the petitioner is deprived of his legal right to such benefits. There is no reason why the petitioner should suffer for the fault of the University....

10. The Karnataka High Court in *Anjay Bansal v. Bangalore University and Anr.* AIR 1990 Kar 225, specifically dealt with the validity of a notification issued by the Bangalore University prohibiting the revised ranking in respect of examinees deriving benefit of higher marks obtained during the course of re-evaluation. Relying upon the aforesaid two judgments including the Division Bench judgment of this Court, the Karnataka High Court held as follows:

...In my opinion, by the process of revaluation of the answer scripts, is determined the merit of the examinee concerned in his performance and there can be no distinction between original valuation and subsequent revaluation for the purpose of award of rank to the concerned examinee. What ultimately is discovered upon revaluation is the actual performance of the candidate and if the actual performance of the candidate fetches higher marks than what was awarded in the original valuation, it must hold good for the purpose of ranking. The artificial barrier created between valuation and revaluation does not stand the test of either fairness or reasonableness. If actual performance is the criteria, the petitioner should be entitled to the award of tenth rank no matter whether the marks secured by him were higher in revaluation when compared with the marks awarded to him under wrong valuation earlier. What is relevant for consideration is not the expression "review", but the actual performance of the candidate on merits. After revaluation, it is conceded beyond dispute that the petitioner by his performance is entitled to an aggregate of 834 marks and this aggregate is higher than the aggregate marks secured by respondent 2. In my opinion, the declaration of the marks of the petitioner on review stands on firm

ground and cannot be defeated by the unconscionable condition stipulated in the impugned notification. The petitioner, in relation to the ten rank holders including the 2nd respondent are persons who are similarly situated and belong to the same class and there can be no discrimination among them. There is no intelligible differentia for the discrimination between the petitioner and respondent 2 to exclude the petitioner for the benefit of ranking based on marks obtained in revaluation. The impugned portion of the notification is arbitrary and unreasonable. I, therefore, hold that the impugned notification to the extent to which it has been challenged is not valid in law and is unconstitutional, and violative of Article 14 of the Constitution.

11. The Rajasthan High Court in *Fateh Kumari Sisodia Vs. State of Rajasthan and Others*, was dealing with a similar Rule framed by the University debarring candidates to be eligible for award of Gold medal consequent to re-evaluation. The Rule was held to be ultra vires and the learned Single Judge directed that Gold medal be awarded to the petitioner on the basis of the marks obtained by him in re-evaluation.

12. A similar question arose before a Division Bench of the Punjab and Haryana High Court in *Ms. Deepa Vs. Maharishi Dayanand University and Others*, The Punjab and Haryana High Court followed the law cited above and held the rule to be ultra vires.

13. In view of the above discussion, it is apparent that the reason for making a provision of re-evaluation is that no candidate should suffer for the mistake of the examiner. Every student must get the just rewards for the labour put in by him. In these days of great competition where even half a mark can make a great difference, every candidate if not satisfied by the marks awarded to him will apply for re-evaluation. If after reevaluation the student obtains higher marks which would entitle him to consequential benefits such as award of gold medal, free-ship etc. there is no reason why the Institution should deny the same to the said student. The Rule framed by the Board denying such benefit is arbitrary and unconstitutional. The Board has failed to show what is the rationale behind the rule. The only argument made was that there must be certainty attached to the result. If that is the only reason, the Board can easily frame a rule whereby the final merit list is drawn up only after the period fixed for revaluation is over.

14. In view of the above discussion, Clause 13.2.10 of the Himachal Pradesh Board of School Education Regulations, relating to Re-evaluation framed by the respondent No. 2 H.P. Board of School Education in so far as the Regulations deny the benefit of the marks obtained in re-evaluation for the purpose of drawing up the merit list and for grant of scholarship/awards/freeship/medals etc. is held to be arbitrary, illegal and violative of Article 14 of the Constitution of India and is accordingly struck down. The respondent-Board is directed to declare the petitioner to be the topper and award him all consequential benefits. However, in the peculiar facts of the case and in view of the fact that

examinations were held as far back as in the year 2006 and the respondent No. 4 has already availed of the benefits awarded in her favour the same shall not be withdrawn from her.

15. The petition is disposed of in the aforesaid terms with no orders as to costs.