

(2011) 12 DEL CK 0327

In the Delhi High Court

Case No : Writ Petition (C) 6448 of 2011

Arsha G. Kurup and Another

APPELLANT

Vs

Guru Govind Singh Indraprastha University and Another

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0327

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : D.K. Sharma, W.P.C 6448/2011 and Ms. Nandita Abrol, W.P.C 7005/2011, for the Appellant; Mukul Talwar, Advocate for respondent No. 1/ University and None for respondent No. 2/College, W.P.(C) 6448/2011 and W.P. (C) 7005/2011, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The present petitions have been filed by the petitioners praying inter alia for directions to the respondents to add 30 grace marks to the marks obtained by them in paper-I of surgery examination of third year of Bachelor in Homeopathic Medicines and Surgery (BHMS) and promote them to the fourth year of the BHMS course.

2. The facts of the case lie in a narrow compass. The petitioners have been studying in respondent No.2/College, which is affiliated with respondent No.1/ University. On 16.05.2011, the supplementary examination for paper-I of the surgery course in the third year BHMS was held by respondent No.2/College, which was taken by the petitioners. It is the grievance of the petitioners that the question paper for the aforesaid examination contained questions of 30 marks, which were out of syllabus, i.e., were from the syllabus relating to paper-II in the surgery course. As per the petitioners, this fact was brought to the knowledge of the invigilator during the course of the examination itself. The petitioners were in turn advised to continue to attempt the paper and were assured that their grievance would be examined later on. Consequently, the petitioners attempted

the question paper, however, their results were declared on 21.07.2011, in which they were found to have not passed. Immediately thereupon, the petitioners submitted a representation dated 26.07.2011 to the Principal of respondent No.2/ College, requesting the College to take up the issue of the questions being out of syllabus with respondent No.1/University. As per the petitioners, they had submitted representations dated 08.08.2011 and 19.08.2011 to the Vice Chancellor of respondent No.1/University and requested that grace marks be given to them, but as no response whatsoever was received from the respondent No.1/University, they filed the present petitions. Pertinently, the number of students before the Court in both the petitions together are five in all.

3. Notice was issued in W.P.(C) 6448/2011 on 08.09.2011 returnable on 12.09.2011 and notice was issued in W.P.(C) 7005/2011 on 23.09.2011 returnable on 29.09.2011. Having regard to the facts of both the cases and considering the grievance of the petitioners that they were not being permitted to sit for classes for the fourth semester, vide order dated 12.09.2011 the Vice Chancellor of respondent No.1/University was directed to decide the representations of the petitioners within a period of ten days from the date of the aforesaid order in terms of clause 14(b) of Ordinance 22, while ignoring the delay on the part of the petitioners in failing to submit their written representation within a period of seven days from the date of the examinations.

4. Based on the aforesaid directions, learned counsel for respondent No.1/ University filed an affidavit dated 23.09.2011, enclosing therewith the minutes of the meeting dated 15.09.2011, held in the office of the Controller of Examinations, wherein the grievance of the petitioners was considered by the Students Grievance Committee, constituted by the Vice Chancellor of the respondent No.1/University to look into the said matter. The said Committee comprised of the Deans of the University School of Humanities and Social Sciences, University School of Law and Legal Studies, University School of Medical & Para-Medical Health Sciences, the Subject Expert, namely, Dr. Vimal Bhandari from Vardhman Mahavir Medical College and Safdarjung Hospital, Delhi, the Principal of respondent No.2/College and the Controller of Examinations. A perusal of the minutes of the meeting reveals that the Committee considered the statement of the Controller of Examinations that he had already obtained the comments of the Paper Setter, who also happens to be the teacher of the subject of Surgery in respondent No.2/College. After examining the comments/report and after deliberating over the matter, the Subject Expert, namely, Dr. Vimal Bhandari gave his opinion as below:-

I perused the syllabus of BHMS-301 and the question paper Surgery-I of the year May/June 2011 (Supplementary Exam) and the grievances of the student relating to said examination paper.

On examination of said question paper, my opinion is as follows:

1. The surgery is a composite subject consisting of Basic Sciences, Clinical and

Therapeutics.

2. Question No.3 in the Paper I is a part of the Paper-II, since there is a choice in this Paper I, the remaining questions could have been attempted by the students.

3. The question No.4 (A) & (B) are not part of the syllabus of the Paper I but they are part of the Paper II, which can be attempted with subject knowledge of the Surgery as a whole.

On this, I recommend:

Even if, the grievances are to be considered according to the division of the subject Paper I & II, 50 percent of the marks of the question 4(A) & (B) can be considered for the grace marks, i.e. 5 marks to be given to the each student of the subject.

5. The aforesaid recommendations of the Subject Expert that 5 grace marks be given to each of the students was unanimously accepted by the Committee and forwarded to the Vice Chancellor of respondent No1/University, who in turn accepted the recommendation of the Students Grievance Committee.

6. Counsel for respondent No.1/University submits that after the grant of 5 grace marks, as recommended by the Students Grievance Committee and endorsed by the Vice Chancellor of respondent No.1/University, the marks obtained by the petitioners herein are as below:-

1

2

3

4

5

6

7

Student Name

Marks obtained in Paper I Part A

Total Marks in Paper I (out of 100)

Total of all 3 Papers (out of 300)

Shortfall (Pass Marks 150)

Total of all 3 Papers (out of 270) (Ignoring Q.3 & 4 (a) & (b)).

Marks required out of the balance 30 marks

Arsha Kurup Petitioner No.1 in W.P.(C) 6448 of 2011

Q. 1 : 6 Q. 2 : 8 Q. 4a: 0 Q. 4b: 1 Q. 4c: 1 Q. 4d: 1

33

131

19

122

28

Neeta Vats Petitioner No.2 in W.P.(C) 6448 of 2011

Q. 1 : 7 Q. 2 : 10 Q. 4a: 3 Q. 4b: 0 Q. 4c: 2 Q. 4d: 0

39

133

17

120

30

Niraj Kr. Singh Petitioner No.1 in W.P.(C) 7005 of 2011

Q. 1 : 6 Q. 2 : 4 Q. 4a: 2 Q. 4b: 2 Q. 4c: 2 Q. 4d: 0

37

137

13

129

21

Mohan Singh

Q. 1 : 5 Q. 2 : 10

50

135

15

120

30

Petitioner No.2 in W.P.(C) 7005 of 2011

Q. 4a: 2.5 Q. 4b: 2.5 Q. 4c: 3 Q. 4d: 1/2

Devender Kr. Petitioner No.3 in in W.P.(C) 7005 of 2011

Q. 1 : 6 Q. 2 : 2 Q. 4a: 2 Q. 4b: 2.5 Q. 4c: 2.5 Q. 4d: 1

27

100

50

93.5

56.5

7. It is thus submitted by counsel for respondent No.1/University that none of the petitioners have obtained the required 50% pass percentage, i.e., 150 out of 300 marks as mandated by Ordinance 22 of the University Ordinance and thus, they cannot be promoted to the fourth professional year of BHMS course.

8. Counsel for the petitioners submits that the grace marks recommended by the Expert Committee are insufficient for the reason that the two-fold grievance raised by the petitioners has not been properly considered by the Students Grievance Committee. The first grievance was that in the paper-I of the supplementary examination relating to the subject of Surgery which included ENT, Ophthalmology, Dental Surgery & Homeopathic Therapeutics-I which was for the maximum marks of 100, out of eight questions, the students were expected to attempt six questions in all three from part A, three from part B of which, question No.1 in part A and, question No.5 in part B were compulsory. She states that the petitioners have no dispute with respect to part B, however, as question No.3 and question No.4 (a) & (b) of part A were out of syllabus, the option of the petitioners to attempt six out of eight questions in all was reduced and the resultant effect was that the petitioners had to compulsorily attempt the remaining six questions. Further, paper-I was only a part of the subject of surgery and there were two other papers for the said subject, i.e., paper-II and paper-III, and all the three papers had a well defined and separate syllabus. It is stated that respondent No.1/University having introduced questions in paper-I, which actually related to the syllabus of paper-II, caused great prejudice to the petitioners inasmuch as not only did it result in limiting their choice and making all questions compulsory, but it also ended up in the petitioners having to attempt questions from the syllabus of Paper-II, for which they were not prepared on that date.

9. In the course of arguments, counsel for the petitioners relied on an order dated 16.01.2009 of the Controller of Examinations relating to the Grace Marks Policy of the University, which stated that six grace marks could be awarded to students like the petitioners in certain professional courses like MBBS, BHMS etc. where the Annual Examinations are being followed by Supplementary Examinations and the latter is part of the former and the buffer of the unused grace marks could be carried over to the subsequent supplementary examinations and therefore, the petitioners would be entitled to being awarded 18 grace marks if none had been used by them earlier thereto.

10. It is relevant to note that an additional affidavit was filed on behalf of respondent No.1/University on 05.12.2011 in this regard, wherein it was stated that the aforesaid order dated 16.01.2009 of the Controller of Examinations was only a summary of an earlier notification dated 17.01.2006 issued by respondent No.1/University, on the subject of awarding six grace marks per semester/annual examinations. A perusal of the aforesaid notification dated 17.01.2006 shows that notice was taken of the practice of awarding six marks to the students in every semester/annual examinations to pass course(s) of any programme, and if some grace marks were still left over, the same were awarded to the student in the subsequent re-appear examinations of the same semester/annual examinations. While deprecating the aforesaid practice, it was suggested by respondent No.1/University that grace marks (maximum upto six marks) may be awarded only to the regular semester/annual examinations and the facility of awarding grace marks during the re-appear may be discontinued so as to meet the academic standard of the University. It was further suggested that in programmes like MBBS and BHMS etc., where the annual examinations were being followed by supplementary examinations, making them a part of the annual examinations itself, then award of maximum of six marks as grace/moderation may also be applicable for the supplementary examinations, provided that the award of the total of six grace/moderation marks be restricted to just that professional/year of examinations and not be carried over to the next professional/year of examinations. The logic for making such a suggestion was also indicated in the notification, which was that a student enrolled in MBBS and BHMS Courses cannot be promoted to the next professional year until and unless the examinations of previous professional year are cleared in the annual followed by supplementary examinations and he/she would have to repeat the entire professional year. Hence the possibility of transferring grace marks to the next professional/year would not arise. The order dated 16.01.2009 issued by respondent No.1/University in respect of the grace marks policy of respondent No.1/University is clearly a reiteration of the earlier circular dated 17.01.2006, a part of which has also been reproduced therein. The date of giving effect to the said order has been indicated as 23.01.2006. In other words, the notification dated 17.01.2006 and the order dated 16.01.2009 do not permit carry forward of six grace marks from one professional/year examination to another in the course of a programme like MBBS and BHMS, and the petitioners cannot claim entitlement to 18 grace marks on the basis of the order dated 16.1.2009.

11. Be that as it may, in the light of the grievance of the petitioners that they had not been granted grace marks despite repeated representations made by them to the respondent No.1/College, and in spite of the fact that they had also sent separate representations to the Vice Chancellor of respondent No.1/University to consider their case for grant of grace marks, for which they had received no response, vide order dated 12.09.2011, the Vice Chancellor of respondent No.1/University had been directed to decide the pending representation dated 08.08.2011 of the petitioners. The said representation has

been decided in accordance with the minutes of the meeting of the Students Grievance Committee dated 15.09.2011 wherein the Subject Expert opined that questions No.4(A) & (B) were not a part of the syllabus of paper-I but a part of paper-II, but could be attempted with subject knowledge of surgery as a whole and that question No.3 in paper-I was also a part of paper-II, but since there was a choice in paper-I, the remaining questions could have still been attempted by the students. In spite of the aforesaid observations, the subject expert recommended grant of five grace marks to each of the petitioners, which was unanimously accepted by the Committee. Unfortunately, even after the grant of five grace marks to the petitioners, they have still fallen short of the pass marks of 150, which are required to be obtained by them out of the total of 300 marks, i.e., the sum total of 100 marks in paper-I, 100 marks in paper-II and 100 marks in paper-III. Even if the contention of the counsel for the petitioners is accepted that under the policy of respondent No.1/University pertaining to grace marks, students like the petitioners would be entitled to grant of six grace marks for that professional/year and along with that they would be awarded five grace marks as recommended by the Subject Expert, even then the addition of 11 marks to the marks obtained by them in paper-I are not sufficient for the petitioners to obtain the pass marks of 150 out of 300 marks.

12. It is a settled law that when an expert body gives its definite conclusion and submits a report in that regard, then the Courts should not step into the shoes of such an expert body and arrive at a different conclusion merely on the basis of its own calculations. The Court must keep in mind the fact that it lies in the domain of the Vice Chancellor of the University to take appropriate action relating to the affairs of the University, which would include conducting examinations in a proper manner. As held in the case of Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, the Vice Chancellor is the conscious keeper of the University and he is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs and for the said purposes, the University Act confers a residuary power on the Vice Chancellor to see that the provisions of the Act, the Statutes, Ordinance and Regulations are duly observed.

13. Similarly, in the case of Parents Forum for Meaningful Education and Others Vs. Central Board of Secondary Education and Others, where the petitioner/society approached the Court for directions to the respondent/CBSE therein to compensate class XII students, who sat for the Mathematics examinations in the year 1994 for the reason that the question paper was not only lengthy, but included some wrong questions and the distribution of marks for some questions was inappropriate, the Division Bench took notice of the fact that the respondent/CBSE therein had constituted an Expert Committee to look into the grievances of the students, which had evolved a marking scheme prepared for evaluation of class XII Mathematics paper and was satisfied that it would serve the purpose of protecting the interest of the examinees. Having regard to the fact that the

respondent/CBSE had accepted the findings of the Expert Committee for compensation to the examinees, the Court declined to go into that grievance by observing that it was inappropriate for it to discuss the method of the compensation.

14. In the present case, under Clause 14(b) of the Ordinance, the Vice Chancellor has constituted the Students Grievance Committee and the said Committee has made recommendations, which have been accepted by him. All that this Court is required to examine in judicial review is whether the aforesaid decision of the educational authority contravenes any Statute or the binding rule is so arbitrary, unreasonable, malafide and perverse that it warrants intervention. Ordinarily, the Court should show due regard to the opinion expressed by an expert body. Considering the fact that the request of the petitioners for grant of grace marks has been duly considered by respondent No.1/University and the recommendations made by the expert body to grant five grace marks to the petitioners has been accepted by the Vice Chancellor of respondent No.1/University, the matter ought to rest there. However, even if the Court takes into consideration the submission of the counsel for the petitioners that six additional grace marks as per the Grace Marks Policy of respondent No.1/University be given to the petitioners, the same would be of no help to them as even after adding a total of 11 grace marks to the marks obtained by the petitioners, they would still fall short of the aggregate pass marks of 150 marks required to be obtained by them to pass the subject. In such circumstances, no further indulgence or relaxation can be claimed by the petitioners beyond what has been granted by the expert body. There are some petitioners who after the addition of 11 grace marks still fall short of the pass mark of 150 by just a couple of marks. The Court can express sympathy with them, however, no further relaxation can be granted, as the norms of evaluation and compensation have to be applied uniformly to all the examinees and not to individual cases.

15. In the present case, the expert committee has scrutinized, reviewed and reconsidered the entire facts and circumstances of the case and ultimately has arrived at a conclusion that only five grace marks ought to be granted to the petitioners. This Court does not find any infirmity in the aforesaid order or in the decision making process for interference therein. There can be no justification to further relax the norms of evaluation to accommodate such of the petitioners, who after adding the grace marks still fall short by one or two marks, inasmuch as the exercise of such extraordinary powers would result in throwing to the winds all principles of equality and non-partisanship, which cannot be permitted.

16. In the aforesaid facts and circumstances, both the petitions fail and are disposed of accordingly while leaving the parties to bear their own costs. However, before parting with the case, this Court deems it appropriate to direct respondent No.1/University to ensure that in the future, the question papers are prepared with more meticulous care and caution, and instructions ought to be issued to all the paper setters to ensure that all the questions set in the paper

are within the syllabus of the course in question and are properly evaluated to gauge whether an average student can attempt and complete them within the prescribed time. Such an exercise should not only be undertaken by the paper setters, but should also be independently followed by the Moderators at the pre-examination stage. Once this exercise is undertaken at two levels, it will eliminate all chances of error/oversight, which may jeopardize the career of students like the petitioners in the present case. The purpose behind setting questions for the students in a paper is not only to test their knowledge but also to set a standard of academic excellence in the institution, and to ensure that the credibility and sanctity of the examination system is protected and maintained. It is for the respondents to work in that direction and to ensure that such an error/oversight does not occur in the future.

17. The Registry is directed to forward a copy of this order to the Vice Chancellor of respondent No.1/University for perusal and compliance. The Court places on record its appreciation for the assistance rendered by the counsels on both sides appearing in the matter.