(2014) 07 AHC CK 0067

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33502 of 2014

Hira Khan APPELLANT

Vs

Vice-Chancellor, University of Allahabad RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Citation : (2014) 8 ADJ 219 : (2014) 4 ESC 1947

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : J.K. Srivastava and Jai Singh Chandel, Advocate for the Appellant; Ram Gopal Tripathi, A.K. Goyal and S.C, Advocate for the Respondent

Judgement

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Manoj Misra, J.—Heard learned counsel for the petitioner and Sri A.K. Goyal for the respondents 1 to 4. By the instant petition, the petitioner has prayed for a direction to the University authorities to produce the answer script of the petitioner of B.Com. III year session 2013-14 (Roll No. 584035) in subject Income Tax Law and Accounts and to get it re-evaluated.

2. The case of the petitioner was that she had been a good student all throughout, as would be evident from her marks at the secondary level, and that even in B.Com. I year examination 2012 and B.Com. II year examination 2013, she secured good marks. But, in B.Com. III year examination, she has been awarded only 10 marks out of 100 in Income Tax Law and Accounts even though she got good marks in other papers. She has thus claimed that her marks in Income Tax Law and Accounts were awarded arbitrarily and, therefore, re-evaluation is necessitated.

3. On 8th July, 2014, this Court passed the following order:

"Pursuant to the order dated 1.7.2014, Sri A.K. Goel, learned counsel for the respondents, has produced the answer script of the petitioner pertaining to

Income Tax Law and Accounts paper of B.Com IIIrd year Examination 2014.

A bare perusal of the answer script would indicate that the petitioner had attempted nearly all the questions. It is, however, difficult for this Court to arrive at a conclusion whether the answers rendered were correct or partially correct as also whether the examinee deserves the marks that have been awarded. What the Court can see is that the marks awarded to the petitioner in her other subjects such as Corporate Accounts, Human Resource Management, Marketing Management, Insurance Ist and IInd paper as also in the viva are fairly decent i.e. above 55% and close to 60%.

The contention of the learned counsel for the petitioner is that the petitioner is confident that she has been arbitrarily awarded 10 marks in the concerned subject even though she answered properly.

In the case of Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, of the report, the Apex Court observed as follows:

"32. The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the Judgment impugned should not be interfered with, cannot be accepted. Re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the Court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the Court should show due regard to the opinion expressed by the authority.

37. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statute at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts re-evaluation may be found necessary."

In view of the above, to ascertain whether the marks awarded to the petitioner in B.Com IIIrd year in subject Income Tax Law and Accounts paper for the Session 2013-14, have been awarded arbitrarily or not, this Court considers it appropriate to direct the respondent No. 2 to obtain a photocopy of the answer script of the petitioner, thereafter, hide the marks already awarded on it by the earlier examiner, and send the said photocopy of the answer script alongwith photocopy of the question paper to an External Examiner of the concerned subject, who would re-evaluate the answer script and submit a report to the Court by 24.7.2014.

It is made clear that such re-evaluation is only for the purpose of ascertaining whether the marks earlier awarded to the petitioner were based on arbitrary evaluation or not.

List on 24.7.2014. The original of the answer script is being returned to the learned counsel for the University."

4. Pursuant to the above order, Sri A.K. Goyal, learned counsel for the respondents-University has produced, in a sealed cover, the evaluation report of an external examiner with respect to the answer script of the petitioner in Income Tax Law and Accounts subject of B.Com.III year examination 2014. According to the evaluation by the external examiner, the petitioner has been found entitled to 50 marks out of 100 marks.

5. From the above evaluation report, it becomes clear that the marks earlier awarded to the petitioner i.e. 10 marks out of 100, were not carefully awarded and were awarded in an arbitrary manner because there cannot be so much difference between two evaluations as has been found in the present case. Therefore, considering that in other subjects of B.Com.III year examination 2014, the petitioner has obtained about 55% marks, this Court finds it appropriate to accept the re-evaluation report submitted pursuant to the order dated 8th July, 2014. In view of the above, the writ petition is allowed. The University is directed to issue mark-sheet to the petitioner by incorporating the revised marks of Income Tax Law and Accounts paper of B.Com.III year examination 2014, which are 50 marks out of 100. The original answer script as well as re-evaluated answer script alongwith the report of the external examiner is being returned to the learned counsel for the University.

