
(1991) 09 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 2446 of 1991

Kishore Kumar Choudhary

APPELLANT

Vs

Registrar, Marathwada University and Others

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Citation : (1991) 93 BOMLR 684

Hon'ble Judges : N.P. Chapalgaonker, J;H.W. Dhabe, J

Bench : Division Bench

Judgement

H.W. Dhabe, J.—The petitioner was admitted to the Bachelor of Engineering (for short "B.E.") Course of the Marathwada University in the Marathwada Technology, Aurangabad, (for short "M.I.T. College, Aurangabad"). After passing the First Year Examination in B.E. Course, he appeared for the Second year Examination in the said Course in October/November, 1990. In the said Examination he received 26 marks out of 100 in the Mathematics Paper III and was therefore, declared failed in the said subject as the passing marks required were 40. He, however, continued his studies in the Third Year of the B.E. Course in the said College and appeared for the Third Year Examination in April/May, 1991, in which according to the petitioner he had passed, but his result was withheld.

2. It is the case of the petitioner that after the receipt of the mark-sheet of the second Year B.E. Examination, the petitioner made an application to the Marathwada University for recounting of his marks on 23.2.1991. However, on second thought immediately on 25.2.1991, 24th Feb., 1991 being Sunday, he made an application for revaluation of his marks in Mathematics Paper-III of the Second Year B.E. Course as per the Ordinance No. 105 of the Marathwada University. On 27.5.1991, the Deputy Registrar (Examinations), of the Marathwada University communicated to the Principal of the M.I.T. College, Aurangabad the names of the students, from his College who had applied for revaluation of their answer papers and who, as a result thereof got the benefit of

reevaluation of their answer papers. At serial No. 6, in the said letter dated 27.5.1991 is shown the name of the petitioner. The marks obtained by him in the Mathematics Paper-III are shown as 40 out of 100 after reevaluation which would mean that the petitioner had passed in the Mathematics Paper-III.

3. However, by the subsequent letter dated 1.6.1991, the Marathwada University communicated to the Principal of the M.I.T. College, Aurangabad, that the aforesaid letter dated 27.5.1991, should be treated as cancelled, because by reason of recounting of his marks, his marks in the said Mathematics Paper-III had become 31 out of 100 and since the difference in the said marks obtained after recounting and 40 marks out of 100 obtained after reevaluation was less than 10 per cent of the maximum marks prescribed in the said paper he was not entitled to the benefit of reevaluation of marks under Clause (iv) of the Ordinance No. 105 and could not therefore be declared to have passed in the said paper. It is for this reason that the result of the petitioner of his Third Year B.E. Examination was also withheld by the University. Being aggrieved, the petitioner has moved this Court by way of the instant Writ Petition.

4. The learned Counsel for the petitioner has urged before us that as per Clause (iii) of the Ordinance No. 105 framed by the Marathwada University in regard to reevaluation of Answer Papers of the candidates appearing for University Examinations, the process of reevaluation includes the process of verification of marks also and therefore it is not necessary for a candidate requesting for reevaluation of his Answer Paper to apply separately for verification of his marks in that paper. The submission thus is that since the process of reevaluation includes the process of verification of marks, the original marks for the purpose of computing the difference of 10 per cent of the maximum marks prescribed for the Mathematics Paper-III between the marks awarded to the petitioner after reevaluation and his original marks have to be taken as the marks awarded to him in the said paper by the valuer before verification or recounting of marks.

5. In support of the above submission, it is also urged that although the petitioner had made a separate application for verification of his marks on 23.2.1991, in Mathematics Paper-III, it had become redundant or was superseded since he had immediately thereafter on 25.2.1991, 24.2.1991 being holiday made the application for reevaluation of his marks in the said paper which, as per Clause (iii) of Ordinance No. 105 of the Marathwada University above included verification or recounting of marks also. With reference to the above dates, it is emphasised that there was no time-lag in between the above referred applications for recounting and reevaluation and the result of his recounting could not have been communicated to the petitioner before he had made an application for reevaluation on 25.2.1991.

6. Ordinance No. 104, and Clauses (iii) and (iv) of the Ordinance No. 105 of the Marathwada University which are relevant for the purpose of this Writ Petition are extracted below.

Ordinance No. 104.

Information as to whether a candidate's answers in any particular head or heads of a University examination have been examined and marks will be supplied to the candidate on his forwarding an application in the prescribed proforma enclosed, accompanied by a fee of Rs. 10/- for each head through the Principal or a Head of the recognised Institution within 15 days of the declaration of the said examination result. If the examinee desires to have the verification of marks done in the presence of parent/guardian, the fee shall be Rs. 15/-. The fee is only for verifying whether a candidate's answers in any particular head have been examined and that the marks obtained have been correctly calculated and not for the reexamination of answers. The rule that marks obtained by candidates in individual questions or in section of a paper cannot in any circumstances be supplied holds good also in the case of applications for the verification of marks. If as a result of verification made under this clause it is discovered that there has been either an omission to examine or mark any answer or answers or a mistake in the totalling of the marks, the fee for verification of marks shall be refunded to the applicant and the result will be suitably amended.

Ordinance 105:

(i) ?

(ii) ...

(iii) An aggrieved Candidate applying for revaluation shall have to deposit the revaluation fee of Rs. 50/- per paper. The process of the revaluation includes the scrutiny of answer-scripts for verification of marks and therefore, it will not be necessary for a candidate requesting for revaluation of answer-scripts to apply for the scrutiny of answer-scripts prior to revaluation he may apply for revaluation directly or after scrutiny as the case may be, in accordance with the provisions of this Ordinance.

(iv) Along with the application for revaluation, candidate shall have to give an undertaking in writing that whatever the result of revaluation favourable or otherwise, the same shall be binding on him. If as a result of the revaluation, the marks differ from the original marks obtained by the candidate before grading by 10 per cent or more of the maximum marks prescribed for the paper then only the result of the revaluation will be accepted.

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7. Perusal of the Ordinance No. 104 shows that in the process of verification of marks, there is no re-examination of answers but there is only scrutiny as to whether, there is any omission to examine or mark any answer/s or whether, there is any mistake in the totalling of the marks. On such verification being

made, the result of the candidate is suitably amended which means that the statement of marks, shown to have been obtained at the time of the original declaration of results and a copy of which is supplied in accordance with the Ordinance No. 103 is amended and the result accordingly declared. Perusal of Clause (iii) of the Ordinance No. 105 relating to revaluation of answer-papers then shows that apart from revaluation of answers, it also includes, the above process of verification of marks as contained in the Ordinance No. 103 for which no separate application is necessary although it is open to any candidate to apply for verification of marks prior to revaluation.

8. It is in the context of the provisions of Clause (iii) in the Ordinance No. 105 that the expression "as a result of revaluation" used in Clause (iv) of the said Ordinance has to be understood. Since the process of revaluation includes the process of verification as provided in Clause (iii) of the aforesaid Ordinance No. 105, the change in the original marks can occur either as a result of the actual re-examination of the answer/s or as a result of rebottling of marks or both.

8A. Viewed in this light, the expression "Original marks" used in Clause (iv) of the aforesaid Ordinance No. 105 can mean "the marks awarded to the candidate in the paper concerned at the time of original declaration of result and are contained in his statement of marks supplied to him in accordance with the provisions of Ordinance No. 103. Thus interpreted Clause (iv) of the Ordinance No. 105 gives the benefit of revaluation of answer paper/s to a candidate if his marks in the answer-paper/s concerned as a result of such revaluation which means actual re-examination of answer/s or rebottling or both differ from the "original marks" which expression means "the marks awarded to him in the paper/s concerned at the time of the original declaration of results" by 10 per cent or more of the maximum of the marks prescribed for the paper/s, concerned.

9. Keeping in mind the above construction of Clause (iv) of the Ordinance No. 105, it must be seen that in the instant case although the petitioner had made an application for verification of his marks in the Mathematics Paper-III on 23.2.1991, he had immediately thereafter on the next working day, i.e. 25.2.1991, 24.2.1991, being holiday, made an application for revaluation of the said paper. It is not shown to us that verification of his marks in the said paper was made and his result was accordingly amended as provided in the Ordinance No. 104 relating to verification of marks prior to his application for revaluation made on 25.2.1991. If that is so, it is clear that his application for verification of marks made on 23.2.1991 became redundant and stood superseded and should not have been pursued by the authorities concerned because his application for revaluation made immediately thereafter on 25.2.1991 included the process of verification of marks also as provided in Clause (iii) of the Ordinance No. 105.

9A. As such, the original marks for the purpose of giving the benefit of revaluation to the petitioner under Clause (iv) of the aforesaid Ordinance No. 105 are the marks awarded to him at the time of the original declaration of results

and not the marks awarded to him after verification of his marks in the said Mathematics Paper-III. Since we have taken the view that the verification of marks in the Mathematics Paper-III and the amendment of the result accordingly as provided in the Ordinance No. 104 had not taken place prior to 25.2.1991, i.e. the date of the application for revaluation of the said paper, it is not necessary for us to consider the question as to which mark should be taken as "original marks" for the purpose of Clause (iv) of the Ordinance No. 105 relating to revaluation i.e. the marks awarded at the time of the original declaration of the results or the marks obtained after amendment of the result of verification of marks as provided in Ordinance No. 104 because by reason such a question can arise only if, the result by reason of verification of marks is already amended before an application for revaluation is made.

10. The contention raised on behalf of the petitioner, is therefore well founded and the margin of difference of 10 per cent of marks or more of the maximum of the marks prescribed for the Mathematics Paper-III as provided in Clause (iv) of the Ordinance No. 105 has to be determined with reference to the original marks awarded to the petitioner in the said paper at the time of the original declaration of his result and not with reference to the marks given to him by verification of his marks i.e. by rebottling of his marks. It cannot be disputed that, if the original marks are taken as the marks awarded to the petitioner at the time of the original declaration of the results, he is entitled to the benefit of revaluation because originally the marks given to him were 26 out of 100 in the Mathematics Paper-III and as a result of revaluation he was given 40 out of 100 marks which are more than 10 per cent of the maximum marks prescribed for the Mathematics Paper-III. It may be seen that, the maximum marks prescribed in the Mathematics Paper-III are 100 and 10 per cent of the same would be 10 marks.

11. It has therefore to be held that the petitioner was rightly given the revaluation by the Marathwada University as per its letter dated 27.5.1991 (Ex. D) addressed to the Principal of the M.I.T. College, Aurangabad and its cancellation by its letter dated 1.6.1991 (Ex. E) was erroneous and was liable to be set aside.

12. In the result, the instant Writ Petition is allowed. The impugned Order of the Marathwada University contained in its letter dated 1.6.1991 (Ex. E to the petition) is set aside and its earlier order contained in its letter dated 27.5.1991 (Ex. D to the Petition), addressed to the Principal M.I.T. College, Aurangabad giving the benefit of revaluation to the petitioner is restored. The respondent-University is thus directed to declare that the Petitioner as passed in Mathematics Paper-III of the Second Year B.E. Examination held in Oct./Nov. 1990. The respondent-University is further directed to declare the result of the petitioner of his Third year B.E. Examination held in April/May, 1991.

13. Rule made absolute in the above terms. No costs.