

(2004) 12 AHC CK 0133

In the Allahabad High Court

Case No : Special Appeal No.314 of 2004 (connected with Special Appeal No.320 of 2004)

K.K.Wadhwani

APPELLANT

Vs

Sunita Singh and Others

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 226
High Court Rules, 1952 — Chapter 8, 5

Citation : (2004) 12 AHC CK 0133

Hon'ble Judges : Pradeep Kant, J and Rajiv Sharma, J

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—Present is the case which calls for adjudication of a dispute raised by a student against the examiner, who according to her got her declared failed by interpolating, manipulating, cutting, rubbing and erasing the original marks and thereafter by substituting the reduced marks as against the original marks awarded. The task is unpleasant as the controversy involved reflects an element of distrust in the relationship of a teacher and a student, which is not good for healthy educational atmosphere, but we would be failing in our duty in case we do not dwell upon the questions involved, in view of the self evident facts of the case. Of course, this judicial scrutiny has to be done within the extent of jurisdiction, which is conferred upon the High Court under Article 226 of the Constitution and within the prescribed parameters of law.

2. These are the two Special Appeals, one filed by Dr. K.K. Wadhwani, Professor and Head of Department of Operative Dentistry, Faculty of Dental Sciences, King George's Medical University, Lucknow and the other by the Registrar, King George University of Dental Sciences, Lucknow, assailing one and the same order passed by the learned Single Judge on 26.8.2004 allowing the writ petition filed by Ms. Sunita Singh, respondent No.1 in both the Special Appeals by issuing the following directions:

?(i) Writ petition is allowed with cost quantified to Rs.25,000/ which shall be payable by respondent No.3 within a period of one month from today. The cost shall be deposited in the court within the said period of one month out of which Rs.15,000/ shall be payable to the petitioner for her suffering on account of the present controversy. Rs.10,000/ shall be deposited in the legal aid cell of the High Court. In case the cost is not deposited within a month from today, the Vice Chancellor of the respondent University shall recover the same from the respondent's salary and send to this Court immediately within a period of one month after lapse of period provided to respondent No.3. Registrar shall ensure the compliance of order.

(ii) Respondents Universities are directed to prepare fresh award sheet/tabulation chart and declare the petitioner's result within a period of two weeks from the date of receipt of certified copy of this judgment on the basis of observation made in the present writ petition and keeping in view the report sent by Government Forensic Lab, Mahanagar, Lucknow, a copy of which has been provided to the parties' counsel during the proceedings of present writ petition.

(iii) The entire original records except the three award sheets and the copy of second paper of Operative Dentistry bearing marks/seal from the office of Government Forensic Laboratory, Mahanagar, Lucknow shall be retained by the Registrar of High Court for the period of three months so that in the event of filing of special appeal in the High Court or an appeal under Article 136 of the Constitution of India in the Supreme Court, this Court as well as Apex Court may have opportunity to peruse the original records i.e. award sheet and copy, in the event of application moved by the parties' counsel or suo moto while exercising jurisdiction. Though the Photostat copy of the award sheet as well as the Photostat copy of the second paper of operative dentistry have been provided to the counsel for the parties during the course of proceedings but it shall be open to the respondents University to obtain another Photostat copy of the three award sheets and copy of second paper of operative dentistry for the purpose of preparation of petitioner's result or others result, if any, in compliance of present judgment. However, in any case, the Registrar of the respondent University shall keep the entire original record in their personal custody atleast for the period of one year from today.

(iv) In case no appeal is filed, it shall be open to the respondents University to get back the award sheets and original copy of the second paper of Operative Dentistry with prior permission of the High Court.

Writ petition is allowed accordingly.?

3. Respondent No.1, a final year student of King George Medical University, Lucknow (hereinafter referred to as KGMU) feeling aggrieved by the alleged biased treatment given to her by Dr. K.K. Wadhwani, Professor and Head of Department of Operative Dentistry and her alleged deliberate action of reducing the marks as against the marks initially awarded and thereby failing her in one of

the theory papers of which she was the examiner and also in the practical examination, prompted her to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution.

4. At the very outset, it would be relevant to mention that learned counsel for the appellants S/Shri Umesh Chandra, Senior Advocate and S.P. Gupta, Senior Advocate opened their arguments by urging that there being no provision of reevaluation under the Rules of KGMU, the prayer of reevaluation, which was made in the writ petition, could neither have been entertained nor allowed and, in the alternative, even if the reliefs claimed by respondent No.1 was to be considered by the learned Single Judge, he could have ordered for reevaluation only but in no case, he could have embarked upon the enquiry as to what were the original marks (marks initially awarded) to respondent No.1 in the theory paper (second) as well as practical examination and for that purpose, he could not have referred the matter to the Government Forensic Laboratory, Mahanagar, Lucknow. We will consider the aforesaid arguments at the appropriate stage but before advertng to the aforesaid points, it would be appropriate to scrutinize the pleadings of the parties, the conduct of the parties and the relevant law, as would be applicable in such cases.

5. The respondent No.1 was admitted in the B.D.S. Course at Jawahar Lal Nehru Medical College, Belgaum through competitive entrance examination where she secured 67.7% marks in the first professionals and thereafter she was transferred to KGMU, Lucknow in the second professional course in February, 2001. In the second professional course examination at KGMU, she secured 67.3% marks in aggregate and ranked 3rd in her batch. She was also awarded "Certificate of Honour" in three subjects, namely, Human Dental Anatomy, Dental Histology and General Dental Materia Medica. In the third professional examination, she obtained 66.3% marks in aggregate and was ranked 2nd in her batch. She was also awarded "Book Price". However, in final professional examination, which were held in February/March, 2004 she found on declaration of result that she has failed in one of the subjects i.e. Operative Dentistry, wherein she obtained the following marks:

- ?(i) Orthodontics 65%
- (ii) Pedodontics 58.5%
- (iii) Oral Surgery 66%
- (iv) Prosthodontics 57%
- (v) Periodontics 60%
- (vi) Operative dentistry 41%?

Thus except in Operative Dentistry, respondent No.1 was awarded good marks. The result brought a shocking surprise to the respondent No.1, as she was confident of securing not less than 60% marks in Operative Dentistry also and

looking to her own achievements in the previous examinations, she could not reconcile with the marks awarded to her in the subject of Operative Dentistry.

6. It appears that some enquiry was made by the father of the petitioner, also a Doctor. The respondent No.1 gathered that Professor and Head of Department of Operative Dentistry, namely, Dr. K.K. Wadhwani, appellant in one of the appeals, became annoyed with her, as at some point of time some of the teachers asked respondent No.1, who was considered to be one of the best students, regarding the topics which had not been taught and left uncovered in the subject of Operative Dentistry. The respondent No.1 consulted the batch mates, enlisted such topics and gave the information on behalf of the batch. Incidentally most of the topics in the said list were supposed to be taken up by Dr. K.K. Wadhwani. This action of respondent No.1 annoyed the Professor and, therefore, she deliberately failed her in the theory paper (second) of which she was the examiner and also in the practical examination, that too by interpolating, manipulating and by erasing the marks originally awarded. The representations were made by the father and mother of respondent No.1 to the Registrar, KGMU praying for reevaluation of the answer books of the Operative Dentistry subject mentioning therein the achievements of respondent No.1 in the earlier professional examinations and also that a student who had been securing position in the batch in all examinations, has been declared as failed. This representation was dated 1.4.2004. A second representation was made on 4.4.2004 and a third representation was made on 15.4.2004 in which it was specifically mentioned that on enquiry being made it has been revealed that Head of Department, Operative Dentistry, Dr. K.K. Wadhwani was annoyed with his daughter for the reason already indicated in the earlier part of the judgment and that if the answer book in question and result sheet of his daughter is reevaluated, it will reveal that marks obtained by her daughter has been deliberately reduced and out of three foils of the result sheet, in two foils the marks obtained by her have been reduced by tampering. Further, in these two foils the marks have been changed by using whitener to the utter disadvantage to his daughter and that the tampering has been done in the answer books for reducing the marks. This representation was made to the Vice Chancellor and another representation was again made on 16.4.2004 with a copy to the Registrar for taking early action.

7. Prior to the making of representation dated 1.4.2004, it has been alleged that when the parents of respondent No.1 contacted Dr. K.K. Wadhwani, she pretended to be surprised over the result and promised to look into the matter and offered all cooperation in rectifying the error but when they met again on 1.4.04 she expressed her inability to rectify what had happened to their daughter. She stated that if the parents of respondent No.1 had met her earlier i.e. prior to the examination, this would not have happened to their daughter.

8. On the writ petition being filed by the petitioner, a learned Single Judge of this Court passed the following order:

?Heard Sri Shashi Prakash Singh, learned counsel for the petitioner and Sri S.K. Kalia, Senior Advocate assisted by Sri K.K. Singh, learned counsel appearing on behalf of opposite parties 1 and 2.

The petitioner has alleged that Dr. K.K. Wadhwani, opposite party No.3, became vindictive to the petitioner and has awarded only 41 per cent marks in Operative Dentistry. The petitioner has further alleged that she is an outstanding student of her batch.

In view of the aforesaid facts, the petitioner is directed to make a fresh representation before the Vice Chancellor, King George's Medical University, Lucknow within three days from today, who shall consider and decide the same, in accordance with law, within ten days thereafter. In the meantime, the petitioner shall also make an application for scrutiny by depositing the requisite charges before the authority concerned.

List this petition on 10.5.2004.?

9. On representation being made, the Vice Chancellor, KGMU himself examined the answer books and thereafter he called a meeting on 7.5.2004 of all Heads of Department where the matter was discussed and the fact regarding interpolation etc. in the answer books came to the knowledge of the persons concerned. On 17.5.2004, the ViceChancellor passed the following order:

???????I have gone through the record and informations placed before me in respect of examination of Operative Dentistry theory paper and award sheet. Scrutiny revealed that total marks of the student change theory paper in partI. A perusal of the answer book partII and award sheet reveals that cutting and over writing has been done by the examiner. In the light of the legal opinion from the Senior Advocate, I was satisfied that it was a fit case that the Vice Chancellor should take steps for correct assessment of the theory paper and also reexamination of practical, if necessary. Accordingly suitable step with sufficient secrecy were taken and after reevaluation of theory paper, reexamination of practical was also arranged on 8.5.04. The results were kept secret because the Examination Committee or the Executive Council, K.G. Medical University is the only authority to take final decisions in such matter. An emergent meeting of the Executive Council was called on 13.5.04 at 5.00 p.m. and the matter was placed before the Council for a decision. After discussion in detail and considering all relevant provisions relating to the University Examinations, the Council resolved that since there is no provision of reevaluation in the University Statutes, prospectus and ordinances, so steps taken by the Vice Chancellor are void and that the candidate should be communicated only the change of mark, if any, discovered in the scrutiny of the answer book and the award sheet. Accordingly, the result of the reevaluation cannot be implemented and Ms. Sunita Singh will be communicated change in obtained marks because of scrutiny.

The representation dated 27.4.04 is disposed of accordingly.?

10. The ViceChancellor considered respondent's case and directed for scrutiny of answer books. Her copies were sent for reevaluation/reexamination by two examiners of outside the State. A practical examination was also held on 8th May, 2004 on the direction of the Vice Chancellor by two examiners of other Universities situated in the State of U.P. but in the presence of the Dean, Faculty of Dental Department. The respondent No.1, however, did not succeed in the practical examination so held, which result was also noticed by the Court during the pendency of the writ petition, as it was never disclosed or pronounced earlier.

11. The Vice Chancellor thus being satisfied about the charge of manipulation and interpolation in the answer books by the examiner proceeded for reevaluation of the answer book and also for holding practical examination, as aforesaid. The marks so obtained in the theory paper (second) and practical examination were, however, not disclosed and were kept secret in a sealed cover but when the matter was placed before the Executive Council on 13.5.2004, the Executive Council did not agree with the view of the Vice Chancellor for holding reexamination or reevaluation, as there was no such rule allowing such exercise and, therefore, the Executive Council refused to agree with the decision of the Vice Chancellor and thus the same was not given effect to.

12. In pursuance of the order passed by the Court, the records were produced on 24.5.2004, on perusal of which record, the Court was satisfied that cuttings and overwriting were done on each and every question of theory paper (second) and in the award sheet also which contained not only cuttings and overwriting but erasion also. On seeing the record, since by bare perusal of the answer book, it was clear that there has been cuttings, interpolation and erasing of the marks and that too to the extent that it resulted into perforation of the paper of the answer book, learned Single Judge passed an order for getting the answer books of theory paper and award sheet of practical examination of Operative Dentistry examined by the Director, Government Forensic Laboratory, Mahanagar, Lucknow requiring him to submit report after scientific investigation of the matter. This order was passed on 25.5.2004, after hearing the parties' counsel.

13. The report of the Government Forensic Laboratory was considered by the learned Single Judge, who also perused the answer book himself and on being satisfied that the marks have been reduced by making cuttings, overwriting and erasion, ordered for award of marks to the respondent No.1 which were actually and originally awarded as against the marks which were awarded after cutting and manipulating and by making overwriting thereafter. As a result of the originally awarded marks being awarded to respondent No.1 in the theory paper (second) as well as in the practical examination, her result was directed to be declared.

14. The argument that the petitioner had initially prayed before the Vice Chancellor and also in the writ petition that reevaluation of her copies be done, the same having been done, in which she could not succeed in the practical examination, the learned Single Judge acted beyond his jurisdiction in probing

further and allowing her the marks, which, according to him, were originally awarded, has to be seen in the light of the extraordinary and peculiar facts and circumstances of the case.

15. It has been strenuously urged by Sri S.P. Gupta, Senior Advocate that once the Court had found on opening of the result of the reevaluation of the theory paper and also of the fresh practical examination held under the direction of the Vice Chancellor on 24.5.2004 that the respondent No.1 would not be successful in the final examination, as she had failed in the practical examination held again, the petition ought to have been dismissed at that very stage, as the Court could not have embarked upon an enquiry about the marks given in the answer book by the examiner originally nor there was any record of practical examination on the basis of which correct marks which should have been given in the practical examination could have been known. The argument in substance is that once the respondent No.1 could not succeed in the practical examination again held, she lost her right to claim any further scrutiny or correction of marks.

16. Sri Umesh Chandra, learned Senior Advocate, submitted that the Vice Chancellor has taken action of reexamination of theory paper and practical examination on the basis of the representation made by respondent No.1 and her parents and also on the directions issued by the High Court on 26.4.2004 and, therefore, also there was no scope for the learned Single Judge to travel beyond the prayer made by respondent No.1 before the Vice Chancellor and also in the writ petition.

17. Sri Umesh Chandra, learned Senior Advocate has further argued that mere bizarre confidence of an examinee that he/she could never fail in any paper and he/she ought to have been awarded more marks, in itself, would not be a ground for interference by the Court nor would be an equity so as to allow the Court to enter into the scrutiny about the marks awarded to such examinee. His submission is that respondent No.1 and her parents, who happened to be medical practitioners themselves were under a misconception that respondent No.1 was a very brilliant student and that she can never fail and, therefore, they made frantic efforts to get the marks enhanced by any means, though the final marks which were awarded in the answer book were the correct marks which were awarded to the candidate on assessment of the merit of the answer given and, therefore, no interference by the learned Single Judge was warranted.

18. According to the case of the appellants, the pleadings were too short for making out any case for interference by the Court and muchless for referring the matter to the Government Forensic Laboratory. Any action, which has been taken without proper pleadings, cannot be sustained nor the evidence so adduced could be admissible for deciding the controversy. His further submission is that expert's evidence (report of the Government Forensic Lab) even otherwise could not have been relied upon, as the appellants were not given any chance to crossexamine the expert though demanded and only giving a right to file objection against the report could not be said to be sufficient opportunity in this

regard.

19. Of course, it has also been vehemently urged that there being no provision under the Rules for reevaluation of the answer books, the reevaluation could not have been ordered either by the University or even by the Court.

20. Regarding the cuttings, overwriting and erasion, which is apparent in the answer books and also the performance, it has been asserted by the learned counsel for the appellant that the cuttings, though appear in the answer book, but the appellant Dr. K.K. Wadhwani is not responsible for the same, as all cuttings which she had made, have her signatures/initials but the cuttings on which there is no initial or signatures could not be attributed to her. In defence learned Counsel Sri Umesh Chandra has gone to the extent of saying that the cuttings and interpolation are the handiwork of respondent No.1, namely, the candidate and her parents, who could have done so when the answer books were in the custody of Controller of Examinations.

21. Before examining the aforesaid arguments, it would be of great assistance to see the conduct of the parties, namely, that of respondent No.1 (Km. Sunita Singh) and her parents, appellant Dr. K.K. Wadhwani, Head of Department, Operative Dentistry and that of the University which includes the action of the Vice Chancellor as well as that of the Executive Council.

22. As already observed earlier, respondent No.1 has been a reasonably brilliant student having secured 67.7% marks in the first professional and 67.3% marks in aggregate in the second professional examination at KGMU, with rank 3 in her batch. She was also awarded "Certificate of Honour" in three subjects, namely, Human Dental Anatomy, Dental Histology and General Dental Materia Medica. In the third professional examination, she obtained 66.3% marks in aggregate and was ranked 2nd in her batch. She was also awarded "Book Price". An attempt has been made by the learned counsel for the appellant to show that respondent No.1 was not so brilliant, as she claims to be, as she was shown failed in one or two papers in the internal examination, which has been countered by the learned counsel for the respondent No.1 by saying that in prefinal examination (internal examination), the marks are very strictly awarded which do not reflect the true merit of a student. Apart from that, those marks do not carry any weight in the final examination nor are counted for.

23. Dr. K.K. Wadhwani, Head of Department, Operative Dentistry, even before the notice was issued by the court on the writ petition filed by respondent No.1, chose to defend her action by filing affidavit of her own on the ground that she has received the copy of the aforesaid writ petition from the Registrar, KGMU from where she noticed the allegations contained in paras 10, 11 and 12 of the writ petition. In this counter affidavit, Dr. Wadhwani denied that she was annoyed with respondent No.1 and asserted that she had taught all topics and no topic was ever left to be taught. She has tried to corroborate this statement of fact by saying that no student ever approached her for teaching of any subject

and she has gone to the extent of saying that she did not recognize respondent No.1 either by name or face, as it was practically impossible to recognize all the students of the faculty.

24. This statement of fact made by Dr. K.K. Wadhwani that she did not even recognize the candidate, namely, Ms. Sunita Singh apparently was against one's belief. It has been asserted by the learned counsel for the appellant that father of Ms. Sunita Singh is a doctor in a Government Hospital whereas her mother Dr. Savitri Thakur is Professor in the Department of Pediatrics in KGMU itself. Apart from the above, the respondent No.1 had been a brilliant student of her batch wherein she had been awarded "Certificate of honour", besides having obtained very good marks and position in the batch consistently, it does not appeal to reason that a teacher who has been imparting instructions to her students would not recognize such an student, who has consistently obtained merit position.

25. Justifying her award of marks, it has been stated by Dr. K.K. Wadhwani that she exercised her best wisdom and conscience to do justice with the answer books. It was stated that since precious life of citizens is dealt with by the doctors, it becomes the pious duty of the examiner to evaluate that the examinee is upto an acceptable level of standard before he or she starts treating the public. It would be a gross disservice to the public if an incompetent doctor is allowed to serve the masses. In this background the theory papers and practical examinations are evaluated meticulously. She further stated that respondent No.1 had got 20 marks out of 50 in the theory paper, which was examined by the external examiner, and out of 50, 20 marks were awarded by her, in the theory paper, which was examined by her. However, in the practical examination of respondent No.1, which was conducted by the external examiner clinically on the patients, followed by viva conducted jointly by her and the external examiner, she obtained 42 marks out of 100. According to the University Rules all passing candidates have to obtain minimum 50 marks out of 100 separately in theory and practical. Respondent No.1 had obtained a total of 40 marks out of 100 in theory and 42 out of 100 in practical and viva. Thus, she failed in practical as well as in theory in the subject of Operative Dentistry.

26. In this very paragraph she further stated as under:

?Though the deponent maintains that she exercised her best wisdom and conscience to do justice with the answer books and she evaluated them meticulously, she is surprised to note the allegations. After examination secrecy is maintained. The examination department is absolutely confidential section of the University and the answer books are out of reach, as they are sealed and kept in strong room.?

27. The statement made in this paragraph, namely, para 3 of the counter affidavit means to reflect that had respondent No.1 been awarded more marks, then it would have been a gross disservice to the public if an (in) competent doctor is allowed to serve the masses. Such type of allegations made by the

examiner only for putting a defence against an examinee cannot be appreciated, particularly when respondent No.1 was having a meritorious academic record and had secured quite good marks in other subjects, in this examination also.

28. Dr. K.K. Wadhwani also while refuting the allegations of tampering by her strenuously emphasized that full secrecy is maintained after examination and examination department is absolutely confidential section of the University where the answer books are out of reach, as they are sealed and kept in strong room. This allegation does not say that whether any interpolation was actually done or cutting or manipulation was there in the answer books but in fact it denies of any tampering having been done by Dr. K.K. Wadhwani but at the same time appears to have been made with a view to convince the Court that in view of the secrecy maintained at the examination department, no copy can be tampered with.

29. This statement forgets, that, as a bare truth, the answer book of respondent No.1 does contain overwriting, cuttings and interpolation. It would be a different matter as to who had done it and for what reason and with what motive. A clean denial in this regard or purposeful denial of getting herself absolved would not be of any assistance to the appellant in view of the factual position of the answer book and the award sheets.

30. Dr. K.K.Wadhwani has even gone to the extent of saying in para 4 of this affidavit that the mother of the respondent No.1 Dr. Savitri Thakur, Professor in the Department of Pediatrics, KGMU, Lucknow alongwith her husband came to her residence to pressurize her to increase the marks of respondent No.1 so that she passes, on which she told them that their request was unethical and it was not possible for her to increase the marks. This very fact indicates that the theory set up by Dr. K.K. Wadhwani that she was not knowing respondent No.1 or that she does not recognize her, is not a true depiction of the facts.

31. Thereafter a second counter affidavit has been filed by Dr. K.K. Wadhwani in which she again made an attempt to justify the action of awarding marks and in this counter affidavit she did not hesitate in making allegation even against the Vice Chancellor and imputing motive against him. Besides asserting that the Vice Chancellor without taking her version had chosen to send the answer books of five students for reevaluation or reexamination, she also asserted that Operative Dentistry is not the subject of the Vice Chancellor and, therefore, he has no knowledge of the subject. She also stated that for a person of the status of Vice Chancellor, it would have been desirable for him at least to consult the Dean, Faculty of Dental Sciences and also the Head of Department, Operative Dentistry, namely, Dr. K.K. Wadhwani but the Vice Chancellor took the step of sending the answer books for reevaluation and ordering for fresh practical examination for the candidate against all Rules and Regulations of the University, justifying his decision on the ground that this has been done on the legal advice of a Senior Advocate but without naming him or showing any such legal advice.

32. Dr. K.K. Wadhwani has charged the Vice Chancellor in the following manner

in this affidavit:

?????????.The deponent bona fide believes that the decision has the smell of personal bias because on one hand the Vice Chancellor supposedly consulted an Advocate but chose not to consult anybody from the Dental Faculty including the Dean or the deponent. This decision was rightly scrapped by the Executive Council because they also felt like the deponent that this decision would undermine the examination system of this prestigious college and encourage the students in future to make false and frivolous charges against their examiners and the students may go to the court for obtaining reexamination every time. This would result in the failure of the system of medical education, which has sustained itself nearly for the past hundred years in the prestigious institution without any such problem.?

?????.It is further submitted that if such pleas are entertained by the authorities then any student who fails in any subject will approach the authorities claiming falsely the element of bias against the examiner and the courts will be flooded with such petitions and ultimately examiners will find themselves spending more time in Court than Medical College and finally may prefer not to be examiners as they see their pride integrity and selfesteem dented.?

???????It is important to note that the Vice Chancellor had also requested the deponent to help the girl as far as possible but was informed by the deponent that she was unwilling to manipulate the result just to pass this particular candidate.?

33. She has also stated that good performance in the earlier examination cannot be a ground for reevaluation of the answer books or for holding fresh practical examination.

34. In this counter affidavit Dr. K.K. Wadhwani stated that respondent No.1 had got 20 marks out of 50 in theory paper which was examined by her and 28 out of 50 in theory paper examined by the External Examiner, as against her earlier statement on oath, in the previous affidavit dated 9.5.04, that 20 marks have been awarded in this paper also. Justifying the aforesaid discrepancy in the statement of fact made by her in earlier affidavit regarding the marks awarded in the theory papers, she stated that by human error it was written as 20 on the marking list and later on it was corrected as 28 and thus the total marks is 48 out of 100 in theory.

35. The first counter affidavit was filed even prior to the issuance of the notice to Dr. K.K. Wadhwani and there she stated that respondent No.1 had got 20 marks each in both the theory papers and had also reassured the belief that the examination process is very sacrosanct and examination section is very secret and confidential and the answer books are kept out of reach of any person. It has not been clarified in this affidavit that when undisputedly final marks which were awarded to the student were 28 in the theory paper (first), examined by the other examiner, then under what circumstances they were mentioned as 20

in the counter affidavit nor this was sought to be explained in the affidavit. The explanation which is sought to be given that earlier by human error it was written as 20 on the marking list but later on it was found that they should be 28, cannot be given any credence, as at the time when the first counter affidavit was filed, 28 marks had already been awarded in theory paper, then in what circumstances Dr. K.K. Wadhwani mentioned in her first counter affidavit that the student had got only 20 marks in each theory paper. The only inference which could be drawn for quoting incorrect marks, as against the marks, which were awarded to the respondent No.1, in the theory paper (first) was an effort to get the writ petition dismissed summarily, as ordinarily, the Court would have given due sanctity to the affidavit filed by the Head of the Department, while hearing the writ petition at the preliminary stage.

36. Denying the allegations of interpolation, cuttings and overwriting in theory papers as well as in practical examination she stated that in all 71 students had appeared in the subject of Operative Dentistry. Their roll numbers were printed in the award list. In two of the award lists, when internal and external examiner started transferring the marks, they did not realize that Roll No.44 who had appeared in theory and practical was missing in the award list, which was not expected. Due to that lot of cuttings had to be done in both the award lists. As the office of Controller of Examinations was closed at 6"O Clock, no fresh award list could be procured. Whatever cuttings are there, it is because of that. Since the mistake was realized after entering the marks in the first two award lists by the examiners, third award list is without any cutting. In this counter affidavit again she made allegations against the Vice Chancellor also, besides her parents, for asking her to help the girl in getting passed.

37. In the supplementary affidavit filed in the Special Appeal, the appellant Dr. K.K. Wadhwani admitted of awarding 10 marks to question No.1 in theory paper (second) and that thereafter she reduced it to 8 marks. A curious explanation has been given for doing so in para 2 of the affidavit, which reads as under:

?2. That as regard to answer to question No.1, initial marks given was ten. But after going through the text written by the respondent No.1, the deponent could not give more than eight marks as the question replied was not correct and she had written many pages of the answer book but actually she had not written what was asked????? ?????????????????...?

38. The aforesaid averment on oath indicates the manner in which the copies have been examined. According to her own admission, Dr. K.K. Wadhwani awarded 10 marks as against question No.1 and after awarding 10 marks, she cared to go through the text of the answer. This statement of fact made in the counter affidavit, if accepted, would show that the examiner awarded 10 marks initially without examining the answer and reduced them to 8 afterwards when she thought of going through the text of the answer. This statement is wholly unbelievable and if credit is given to such statement, it would vitiate and pollute the whole system of the examination. In this affidavit she has also tried to justify

her own award of marks and has tried to impress upon the Court that the student was not upto the mark.

39. A second supplementary affidavit has been filed by her in which again she has asserted that the student Ms. Sunita Singh was not a brilliant student and that in the preprofessional examination she obtained less than pass marks in Orthodontics and Operative Dentistry. She also stated that the factum of interpolation and using of white fluid in the answer book had come to the knowledge of the father of respondent No.1 on 15.4.2004 which speaks that tampering had been done subsequently to the sealing of answer book and award list by the examiner. During the course of arguments, learned counsel for Dr. K.K. Wadhwani submitted that this appears to have been done when the copies were with the Controller of Examinations. Thus, for defending herself, she also charged the office of the Controller of Examinations, for extending favour, though without there being any prima facie proof.

40. The facts admitted or proved from the record, establish beyond doubt that there has been interpolation, manipulation, cuttings and overwriting and use of white fluid in the answer book of theory paper (second) of Operative Dentistry as well as in the award sheets of practical examination. The question for consideration thus would be that in view of the aforesaid established facts, whether the Court was justified to make an enquiry through the agency of the Government Forensic Laboratory and that whether the Court ought to have stopped his hands after seeing the result of the practical examination held afresh under the orders of the Vice Chancellor wherein respondent No.1 again failed.

41. The action of the Vice Chancellor was the result of representation made by the parents and respondent No.1 in view of the direction issued by the High Court on 26.4.2004. Since reevaluation and reexamination of the answer books is not provided under the Rules of the KGMU, therefore, before the result of the aforesaid reexamination or revaluation could be declared, the Executive Council in its emergent meeting on 13.4.2004 rejected the steps taken by the Vice Chancellor. The Vice Chancellor in his own order dated 17.5.2004 has clarified that he was convinced that there was cuttings and overwriting in the answer sheets. The factum of cuttings, overwriting and interpolation in the marks given to the respondent No.1 came well within the knowledge of all others when the consultation was made by the Vice Chancellor with such persons and, therefore, it cannot be said that parents of respondent No.1 or respondent No.1 could gather such information of interpolation, cuttings and overwriting by adopting some underhand policy or by surreptitious or illegal means. There was lot of criticism and hue and cry in the newspapers also when the external examiners were appointed for holding practical examination.

42. A distinction has to be kept in mind where the Court has to consider when the relief claimed for, has already been granted or has been made available, though the result of such relief may not be in favour of the student and in such a case probably the Court would not have any occasion to make any further probe

or to mould the relief but in a case where a relief is claimed for reevaluation (as in the instant case) and even if such a relief has been made available by the agency not that of Court but that of departmental agency or the University, as the case may be, the court has to see that whether there was some gross illegality in such reevaluation or reexamination or that even without undertaking that process of reevaluation or reexamination, the candidate could be declared passed on the basis of the original marks and the relief of reevaluation was not the real relief nor was required to be considered or given.

43. In the instant case the court would be fully justified to direct for award of such marks, which were initially awarded, namely, untampered, unmanipulated or uninterpolated marks. The reason for such an observation is that had the result of the student (respondent No.1) been declared after taking into account the marks originally awarded she would have been declared pass and there was no occasion for her to fail in the subject concerned or in the examinations. Besides, if a student had secured marks which are sufficient for getting herself declared as successful and the award of such marks had been tampered with resulting into declaration of the student as failed, allowing him or her actual marks awarded, would not mean any reevaluation of the answer books or holding of reexamination but only facilitating her or him to get her result corrected and declared in view of the marks actually awarded. A student who has been awarded marks more than the pass marks can never be declared as failed and if such a student had been declared failed for any reason whatsoever by interpolation or manipulation of marks, she/he has every right to get the discrepancy removed so that he/she is declared passed. This does not involve any exercise of reevaluation or reexamination and, therefore, it cannot be said that the learned Single Judge committed any error or acted beyond his jurisdiction in entering into this controversy to find out the actual marks initially awarded to respondent No.1. As a matter of fact, the tampered reduced marks cannot be taken as the marks ever awarded nor the same could have been legally awarded and, therefore, such manipulated marks could not have been taken into account for declaration of the result, at all.

44. It has been strenuously urged that the learned Single Judge once have got the result declared of the reevaluation of the theory paper and that of the fresh practical examination and having found that respondent No.1 failed in the practical examination, he ought not to have further directed the answer books to be sent to Government Forensic Laboratory, as the court would have no power to give a second chance to the candidate unless he or she is declared successful. This argument in a sense disputes the jurisdiction of the learned Single Judge and his order in proceeding with the enquiry in the matter of award of marks to respondent No.1 after knowing the result of the fresh practical examination.

45. Firstly, from the record, it does not appear that the learned Single Judge ever directed that the result of the reexamination or reevaluation of the answer book done under the directions of the Vice Chancellor would be final or should be

declared. It was in pursuance of the orders passed by the Court for production of the entire records including the answer books that the said marks were also produced. Learned Single Judge had seen the marks and has also given his reasons for not giving any importance or for not adhering to the marks so awarded in the practical examination. We are not on the reasons at the moment which have been given by the learned Single Judge for not giving weight to those marks which have been given in the practical examination held afresh, but we do hold and find that a perusal of the original answer book on the same very day by the learned Single Judge, which not only reflect but does prove the fact of cuttings, overwriting, interpolation and manipulation, use of whitener and rubbing to the extent of perforation of the page, all which was evident to a naked eye, prompted the learned Judge to refer the matter to the Government Forensic Laboratory. It was only on the perusal of the original record that such an opinion could be formed that, prima facie, there was a clear case of interpolation and manipulation with the answer books with respect to the award of marks and once the said fact is found lurking into the answer books, the Court could very well embark upon the scrutiny and enquiry to find out the correct version of the marks given to a candidate. Tampering has been done with such impunity that it did not remain a matter of assessment or guess as to whether the tampering has been done or not. Learned Judge as well as we ourselves have seen the answer books and we find that the original marks awarded in different questions were as follows which have been substituted by lesser marks, as observed by the learned Single Judge, who has found as under:

?In the second paper of operative dentistry according to report forensic expert in question No.1 the petitioner was originally awarded 12 marks which has been changed by overwriting to 8 marks. In question No.2 she was awarded 10 marks, which has been changed to 8 marks. In question No.3a, the marks have been changed by overwriting or erasion to "0" but it could not be deciphered. In question No.3 b, the petitioner has been granted originally 4 marks, which has been changed to "0" marks and question No.3c, the petitioner has been granted 4 marks, which has been changed to 2 marks. Accordingly, originally petitioner was granted not less than 30 marks (since originally marks in question No.3a could not be deciphered by the Laboratory). However, as per result declared by opposite party No.3, in second paper of operative dentistry the petitioner has been given only 20 marks.?

46. In the total aggregate column of cover page initially/originally 30 marks have been totaled both in figures as well as in words but thereafter cutting has been done and they have been made 20.

47. In the case of Smt. Gunwant Kaur and others v. Municipal Committee, Bhatinda and others, 1969 (3) SCC 769, the Apex Court while considering the power of the High Court to direct an enquiry by the CBI, observed that the said power can be exercised only in a case when there is need of any such enquiry. It is not sufficient to have such material on the pleadings. On the contrary, there is

a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an enquiry by CBI. The Court further held "therefore, it is clear that a decision to direct an enquiry by CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations".

48. Learned Single Judge, in the instant case, was not only, prima facie, satisfied about the illegalities committed in the matter of award of marks but was also satisfied on perusal of the original answer books that there was clear interpolation, cuttings, overwriting and use of whitener and reduction of marks as against the marks originally awarded and that too without following the procedure prescribed under the Rules for making cuttings and giving different marks i.e. no such cutting contained any initial or signature of the examiner. The relevant circular and the Rules, which have been quoted in extensor, in his judgment by the learned Single Judge, forbid any cutting, over writing or use of whitener in the answer books by the examiner and in case any cutting has necessarily to be done, the same has to be done only by a straight line, and by putting the initials of the examiner. Need was also felt by the learned Single Judge to get the report of the Forensic Expert, as the original marks as were awarded to the respondent, if had been calculated for the purpose of declaration of result, she would have certainly passed and she could not have been failed.

49. In the case of *State of Orissa v. Dr. (Miss) Binapani Dei and others*, AIR 1967 SC 1269, while considering the permissible limits of enquiry by the High Court while issuing the writs of certiorari and mandamus regarding the disputed questions of fact, the Supreme Court observed as under:

"Where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court. In the present case the question in dispute was about the regularity of the enquiry and the High Court apparently was of the view that the question whether the State acted arbitrarily did not raise any question of investigation into complicated issues of fact. No interference with the exercise of discretion of the High Court is, therefore, called for."

50. The controversy before the learned Single Judge did not raise any disputed question of fact nor there was any legal bar for the court to make an enquiry into the aforesaid facts wherein the only question was limited to the fact that as to what were the original marks awarded to the respondent.

51. In the case of *Smt. Gunwant Kaur and others v. Municipal Committee*,

Bhatinda and others (supra), where the High Court dismissed the writ petition in limine on the ground that there were disputed questions of fact, the Supreme Court observed as under:

?In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine question of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties, the High Court should have entertained the petition and called for an affidavit in reply from the respondent, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.?

52. Also there is no explanation coming forward from Dr. K.K. Wadhwani that on the one hand she has been disputing all cuttings being done by her on the ground that cuttings which do not contain her initials have not been made by her and on the other hand she admits that the marks mentioned in the cover page of the answer book and on the award sheets are the correct marks, though they are also the result of cuttings, overwriting, obliterated by using whitener but do not contain her initials on such cuttings. The only signature, which finds place, is on the bottom of the cover page against the total aggregate but cutting done on the total marks initially mentioned, as 30 also have not been initialed. This belies the statement of Dr. K.K. Wadhwani that cuttings, which do not bear her initials, have not been made by her or cannot be taken to be made by her. In view of her own first counter affidavit that examination section maintains strict secrecy and the answer books are kept in the manner so that they are beyond the reach of any person, it can safely be presumed that any cutting, interpolation or overwriting which has been done in the answer books, has been done somewhere before the answer books were given in the custody of Controller of Examinations. Wild allegations with no basis that cuttings and interpolations might have been got done when the answer books were in the custody of Controller of Examinations appears to be a desperate stand taken by the Head of Department for defending herself for which she had gone to the extent of even making allegations against the Vice Chancellor.

53. So far as the practical examination is concerned, the award list shows cuttings and that Dr. Rajiv Kapoor, External Examiner, had admitted in his affidavit that such cuttings have been done whereas Dr. K.K. Wadhwani denies it. The explanation given that 53 marks were awarded to respondent No.1 in the practical examination but it was because of the wrong placement of marks of the individual candidates that such marks were shown against her name is also neither trustworthy nor believable nor flows from the award sheets.

54. A perusal of the award sheet would reveal that the explanation given by the appellants that since Roll No.44 was absolutely missing from the award sheet and, therefore, on noticing the aforesaid facts, the marks had to be shifted and, therefore, the marks which were awarded to Roll No.63 were actually shown to

have been awarded to respondent No.1 having Roll No.64, does not inspire any confidence inasmuch as it has not made any difference in the award of marks so far as respondent No.1 is concerned.

55. The award sheets show that even in theory first paper she has been shown to have achieved 20 marks instead of 28 marks actually awarded and after cutting she has been set to have achieved 20 marks in theory second paper also. This figure 20 has been made after making over writing over "30" marks initially mentioned therein. Likewise there is cutting of 50 marks total in theory paper by making it 40. In oral and practical marks 53 have been rubbed out and they have been substituted by 42 marks. In the total aggregate also the figure of 82 has been mentioned after scoring out earlier total marks apparently 103. This interpolation is evident by bare naked eye, and is unchallengingly prominent and apparent in the light of a bulb and is absolutely clear in the award sheet No.1 and is more clear and evident in award sheet Nos.2 and 3.

56. It is also not known that when the petitioner had obtained 28 marks in theory first paper then why they have been shown as 20 in all the award sheets. This itself establishes that cutting and interpolation was done in the award sheets unauthorisedly and arbitrarily with a motive Dr. K.K. Wadhwani herself in her second affidavit made an attempt to explain that it was by over sight that in the first affidavit she mentioned that the petitioner had received 20 marks in theory first paper also though she had obtained 28 marks in that paper. In case explanation given by Dr. K.K. Wadhwani is taken as correct, there was no occasion in the award sheet to writ 20 marks in theory first paper whereas the answer book indicates that she had been awarded 28 marks in theory first paper. This not only creates doubt about the actual marks awarded to respondent No.1 but also proves beyond doubt that even the marks, which were awarded to her even after cutting and over writing and which are said to be the correct marks awarded by the examiner were not put forward in the award sheets. The finding of the learned Single Judge that a perusal of the award list discloses that initially 53 marks were given which were reduced to 42, cannot be said to be erroneous or based on no evidence.

57. The actual marks initially awarded to respondent No.1 was got verified by the learned Single Judge by referring the matter to the Government Forensic Laboratory, for satisfying the Court about the genuineness of the claim of both the parties, and not for holding a trial, where a full fledged opportunity of cross examining the expert ought to have been afforded. The report so submitted verified the marks so awarded. The learned Single Judge has rightly applied the principle of Section 56 of the Evidence Act, which provides that the facts, which are judicially noticeable, need not be proved. It cannot be disputed that the interpolation and manipulation done in the answer book and the award sheets is so prominent that notice of the same could have been taken by the Court himself. Besides, the learned Judge himself had ascertained the original marks awarded and in view of Section 73 of the Indian Evidence Act, he was having full

jurisdiction to satisfy himself about the marks so awarded.

58. We have also perused the original answer book and award lists and we find that the findings arrived at by the learned Judge are based on the marks actually awarded initially in the answer book and the award sheets. A bare perusal in sunlight or against a bulb in a lamp makes it self evident that the original marks awarded have been reduced by manipulation and interpolation. The facts of the case are such that the ends of justice require intervention by the Court. If such unethical and immoral attempts in the educational institutions are not checked by the Court, that would not only ruin the career of one or two students but would bring down the whole edifice of education and particularly the higher education.

59. Various authorities have been cited from both the sides for and against, defining the jurisdiction of the High Court under Article 226 in the matter of holding reexamination or reevaluation and that also the authority of the High Court in ordering for expert report and for basing their judgment only on the pleadings of the parties and not to travel beyond the same.

60. The first case which has been relied by the learned counsel for the appellants is Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and others, (2004) 6 SCC 714, in support of their submission that if the rules do not permit, reevaluation, the examinees have no right to claim or demand reevaluation. In this reexamination of the answer books was allowed by the High Court in a competitive examination held for being selected in the Judicial Services (Competitive) Examination, 1999. The petitioner Promod Kumar Srivastava finding himself not being successful in the aforesaid competitive examination approached the Patna High Court on the plea that he has secured very good marks in all the papers and had also answered the questions in General Science paper correctly and, therefore, he would have been awarded much higher marks in the said paper in case the same was correctly examined. On this plea, the High Court issued direction to the Commission to produce the answer books of General Science paper after the petitioner had deposited Rs.5000/- by way of security. The answer book was shown to the Standing Counsel for Patna University, who apparently had science background, and, he was of the opinion that the petitioner deserved more marks. The learned Single Judge then directed the Standing Counsel for Patna University to have the answer book reevaluated by expert teachers through the Principal, Science College, Patna. A photocopy of the answer book (after blacking out the marks awarded by the Examiner of the Commission) was handed over to the said counsel. After fresh evaluation of the answer book by two experts viz. a Physics Teacher and a Biology Teacher of Patna Science College, the answer book was returned to the Court by the counsel. In that fresh evaluation, the petitioner was awarded 63 marks as against 35 marks which had been awarded to him by the Examiner of the Commission. The writ petition was allowed and a direction was issued to the Commission to reconsider the case of the petitioner treating his

marks in General Science paper as 63. The Commission preferred a letters patent appeal against the aforesaid judgment and order of the learned Single Judge, which was allowed by the Division Bench, and the order passed by the learned Single Judge was set aside. The order passed by the Division Bench was challenged by the candidate in the Supreme Court. The Apex Court found that there was no provision of reevaluation of the answer books and that there was only a provision of scrutiny in which no discrepancy was found in the award of marks. In this background the court observed that in the absence of any provision of reevaluation of answer books, no candidate has got any right to claim or ask for reevaluation of marks. Making a note of the judgment pronounced by the Apex Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27, the Court also took note of the aforesaid judgment, wherein the judgment of the High Court was set aside, while holding that no such direction can be issued by the High Court. The Apex Court also observed that even otherwise, the manner in which the Single Judge had the answerbook of the appellant in General Science paper reevaluated cannot be justified. The answerbook was not sent directly by the Court either to the Registrar of Patna University or to the Principal of Science College. A photocopy of the answerbook was handed over to the Standing Counsel for Patna University, who returned the same to the Court after some time and a statement was made to the effect that the same had been examined by two teachers of Patna Science College. The names of the teachers were not even disclosed to the Court. The examination in question is a competitive examination where the comparative merit of a candidate has to be judged. It is, therefore, absolutely necessary that a uniform standard is applied in examining the answer books of all the candidates.

61. It has been, therefore, emphasized that in view of the judgment pronounced by the Apex Court and the law laid down in the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (supra), it cannot be disputed that in the absence of any rule for reevaluation, a student cannot claim such a relief and that no such direction can be issued by the High Court.

62. Here the argument is that when respondent's claim of reevaluation was accepted by the Vice Chancellor and that the learned Single Judge had also got the marks opened in the reexamination of practical, then there was no occasion for the Court to proceed further and embark upon an enquiry into manipulation or interpolation made in the answer books, an argument which does not say that reevaluation could not have been ordered by the learned Single Judge in the instant case.

63. Even assuming that reevaluation could not have been ordered, we find that there is no such direction for reexamining or reevaluating the answer books issued by the Court. What the Court has done is that the candidate, namely, respondent No.1 has been directed to be awarded those marks which were

originally awarded to her i.e. untampered and uninterpolated marks and to declare her result accordingly. At no point of time, the Court ordered for reevaluation or reexamination of the answer books or for holding fresh practical examination. In case the Court finds in a given case that the actual marks awarded do not depict on the cover page of the answer book or against the answers themselves, in the answer book or in the award sheets or in the final result, the Court would be fully competent to get the said discrepancy removed and, of course, the final result would depend upon the marks so actually awarded. A candidate who has secured pass marks in all subjects cannot be declared failed and he would remain pass even if in the final result, he is shown as failed by mistake or otherwise.

64. In the case in hand, the final result sheet did not contain the true marks or the original marks which were awarded to the student and substituted marks which were inserted by cuttings, overwriting and interpolation and by using whitener were shown which resulted into wrong declaration of her result as failed. It is only this result which has been got corrected by the Court. Therefore, the argument that the Court could not have ordered for reevaluation and once the reevaluation was done, the Court could not have entered into further enquiry nor could have ordered for awarding marks as originally awarded is found to be devoid of substance and deserves to be rejected.

65. In fact, this was a case of proper scrutiny, which exercise was though undertaken but was not done in the manner in which it should have been done. A scrutiny of answer books as per rules is made for knowing whether all answers have been examined and marks have been awarded, and the marks awarded have rightly been put on the cover page, in the award sheets and in the tabulation chart. The scrutiny would include that if any interpolation and manipulation or cutting has been done which has overshadowed the real original marks awarded and, if it is so, then to correct such a discrepancy and get the result declared by taking into account the actual marks originally awarded. It was thus a case of scrutiny and if care would have been taken, the scrutiny itself would have detected the aforesaid gross discrepancy into the award of marks, and consequently in the declaration of result.

66. Reliance has also been placed upon a Division Bench judgment of this Court in the case of Lucknow University v. Sanjay Sharma, 1994 (12) LCD 349 wherein the question regarding withdrawing of reevaluation facility by the University was under consideration in which the Court held that no grievance can be made if reevaluation facility is withdrawn, as it is not a substantive right.

67. In the case of Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and others, (2003) 8 SCC 311, on which reliance has been placed by the learned Single Judge, the Apex Court observed as under:

¶13. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct

of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud.

14. In *Lazarus Estates Ltd. v. Beasley*, the Court of appeal stated the law thus:

?I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage, which he has obtained by fraud. No judgment of a Court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.?

68. In the case of *Chengalvarya Naidu v. Jagannath and others*, (1994) 1 SCC 1, the Supreme Court has held that a fraud is an act of deliberate deception for some extraneous reasons. A decree or judgment obtained by fraud is nullity and non est.

69. Learned Single Judge has taken into account the verdict of the Apex Court in the case of *J.P. Unnikrishnan and others v. State of Andhra Pradesh and others*, (1993) 1 SCC 645, for holding that right of education is a fundamental right and that a writ lies not only for issuance of prerogative writs but also for other purposes.

70. Reliance has also been placed upon the case of *Bashesar Nath v. Commissioner of Income Tax and another*, AIR 1959 SC 149; *Dwarka Nath v. Income Tax Officer and another*, AIR 1966 SC 81; *Minerva Mills Ltd. v. Union of India*, (1980) 2 SCC 1789, wherein the Supreme Court had given emphasis to exercise power to preserve the constitutional rights of the people of the country; *Devi Lal v. Sales Tax Officer*, AIR 1956 SC 1150; *Fertiliser Corporation Kamgar Union (Regd.) Sindri and others v. Union of India and others*, AIR 1981 SC 344 and also on the case of *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and others*, (1999) 6 SCC 464, wherein in para 59, the court has observed as under:

?59?????.Every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. On the principle of good governance reference was made to a decision of the Division Bench of the Bombay High Court in *State of Bombay v. Laxmidas Ranchhoddas* (AIR Bom at p.475) (para 120). It was submitted that bad governance sets a bad precedent.?

71. On behalf of respondent No.1, the following cases, which were also cited before the learned Single Judge, were also placed before us in support of his submission that in the exercise of extraordinary jurisdiction under Article 226 of the Constitution, the High Court has interfered with the marks granted by the examiner on the ground that inspite of giving correct answers the examinees were not awarded correct or actual marks by the examiner for various reasons.

1. Krishna Kumar Roy v. State of U.P. and others, AIR 1981 All. 287.
2. Kanpur University v. Sameer Gupta, AIR 1983 SC 1230.
3. Vaibhav Pandey v. Board of High School, (1998) 2 UPLBEC 1501.
4. Pankaj Bhalla v. State of U.P. and others, (1989) 2 UPLBEC 205.
5. Aastik Kumar Pandey v. Director/Chairman, Board of High School and Intermediate Examination, (2001) 19 LCD 598.
6. Surabh Kumar Gupta v. State of U.P. and others, (2001) 1 UPLBEC 31.
7. Km. Renu Sharma v. Madhyamik Shiksha Parishad and others, 1985 UPLBEC 734.
8. Shivdhari Prasad Shah v. State of Bihar and others, AIR 1990 Patna 196.

72. The Court has also taken into consideration the absence of any alternative remedy to respondent No.1 and also the fact that in case such illegal activities are not checked, they would further bring down the standard of education in the State.

73. Learned Single Judge has come to the conclusion that in view of the settled proposition of law and on account of material on record relating to interpolation, fabrication and changing of marks, the writ petition deserves to be decided on the basis of material on record and it cannot be thrown out for any hyper technical ground.

74. The Supreme Court in the case of Shivajirao Nilangekar Patil v. Dr. Mahes Madhav Gosavi and others, (1987) 1 SCC 227 has observed that it shall be in the public interest to investigate an allegation of fraud etc. in educational institutions. Relying upon paras 36 and 37 of the report, the learned Single Judge proceeded to exercise the jurisdiction under Article 226 of the Constitution.

75. Fraud vitiates all solemn proceedings. In case the Court is satisfied that such fraud has been committed, may be either by letter or words or by interpolating the marks, as in the instant case, and if on scrutiny of relevant pleadings and material on record, the Court is satisfied about the illegality so committed, he would be discharging his duty only to uncover the truth by issuing necessary orders. It shocks the conscience of the Court, when the cases of like nature are brought before the Court.

76. While exercising jurisdiction under Article 226 of the Constitution, the High Court has to keep in mind that whether the action impugned violates any fundamental right of the party or the party seeks enforcement of any fundamental right or the breach which is being claimed is a statutory breach which infringes the statutory right of the party concerned. It is also to be borne in mind that jurisdiction under Article 226 besides being extraordinary under which prerogative writs are issued by the High Court, it is also equitable jurisdiction which has been conferred upon the Court for doing substantial justice

where miscarriage of justice or failure of justice has occasioned, because of some deliberate act or otherwise. May be, at times, such arbitrary and illegal action is a result of some mala fide action or misrepresentation or fraud effected by the party against whom the relief is being sought for, then in that case, it would be a fit case and a very appealing reason for the Court to interfere and to undo the wrong done. The powers under the said Article exercisable by the High Court are not confined to the rights which emerge or flow only under Chapter III of the Constitution, namely, Fundamental Rights, but they can be exercised for any other purpose also.

77. In a case where the High Court finds and is surely convinced on the basis of the material on record and on considering the pleadings of the parties that the grievance of the petitioner is not without substance and that the action impugned cannot be supported by any legal provisions or under any authority of law, which action at the same time has unhesitatingly resulted into a complete failure of justice and a gross miscarriage of justice has occasioned to the petitioner, the interference made by the High Court in undoing such wrong and providing justice to the aggrieved party while doing substantial justice would by no means be a matter of blimey.

78. The plea that there was no sufficient pleadings on record of the writ petition so as to make out a case of fraud or deliberate overwriting, interpolation and reduction of marks in the answer books and, therefore, the Court could not have embarked upon any such enquiry has to be seen in the light of the pleadings of the parties and the entire material which has been brought on record. In the writ petition, the allegation has been made against Dr. K.K. Wadhvani and the reason for her annoyance and also that it had come to the notice of the petitioner that there has been interpolation in the answer books of the petitioner. It has also been stated that out of the three foils of the award sheets, in two foils the marks obtained by the petitioner have been reduced by tampering. It was further alleged that in these two foils, the marks have been deliberately changed by using whitener to the utter disadvantage of the petitioner and that if the award sheet is reviewed, it would be confirmed that there has been interpolation in the marks obtained by the petitioner. The representation to that effect which was given to the Vice Chancellor on 15th April, 04 has also been annexed along with the writ petition. Thereafter counter and rejoinder affidavits have been filed in which there is denial about the aforesaid averments by the appellant but reiteration in the rejoinder affidavit filed by the petitioner/respondent. Thus, it cannot be said that no case was ever pleaded before the learned Single Judge invoking his jurisdiction for reevaluation of the copies after reexamining them after perusing the same. The reason for such annoyance and deliberate reduction of marks by interpolation, cuttings, overwriting and by use of whitener was also indicated either in the writ petition or in the representation made to the Vice Chancellor which was made part of the writ petition. A wholesome reading of the pleadings of the respondent would reveal that the examinee, namely, respondent No.1, pleaded a case of deliberate mala fide action of the examiner, which has

been termed by the learned Single Judge as "fraud played by the examiner".

79. On the pleadings of the parties and after hearing them, the learned Single Judge passed an order on 24.5.2004, after perusing the records, namely, the answer books and the marks obtained by the respondent No.1 in the reevaluation done under the directions of the Vice Chancellor of the answer books of the theory paper and also the practical examination held afresh, for sending the answer books to the Government Forensic Laboratory for examining the marks originally awarded and the marks subsequently recorded. Learned Single Judge had perused the answer books himself in the presence of the parties' counsel and also provided Photostat of the same to the learned counsel for the parties and he being convinced and satisfied that apparently there had been cuttings, overwriting and use of whitener and rubbing to the extent that paper has perforated, he ordered for the aforesaid examination by the Government Forensic Laboratory. The learned Single Judge also recorded a finding that on seeing the answer books in the light of a lamp, apparent interpolation made, namely, reduction of marks i.e. recording of lower marks after the marks initially had been awarded, was very clear. It is in this background that the report was called for from the Government Forensic Laboratory and the Government Examiner also confirmed the interpolation and gave the following report:

(a) At front page of the copy where marks are to be entered in respect column erasion has been done by the use of fluid. Original marks have been obliterated in Q No.1 and 2, 8 marks have been awarded after erasion and use of whitener which could not be deciphered by the expert.

(b) At the front page of the copy total marks entered by the examiner was 30 which has been changed by overwriting to 20. Accordingly, the original marks have been obliterated by overwriting and cutting. No signature on the overwritten portion.

(c) In the copy in Q No.1 the total marks granted to the petitioner was 12 which has been changed to 8 marks. Similarly in Q No.2 the total marks granted was 10 which was changed to 8. Expert could not decipher the marks granted to the petitioner in Q No.3 A because of erasion and overwriting. In Q No.3 B petitioner was granted 4 marks which was changed to 2 marks by the examiner. In Q No.3C petitioner was granted 4 marks which has been changed to 2 by the examiner. Thus the original marks granted in each and every question has been changed by cutting, overwriting and interpolation.?

80. The Court again perused the original record and arrived at the following conclusions:

(a) In the award sheet which was marked by the expert as Q No.1, original marks granted to the petitioner in theory second paper seems to be 30 and total marks in theory paper seems to be 50 which has been converted into 20 and 40 respectively. The total marks in practical examination has been originally

recorded 53 which has been changed to 42. This has been done by overwriting 30 marks in theory second paper and total 50 marks in theory paper (I and II paper) as well as 53 marks in practical paper of Operative Dentistry can be noticed by careful scrutiny of award sheet marked as Q 3 by the examiner. The total marks in the paper of Operative Dentistry (which includes theory and practical paper) was originally recorded as 103 marks but it has been changed by erasion or use of whitener to 82. These facts can be noted by careful scrutiny of marks through naked eye or by use of magnifying glass or by looking the award sheet from back side in the lamp light.

(b) In the award sheet which has been marked by Forensic Expert as Q 2 the original marks as per observation made hereinabove relating to award sheet marked as Q 1 is affirmed again by careful perusal of award sheet by naked eyes as well as by magnifying glass or in the lamp light from back side. The report given by the Forensic Expert seems to be correct.

(c) In the award sheet marked as Q 3 by the expert, the theory second paper erasion has been done with the use of fluid and 30 marks seems to be converted into 20. Similarly the total marks of the theory paper has been made 40 by use of fluid and erasion. Though by naked eye the original marks is not identifiable. Similarly the total marks granted in practical paper in the award sheet, as Q 3 is not identified by the naked eye.

(d) In the second paper of Operative Dentistry when the copies are perused it has been found that at front page the original marks recorded in Q No.1 and 2 has been erased and thereafter recorded 8 marks in each question. Adjacent to Q No.3 fluid has been used. However, by naked eye it can be seen that the petitioner was granted in Q No.3, 8 marks. The total marks in the second paper of Operative Dentistry have been recorded as 20 by overwriting and cutting. A careful scrutiny of the total marks shows that originally the petitioner was granted 30 marks but by cutting and overwriting it has been converted into 20. There is no signature of the examiner over the total marks recorded in the front page of answer book Operative Dentistry. However, total marks seen by magnifying glass or in the lamplight it can be deciphered to 30.

(e) While perusing the copy it was found that while granting the marks in Q No.1 the original marks have been erased and overwriting has been done and rewritten as 8 marks. Similarly Q No.2 interpolation and overwriting has been done and there is no signature over the cutting and marks have been changed to 8 marks. In Q No.3A the original zero marks have been granted but at the face of original record seems to be manipulation and no signature found over the cutting on original marks. In Q No.3B there is overwriting and cutting over the original marks seems to be 4 marks but petitioner has been granted 2 marks. In Q No.3C there is overwriting and cutting in the original marks which seems to be 4 marks in case carefully scrutinized in the lamp light or with the use of magnifying glass, but the examiner had granted 2 marks. There is no signature over cutting or overwriting at the relevant place.

Learned Single Judge has further observed as under:

?In the first theory paper of Operative Dentistry, the petitioner's total marks was recorded as 20 but from the original copy of the first theory paper of the Operative Dentistry and as per own admission of the respondents, after scrutiny correction has been done and the petitioner has been granted 28 marks. Accordingly on the basis of report submitted by Government Forensic Laboratory, Mahanagar, Lucknow and material on record, the petitioner's marks in the paper of Operative Dentistry comes as under:?

81. Learned Single Judge has held that on the basis of the report sent by Government Forensic Laboratory, Mahanagar, Lucknow and from a perusal of the record, the total marks at the face of the record seems to be as under:

Subjects Marks granted

Theory First Paper 20

Theory Second Paper 30

Total in theory First and Second Paper 58

Oral and Practical 53

Total Marks in theory and practical 103

Learned Single Judge has further observed as under:

?In the first theory paper of Operative Dentistry, the petitioner's total marks was recorded as 20 but from the original copy of the first theory paper of the Operative Dentistry and as per own admission of the respondents, after scrutiny correction has been done and the petitioner has been granted 28 marks. Accordingly on the basis of report submitted by Government Forensic Laboratory, Mahanagar, Lucknow and material on record, the petitioner's marks in the paper of Operative Dentistry comes as under:

Subjects Marks granted

Theory First Paper 28

Theory Second Paper 30

Total in theory First and Second Paper 58

Oral and Practical 53

Total marks in theory and practical 111

Thus on the basis of original record and the report of Forensic Expert the petitioner is entitled for total 111 marks in the paper of Operative Dentistry in view of discussion and finding recorded hereinabove.?

82. We have already observed that the defence of the appellant that all those

cuttings, which do not bear her signatures have not been made by her and that some interpolation might have been done by the respondent herself, she being the daughter of parents who themselves are in medical profession and it is at the stage when the answer books were in the custody of Controller of Examinations that such interpolations have been done, is a defence which has been set up only for being rejected.

83. The stand taken by the appellant is contradicted by the fact that the cover page of theory second paper does contain cuttings by means of which against the total number of marks awarded were shown as 30 both in figure and words and thereafter by cutting the same, they have been recorded as 20, both in words and figure but this cutting does not contain any initial or signature of the examiner, though she owns and says that the reduced marks are the marks which have rightly been awarded to the respondent.

84. In the practical examination also, the award sheet indicates that the respondent was awarded 53 marks in the practical examination of Operative Dentistry but they were reduced to 42 by tampering.

85. In the circumstances, without relying or accepting the plea of reevaluation of the answer books, the learned Single Judge only made an enquiry about the correct marks which were actually awarded to the respondent by the examiner herself but which were blatantly, arbitrarily and illegally reduced by making cuttings, overwriting and interpolations, and even perforation on the cover page, which resulted into wrong declaration of result of the respondent No.1.

86. On the basis of the aforesaid material before the Court, the Court was fully justified in entering into the question of original award of marks to the candidate, as the Court could not have been a silent spectator in the matter where the fate of a medical student who appeared to be a good student from her academic record be sealed or blemished by deliberately or otherwise reducing the marks as against the marks which were originally awarded and that too in the manner which is not permitted under the Rules. The learned Single Judge has taken into consideration, the relevant rules and instructions, which are to be followed by the examiner, in case any alteration is to be made in the marks already awarded, in given circumstances, but that procedure also has not been followed by the examiner. A student cannot be declared failed nor can be allowed to be declared as such by the authorities when the matter is brought to the notice of the Court or the Court acquires knowledge of such discrepancies in the preparation of the result.

87. Sri S.P. Gupta, learned Senior Advocate, has placed reliance upon the case of State of U.P. and others v. Raj Karan Singh, (1998) 8 SCC 529 in support of his submission that the relief which has been granted by the learned Single Judge is beyond the relief claimed by the respondent inasmuch as that the respondent has claimed only for reevaluation of the answer books and not for getting them examined by Forensic Expert or for awarding the original marks.

88. In the case referred to above, the original prayer of the respondent was for the issuance of a writ to allow him to continue till regular selection through the UPSC was made. The High Court by an interim order directed that his ad hoc appointment to be continued till a regularly selected candidate was available or till termination of his service in accordance with law or till the abolition of the post but during the subsistence of the interim order, an order was passed by the High Court saying that since the respondent, namely, the petitioner to the writ petition had been working for the last one year, therefore, he should be treated as on regular service and his services cannot be terminated without issuing any formal order. The Apex Court found that this relief was not claimed in the writ petition. The Court observed that merely because a person continues under the interim orders of the Court, such continuance on the post cannot and, in this case, does not confer on him any right for continuance, it does not enhance his case for regularization. It is only an interim arrangement pending decision by the court and cannot disturb the position in law or equities, as on the date of the petition.

89. Reliance has further been placed upon the case of Chandigarh Administration v. Laxman Roller Flour Mills Pvt. Ltd., (1998) 8 SCC 326, on the proposition pronounced therein, namely it is settled law that "unless the allegations are made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition.

90. The case of Municipal Corporation of the City of Jabalpur v. State of Madhya Pradesh and another, AIR 1966 SC 837, a Constitution Bench judgment of the Supreme Court, was cited to assert that "Save in exceptional cases, parties should be held strictly to their pleadings and if owing to discovery of new matter or grounds, there is need to add to or to modify the allegations either in the petition or in the counter affidavit, the court should insist on formal amendments being effected, for this would enable each party to state its case with precision and definiteness and the other side would have a proper opportunity to know this case and meet it with appropriate defences."

91. On the same proposition the case of Rani Laxmibai Kshetriya Gramin Bank v. Chand Behari Kapoor and others, (1998) 7 SCC 469, wherein the Supreme Court observed as under:

"The writ petitioners not having made any averments alleging resigning of six of the Field Supervisors after being appointed, the Bank had no obligation to give any reply. In the course of hearing, if a contention had been raised and supporting material produced, then the Bank might have been obliged to file the specific reply but no such material appears to have been produced by the writ petitioners before the High Court and in such context, absence of reply by the Bank does not ipso facto establish the contention raised. It is too well settled that the petitioner who approaches the court invoking the extraordinary jurisdiction of the court under Article 226 must fully aver and establish his rights

flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertion. But in the absence of any averments in the writ petition or even in the rejoinder affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of the submissions made in the course of hearing.?

92. We have already taken note of the pleadings of the parties in the instant case and we have held that the pleadings were sufficient and not only the averments fully make out a case for interference by the court but the counter affidavits filed by the appellant as well as the University do admit and establish that there were cuttings and overwriting in the marks awarded to the petitionerrespondent. Sufficient material in the shape of answer book were the evidence of cutting and interpolations and use of whitener in the answer book and the award sheets itself, which resulted into wrong declaration of result by taking into account the reduced tampered marks, which actually can never be said to have been awarded, instead of taking into account the real original marks awarded in declaring the result.

93. The argument that the order of sending the answer books to the Government Forensic Laboratory was passed by the learned Single Judge after he found that the respondent had failed in the practical examination held afresh under the directions of the Vice Chancellor, as such the said order of the learned Single Judge was totally without jurisdiction and, in any case, once an opportunity of reevaluation and reexamination was afforded to the respondent wherein she again could not succeed, learned Single Judge was having no jurisdiction to give another chance by referring the matter to the Government Forensic Laboratory, is also an argument which misses the very essential element of distinction between the relief of reevaluation and the relief of asking the University to redeclare the result by taking into account the marks actually awarded to the candidate in her/his answer books and in the practical examination. The latter relief does not call for any reevaluation nor the same has been granted, in the instant case, by the learned Single Judge.

94. The learned Single Judge has given very cogent reasons for not attributing any sanctity to the order of the Vice Chancellor in getting the theory answer book reevaluated or that of holding practical examination again, including the reason that such holding of practical examination cannot be said to be free of bias and the time was too short when the respondent was made aware about holding of such examination, besides other grounds and also the ground that the Vice Chancellor before proceeding for directing reevaluation, did not take care to find out as to what were the marks originally awarded, which were later on lowered down by cutting and over writing. Had this been done by the Vice Chancellor, perhaps there would have been no occasion for him to order for reevaluation or for holding fresh practical examination, as the correct original marks, then would have been known and would have been awarded to the respondent No.1. He has also taken into account the fact that the entire action of

the Vice Chancellor was not supported by any Rule and was also rejected by the Executive Council. However, we find that reason for not adhering to the result of the reexamination or reevaluation done under the direction of the Vice Chancellor is not of much relevance for the simple reason that the learned Single Judge has not ordered for any reevaluation after this exercise was said to have been done by the Vice Chancellor nor any direction has been issued for giving marks which might have been awarded to the respondent originally, which may be higher and stand reduced on reevaluation, as in the case of reevaluation whatever marks are allocated in the reevaluation are final, whether the marks are more than the marks originally awarded or the marks stand reduced on such reevaluation as against the marks originally awarded.

95. This was a peculiar case where the original marks were reduced by cuttings and interpolation in the marks originally awarded and, therefore, the only exercise which was done by the High Court was to know the original marks awarded and to ask the University to declare the result accordingly, as subsequent interpolation and cuttings in the marks was neither permissible nor was done in accordance with the Rules and the appellants had filed to give any explanation for such cuttings, overwriting, interpolation and use of whitener in changing the marks. Thus the High Court only directed for declaration of result on the basis of those marks which were actually awarded initially to the respondent and not the marks which were inserted by means of unexplained cuttings and overwriting. This discrepancy could have been corrected by the University under its authority of making "scrutiny".

96. Dr. K.K. Wadhwani, appellant in one of the appeals, has filed several affidavits and in one of the affidavits dated 9.5.2004 she had stated that initially she had awarded 10 marks but later on after going through the text, she made it as 8. In the other affidavit dated 24.5.2004 it has been stated that it is the common practice in the University that marks are allocated, then they are cut or overwritten and corrected. These defences have been taken one by one in one or the other affidavits, as the case proceeded before the learned Single Judge and on finding that the defence taken in the first affidavit does not conform to the bare facts, as are opening in the court from the material produced, the defence was changed every time. In the very first affidavit, which was filed by Dr. K.K. Wadhwani even before issuance of notice to her, she stated that after awarding marks, the copies are sent to the Controller of Examinations in strict security and examination section is strictly a confidential section where the copies are kept in secrecy. Later on finding that cutting and interpolation in the answer books have come in force, she changed the stand and stated that cuttings and interpolation had been done in the answer books when they were in the custody of Controller of Examinations. Again it was stated that cutting and overwriting and correction of marks after award of marks is very common in the University, which is usually done by the examiners and likewise the defence kept on changing. Dr. K.K. Wadhwani did not hesitate even making allegations against the Vice Chancellor and parents of the respondent saying that parents were pressing upon her to

pass their daughter and that the Vice Chancellor had also put pressure upon her.

97. We do not find any reason for the Vice Chancellor to influence the appellant Dr. K.K. Wadhwani to make a fail student pass, as it has nowhere been stated by Dr. K.K. Wadhwani or the University that the parents of the candidate, namely, respondent were having very close relationship with the Vice Chancellor. Dr. K.K. Wadhwani is herself Head of Department of Operative Dentistry in KGMU whereas the mother of the respondent was a Professor in Pediatrics and her father is a doctor serving in a Government Hospital. It, therefore, cannot be said that the Vice Chancellor was trying to bestow any special favour upon the respondent, as no reason has been brought on record for the Vice Chancellor to act against the interest of the appellant Dr. K.K. Wadhwani or to give undue favour to the candidate. What the Vice Chancellor did was, that when the representation was made to him and when he saw the answer books, he felt satisfied that this is a case where the student has been dealt with unfairly and correct marks awarded to her have been reduced by cutting and overwriting by the examiner and, therefore, as a protector and guardian of all students who had come for taking education in the KGMU, he made an effort to undo the wrong occasioned to the student. The High Court also passed interim direction to the Vice Chancellor to look into the matter and, therefore, fully convinced about the discrepancy into the award of marks, he issued a direction as he thought proper in his own wisdom. It is a different matter that the Executive Council rejected the said decision of the Vice Chancellor after holding that there was no such rule permitting such de novo exercise for holding reexamination. But all these actions of the Vice Chancellor cannot be seen with any suspicion nor can be said to have been taken for giving any undue advantage to the candidate concerned. It was only with a view to maintain high standards of education and to remove the injustice caused to the student that the Vice Chancellor on getting support from the interim direction issued by the High Court took the aforesaid action.

98. We also do not find any fault in the decision of the Executive Council in not agreeing with the action taken by the Vice Chancellor, as there was no rule, which could have allowed reevaluation or reexamination and, therefore, no sanctity could have been attached to the marks so awarded on reevaluation of the answer book or in the practical examination held afresh.

99. It having been found that the marks which were originally awarded to the respondent were not reflected in the award sheets and that the marks which were actually recorded were reduced after making cuttings and interpolation and use of whitener at several places and rubbing to the extent of perforation and that the cuttings were not made as per the Circular of the University nor did it contain any signatures or initials of the examiner and there were gross and apparent interpolations done, the order passed by the learned Single Judge cannot be interfered with, as it does substantial justice between the parties. The learned Single Judge has fixed the responsibility upon the appellant Dr. K.K. Wadhwani for making the aforesaid interpolations, manipulations, cuttings,

overwriting and use of whitener.

100. The conduct of the appellant Dr. K.K. Wadhwani, namely, the defence taken by her in various affidavits and her inability to explain the cuttings made in the answer books in the award of marks and her changing stand alleging strict secrecy in the custody of answer books after they were handed over to the Controller of Examinations and thereafter imputing the manipulations, cuttings and overwriting to the respondent herself at a time when the answer books were in the custody of Controller of Examinations and also justifying the cuttings and overwriting by making it a common practice in the University by the examiners and lastly, though not very relevant, but still a matter of concern, she having not hesitated in imputing motive to the Vice Chancellor also, does therefore, leads us to uphold the findings recorded by the learned Single Judge in this regard also.

101. The defence of Dr. Wadhwani, that the cuttings and manipulations in the answer book of theory second paper are the handiwork of the respondent No.1 herself, besides being baseless, also loses sight of the fact, that the marks which have been interpolated, were higher than the marks which have been subsequently awarded and, therefore, there could not be any reason for a candidate to cut or rub the marks which were more than the marks subsequently awarded.

102. Before parting, we would like to keep on record that we have not adjudicated upon the right of seeking reevaluation of marks by any student in the University nor do we propose to hold that in the absence of any right of reevaluation, any such right can be claimed nor any student can claim reevaluation merely because he or she is of the view that the marks allotted to him or her in one or the other subject or papers, are not according to his or her assessment, as the case may be. It is in the exceptional circumstance and the hard facts of this case that the answer books were scrutinized by the learned Single Judge and after finding the charge of interpolation in the marks as correct, the directions, as aforesaid, have been issued.

103. We, therefore, uphold the judgment passed by the learned Single Judge in its entirety and dismiss both the appeals. However, the time for depositing Rs.25,000/ by Dr. K.K. Wadhwani is hereby extended for a further period of one month, under the same terms and conditions, as has been imposed by the learned Single Judge. We would, however, further like to clarify that in view of the aforesaid costs being imposed upon Dr. K.K. Wadhwani, no further action is warranted nor need be taken even departmentally.

104. The original record of the answer books and award sheets which is in the custody of the Registrar as per directions issued by the learned Single Judge shall remain in his custody for a period of one year and in case any appeal is filed, the same shall be kept in sealed cover in the custody of the Registrar till the disposal of the appeal, but in case no appeal is filed, it would be open to the University to take back the record with the permission of the Court.

(Appeals dismissed)