

(1988) 04 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 217 of 1987

Manoj Kumar Jindal

APPELLANT

Vs

Ravishankar University, Raipur and others

RESPONDENT

Date of Decision : 20-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 23(xliv)

Citation : (1988) MPLJ 608

Hon'ble Judges : Y.B. Suryavanshi, J;C.P. Sen, J

Bench : Division Bench

Advocate : R.N. Singh with P.N. Dubey, for the Appellant; P.P. Naolekar, for the Respondent

Final Decision : Allowed

Judgement

Y.B. Suryavanshi, J.

The petitioner who has passed B. Com Final Degree Examination in the year 1985 has filed this petition under Articles 226/227 of the Constitution of India, praying, that an appropriate Writ or directions be issued to the University (Respondent No. 1) to notify fresh MERIT-LIST according to the petitioner's result in REVALUATION of examination papers. According to the results declared in Notification dated 15-7-1985, which related to the "Merit List of First Ten Students" scoring highest marks shown in descending order (Annexure-B), the petitioner's position was at Sr. No. 3. But as a result of revaluation, the petitioner having scored the highest marks should be at Sr. No. 1 vis-a-vis the two students (respondents 2 and 3). Hence this petition.

(i) It is common ground that the petitioner Manoj Kumar Jindal, a student of Ravishankar University appeared in B. Com. Final Year Examination in 1985, with Roll No. 97496. The University published and declared on 15-7-1985 the results of the candidates and the Merit-List of First Ten toppers (Annexure-B). That position is admittedly, as shown below:

Total number of candidates appeared: 2615

Candidates passed : 1143

Pass percentage : 43.7

Roll No.

Name of Candidate

Position

Marks obtained out of 1200

Name of Centre

101555

Jitendra Kumar Singh (Respt No. 1)

FIRST

832

Govt. Digvijay College, Rajnandgaon.

97597

Vijay Kumar Manjuja (Respt No. 2)

SECOND

827

Durge College Raipur

97496

Mahoj Kumar Jindal (Petitioner)

THIRD

820

do

(ii) The petitioner, as per rules applied for Revaluation within prescribed limit of 30 days. The Answer-books were revalued. According to the result of revaluation, the petitioner's marks in General English and Business English were substantially increased by 20 and 9 marks, respectively, i.e. 29 marks were added to his final result. Undisputedly, after revaluation, the petitioner's marks are $820 + 29 = 849$ i.e. 17 marks above the total marks obtained by Sr. No. 1 in the Merit-List, dt. 15-7-1985, (Annexure-B). The petitioner applied (Annexure-C) and requested the University to amend the Merit-List and place him in First Position. The Executive Council considered the application in its meeting, held on 19-12-1986, and took a decision not to amend the Merit List (Minutes -- Annexure-D). The

petitioner was accordingly informed, vide letter dt. 30-12-1985 (Annexure-E).

The petitioner's case is that throughout he had a meritorious academic record and the impugned decision is arbitrary, discriminatory and illegal, as it is a denial of his legal right to get a legitimate place in the Merit List. The decision is hostile to the interests of laborious and devoted students, and as such, it is unreasonable and also contrary to the law of education and the same is liable to be struck down. It is further stated that the act of Revaluation is part and parcel of process of the main examination and the Executive Committee was bound to take notice of revalued result while notifying the Merit-List. Hence, the prayer for directions that fresh Merit-List in accordance with petitioner's achievement after revaluation be notified.

The respondent No. 1 (University) in its Return, stated, that u/s 23(xliv) of M.P. Vishwa vidyalaya Adhinyam, 1973, the Executive Council is the authority to exercise all the powers of University not otherwise provided for in the Act or the statute, which includes to take decision about the declaration of the Merit- List and change it subsequently exercising their powers. Ordinance No. 6 under the said Adhinyam relates to "Examinations (General)". Part V of the said Ordinance provides for "General Conditions applicable to all candidates" and Clause 26 provides, that a candidate whose result has been declared may apply to the Registrar for revaluation. Under Clause 31, the names of first ten successful candidates (who obtained First Division) in each examination is declared in order of merit. It is stated that the said Merit-List was published by the University and after declaration of results and publication of the Merit-List, the petitioner applied for revaluation; that under the Ordinance, University is required to declare the Merit-List "immediately" after the examination and as soon as the results are declared and thus, the University cannot withhold the Merit-list in anticipation of somebody applying for revaluation. The process of revaluation usually takes about five to six months. Soon after the declaration of Merit-List the University grants a certificate to the First Class First student so declared first in the Merit-List. The University is also required to supply the Marks-List to the successful candidates; that those candidates declared in the Merit- List usually take admission on the basis of the Merit-list or get the job. If Merit-List is subsequently changed after five-six months, it may create anomalous position and the candidates who are declared in the Merit-List may suffer irreparable injury. For all these considerations, the Executive Council took a decision that Merit List once declared, will not be changed on the basis of the marks subsequently given in revaluation. The University further submitted that it will abide by any directions as may be given by the Court. Pausing here, the notices to the other two respondents were sent through the Registrar, Ravishankar University, Raipur and as per his memo No. 656 dt. 5-3-1987, it is reported that those were sent to the respondents Nos. 2 and 3 vide registered letters dt. 28-2-1987. The photostat copies of the postal receipts were also sent along with. However, none, appeared on behalf of respondents Nos. 2 and 3. In fact, the lis is between the petitioner and the University, though respondents Nos. 2 and 3

would be affected persons in the Merit-List.

The learned counsel Shri R.N. Singh with Shri P.N. Dubey appearing on behalf of the petitioner and learned counsel Shri Naolekar, appearing for the University heard. Record perused.

The principal submission on behalf of the petitioner is, that the revaluation is an integral part of the main examination and therefore, on basis of the result of revaluation, a fresh Merit-List has to be notified by the University and in not doing so, the University has acted arbitrarily and in violation of the provisions of the Ordinance.

We have been shown "The Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973" and the relevant Ordinance No. 5 which deals with the subject of "Conduct of Examinations". The subject includes, all elaborate arrangements for the conduct of examinations/publication of programmes for the conduct of examinations specifying the date of each examination, last date by which application and fees for examination shall be paid, by the intending examinees- appointments of Superintendent and Assistant Superintendents, the work of invigilators, change of examination centres and indeed all such incidental and ancillary matters which form the conduct of examination. Paragraphs 11(1) and (2) relate to the Results Committee. Para 12 relates to appointment of tabulators, the remuneration of the examiners, invigilators and others involved in the process of the examinations. The material Paragraph/Clause of Ordinance No. 5 is No. 22. It enjoins:

22. Where a candidate applies for revaluation the answer book in which revaluation is sought will be sent for valuation by the Kulpati, to two examiners (other than the one who initially valued it) at least one of who shall be from a place outside the State of Madhya Pradesh. Ten answer books valued by the same examiner and a copy of the memorandum of Instructions for the guidance of examiners if prepared by the paper setter will be sent to each of the two examiners to enable them to evaluate the answer book concerned in the light of the standard set by the examiner and the memorandum of instructions. If less than ten candidates had appeared at the examination in the paper concerned the answer books of all the candidates shall be sent to each of the examiners. Each of two examiners shall receive a remuneration of Rs. 20/- for the revaluation of an answer book.

If the marks awarded in the paper by any of the two examiners vary from the marks given by the original examiner by more than 10% of the maximum marks in the paper, the average of the marks awarded by two of the examiners, the original examiner and the two revaluers and nearest to each other will be taken to represent the "correct valuation". This average of marks will be awarded to the candidate for the revision of his result:

Provided that subject to the condition that atleast one of the variations from the original marks is more than 10% of the maximum marks in the paper if the

difference in marks allotted by the three examiners are equal, the two marks to the best advantage of the candidate shall be taken into account for arriving at the correct valuation.

7-A. Now we may refer to Ordinance No. 6 which also has a heading "Examinations (General)". Parts I, II, III and IV relate to conditions for appearing at the examination. Part I defines "Regular Candidate", "Ex-student Candidate" and "Non-Collegiate Candidate" etc. Parts II, III and IV relate to admissions respectively of regular candidate, ex-student candidate and non-collegiate candidate. Part V refers to "General Conditions applicable to all candidates". Clause 25(1) of Part V enjoins:

Any candidate, who has appeared at an examination conducted by the University, may apply to the Registrar for the scrutiny of his marks in the written papers in any subject and rechecking of his results. Such application must be made so as to reach the Registrar within 30 days of the publication of the result of the examination.

Extracts of Clause 25(4) and (5) are as follows :--

(4) The result of the scrutiny shall be communicated to the candidate.

(5) If as a result of scrutiny it is found that the examinee should be declared as having passed or placed in a higher division, the result of the candidate shall be revised accordingly and the fee deposited by the candidate for scrutiny of marks shall be refunded to him.

Clause 26 of Part V of Ordinance No. 6 is important. Clause 31 of Part V of Ordinance No. 6 is as follows: --

31 The names of first ten successful candidates in each examination other than second full examination who obtain first division shall be declared in order of Merit for each class/subject as the case may be.

In view of the above provisions which all relate to the examinations conducted by the University, it is urged that in Ordinance No. 6, all the above said provisions relating to conduct of examinations are supplementary to each other and have to be read as a whole. The further argument is that the process of examination does not always terminate with the declaration of the results because there is provision of "reevaluation", and therefore, the final results would in any case be subject to the results after the revaluation: The provision of revaluation eliminates any mistake or error which may arise under various circumstances. It further introduces the principle of fair play and that seems to be ensured by getting the answer books examined as enjoined in Clause 22 of Ordinance No. 5 (supra). It follows, therefore, that revaluation is an integral and inseparable part and parcel of the entire examination process ending up in final declaration of results.

The learned counsel, to support the above submission, referred, to Lalit Taori Vs.

Nagpur University, Nagpur and Others, , in which their Lordships observed:

This takes us to the second point viz. as a result of revaluation the marks cannot be varied to the detriment of the student seeking revaluation under the Ordinance. We find that second point is equally devoid of any merit. Revaluation is a part of examination and is a fresh appraisal of the performance of a student by other examiner. In case the marks increase as a result of revaluation the increase is binding on the University which is obliged to vary result on that basis. How then the decrease in the marks can be held not binding on the student? The result of revaluation -- whatever it is -- has to be accepted as correct and final by all concerned and for all purposes. Indeed after revaluation the result of original valuation is erased To hold otherwise would be against the basic concept of revaluation.

(emphasis supplied)

Rohini Dattatraya Tare and etc. Vs. Nagpur University, Nagpur, , was cited which has been referred in Lalit Taori vs. Nagpur University (supra). In that case, the revaluation of answer books and results based on such revaluation were invalid as procedure prescribed u/s 64, Nagpur University Act for appointment of examiners was not followed. However, the observations of their Lordships in Para 19 may be usefully referred:

Revaluation is a part of examination. The declaration of results would be incomplete without revaluation if and when demanded or applied for by the examinee. It would, therefore, be futile to contend that the provisions regarding appointment of examiners u/s 64 will not apply to the appointment of examiners for the purposes of revaluation and that it would be open to the University to follow any procedure which it considers reasonable.

According to the learned counsel Shri Naolekar, as per Clause 31 of Ordinance 6, University is required to declare the Merit List immediately after the examination and as soon as the results are declared and therefore, publication of Merit-List could not have been withheld for an uncertain period, which may be unreasonably long also. In the Return, it is stated that it usually takes about five to six months for revaluation. We are afraid, the expression "immediately" is nowhere mentioned in Clause 31. In fact, there is no reference to any time limit Even assuming as is Contended before us that the Merit-List envisaged in Clause 31 is simultaneously published along with the declaration of results of the examination, both would be subject to results of revaluations, if any. If that be so, the abovesaid Merit-List would be only of a tentative nature, likely to be modified or amended if so required subsequently, subject to the results of revaluation. Neither its under the law relating to the conduct of examinations nor under equity it would be proper to ignore the results of revaluation. While interpreting the Ordinances, the different provisions have to be read on principle of harmonious construction, otherwise the provisions regarding revaluation in the broad scheme of examinations would be rendered dead-wood.

It seems apparent that in order to avoid any delay and uncertainty or long periods in the matter of "reevaluation", Clause 26 of Ordinance No. 6 prescribes a limitation of 30 days from the date of the declaration of results for such application. A similar time limit has been prescribed in Clause 25. Both these time limits appear to be mandatory provisions so far as the limitation is concerned. It is further confirmed by Clause 15 of Ordinance No. 5 which lays down that except otherwise decided by the Executive Council, the examination answer-books and the documents regarding the marks obtained by the examinees except the tabulated results, shall be destroyed or otherwise disposed of after "six months from the date of the declaration of the results." Thus, those provisions ensure that no stale claims for reevaluation beyond the limit of 30 days could be entertained.

Though the Clause 31 in Ordinance No. 6 relating to the names of first ten successful candidates declared in the order of Merit does not expressly state at what stage such Merit-List be published but in view of the provision of reevaluation if any Merit-List is published earlier or simultaneously with the general declaration of results, it will be only of a provisional or tentative nature. This is implied in Clause 31. May be it would have been a more pragmatic approach to have appended a Note in the Merit List itself to the effect that it is "Provisional" and subject to the results of applications for reevaluations if any. Since it was submitted that Clause 31 does not speak of "provisional or final Merit-List", the Executive Council could only, under the existing rules, publish the List as found in this case. There is much substance in this contention otherwise Executive Council would be required to publish another List called "Final" which situation may arise rarely. However, in view of the provision of reevaluation whenever the result of the Merit-List is altered because of reevaluation, the amendment in the Merit-List is consequential and inevitable.

Apropos the contention that on basis of the Merit-List the candidates meanwhile take admissions on its basis or get jobs and if the Merit-List is subsequently changed "after five or six months", it may create anomalous position and the candidates who are declared in the Merit-List may suffer irreparable injury. This contention is counter to the provision of the reevaluation which, as stated earlier, has its own significance and meaning. There is no reason why after reevaluation, if the petitioner is found to have obtained "first position", he should be continued to be ranked in "third position". This would be rank injustice to a student devoted to studies with meritorious performance. The object behind Reevaluation is that every man should get his due which he deserves. That is the rule of law and also equity. This appears to be a case where the position in the Merit-List entails consequential benefits also. Generally the toppers have further benefits not only of Division and Merit, but often Medals and Prizes. If that be so, it is all the worst that the petitioner is deprived of his legal right to such benefits. There is no reason why the petitioner should suffer for the fault of the university. There is no question of any legal injury to the other two respondents just because under the rules relating to reevaluation, they would be relegated from their positions No. 1

and 2, to positions No. 2 and 3. If the relegated No. 3 had any grievance, he could have availed of the provisions regarding revaluation within 30 days. It is not correct to say that amendment in the impugned Merit-List would not be in the interest of public at large.

The Courts, in exercise of discretionary powers under Articles 226/227, Constitution of India, are reluctant to interfere in the matters which are discretionary with those educational authorities unless there are strong reasons for interference arising on account of contravention of law or statutory Regulations governing the examinations. In *Ashalata Vs. M.B. Vikram University and Others*, . Hon"ble H.R. Krishnan and Razzaque, JJ. observed:

A University is amenable to a direction or writ issued by the High Court in appropriate cases. As however, it has been constituted to exercise some highly specialized functions, acting through officers and subordinate authorities appointed or constituted by itself in exercise of powers given by statute, there should be very good reason for the High Court interfering in this manner. The basic requirements for this are that (1) there should be a patent and undoubted violation of a provision in the Statute or Regulation or Ordinance, governing the particular subject; (2) this non-compliance or violation should have directly resulted in a substantial restriction of the service or benefit which a citizen is entitled to get from the University; and (3) the direction or relief sought should be such that it should not add to the inconvenience suffered by the public at large, disproportionate to the injustice or inconveniencence, that is sought to be remedied.....

Changing of text books is left to the discretion of the University and there is no law that there should be no change of the text books for a certain period for examination and the High Court should not enforce by a writ or direction such a prayer.

In view of the aforesaid discussion, the violation of the statutory provisions is patent and has resulted in substantial restriction of benefits which otherwise the petitioner was entitled to get from the University. Since only two students would be affected, the relief sought would not cause any inconvenience to the public at large.

In the result, this Writ Petition is allowed. The respondent-University is directed to publish fresh Merit-List assigning due place to the petitioner in the Merit- List- in accordance with his achievements after the revaluation. Under the fresh Merit-List, the petitioner will have all the consequential benefits as may be admissible under the law and the impugned Merit-List Annexure-B shall stand erased for all purposes. In view of the circumstances of the case, the parties are directed to bear their own costs.