
(2003) 04 MP CK 0061
In the Madhya Pradesh High Court
Case No : L.P.A. No. 401 of 2002

Manorama Garg

APPELLANT

Vs

Rani Durgawati Vishwavidyalaya, Jabalpur and another

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Citation : (2004) 1 MPLJ 35

Hon'ble Judges : Bhawani Singh, C.J; Sugandhi Lal Jain, J

Bench : Division Bench

Advocate : H.S. Ruprah, for the Appellant; S.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Jain, J.

Being aggrieved by the order dated 12-4-2002, passed by the learned single Judge in W.P. No. 5449/2001, the appellant has filed this Letters Patent Appeal under clause 10 of Letters Patent.

Brief resume of the facts necessary for the disposal of this appeal is as follows:

Appellant had been a regular student of B.Sc. in Government Science College, Katni. It is put forth by her that throughout her career she had been getting very good marks in mathematics. In Higher Secondary Examination she secured 93 marks out of 100 in mathematics. In B.Sc. Part-I Examination also she secured 100 marks out of 150 in mathematics. In the year 2000-2001, the appellant appeared in B.Sc., Part-III Examination. In the second paper of mathematics, she got 12 marks out of 50. The answer book was sent for revaluation to two examiners of whom, one awarded her 27 marks and the other one awarded 26 marks. Since the average of these marks was 27 and the difference between the average marks and initially secured marks was big enough, the answer book was sent to fourth examiner, who awarded only 11 marks to the appellant.

It has further been submitted by the appellant that in mathematics paper-III,

she obtained 19 marks. On revaluation of the answer-book by two valuers, both of them gave her 39 marks. Since the difference between the initial valuation and revaluation was very high, therefore, this paper was also sent to the fourth revaluer, who granted her 32 marks. The appellant claimed that after revaluation by the two examiners there was no justification in sending the answer books to the fourth examiner and the marks which were favourable to the examinee should have been awarded.

Combating the aforesaid allegations, the respondent No. 1 submitted that during the process of revaluation, it was found that the difference between the marks awarded by the original examiner and marks subsequently awarded by the two examiners was high enough, thus, giving rise to a suspicion that either the original examiner or external examiners have not valued the answer books properly and fairly. Therefore, the answer books were sent to the fourth valuer for arriving at a correct valuation of the answer books.

The learned single Judge referring to clause 8 and clause 9 of Ordinance No. 71 (hereinafter referred to as the "Ordinance") and the resolution of Coordination Committee passed in its 51st meeting held on 23-5-1995 (hereinafter referred to as the "Resolution dated 23-5-1995") found that the course adopted for the revaluation by the respondent/University was in accordance with the provisions of the Ordinance and since there was a difference of more than 20 percent of the maximum marks in the marks awarded by original valuer and two external revaluers, the answer books of the appellant were rightly sent to the fourth senior examiner, who was from outside the area of University and the marks awarded by the fourth examiner were rightly treated as final. With this finding, the learned single Judge declined to interfere in the marks awarded to the appellant and dismissed the petition. It is against this order of the learned single Judge that the appellant has preferred this appeal.

We have heard Shri H.S. Ruprah, learned senior counsel appearing for the appellant and Shri S.C. Sharma, learned Counsel appearing for the respondent No. 1/University at the admission stage.

Shri Ruprah, learned senior counsel appearing for the appellant submitted that as per the Ordinance, the appellant was entitled to 27 marks in mathematics, paper II and 39 marks in mathematics, paper III because as per the proviso to clause 8 and clause 9 of the Ordinance, the situation advantageous to the examinee is to be accepted. The contention is fallacious. The said proviso relied upon by the learned counsel for the appellant reads as under:

Provided that subject to the condition that at least one of the variations from the original marks is more than 10% of the maximum marks in the paper, if two differences 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.

A perusal of the proviso reveals that it does not relate to valuation by the fourth

examiner. It only says that if two differences in marks allotted by three examiners (one original valuer and two revaluers) are equal, the two marks to the best advantage of the candidate shall be taken into account for arriving at a correct valuation. In this case, since the variation in marks awarded by the original examiner and by other two examiners was big one which gave rise to a suspicion, therefore, answer sheets were sent for valuation to the fourth examiner in terms of the "resolution dated 23-5-1995" and as per this resolution marks awarded by the fourth examiner were treated as final. Thus, no change in the original marks awarded to the appellant was effected in terms of the Ordinance.

Learned counsel for the appellant next contended that if there was any suspicion that either the original examiner or other examiners have not valued the answer books properly and fairly, the Vice Chancellor alone could have got the case scrutinized thoroughly and it was for him to take such action which was necessary to arrive at a correct valuation, but the matter was not referred to the Vice Chancellor. The argument is devoid of substance. There is no material to suggest that the matter was not referred to the Vice Chancellor and some authority other than Vice Chancellor has taken the necessary action in the matter. Secondly, when the Ordinance requires that a particular act shall be done by the Vice Chancellor, it can well be presumed that the compliance was made because all official acts are deemed to be regularly performed. Here the maxim "*omnia praesumuntur rite esse acta*" i.e. all acts are presumed to be done rightly and regularly applies. When the acts of official nature went through the process, the presumption arises in favour of the regular performance.

The learned counsel for appellant submitted that such a presumption is optional and one of facts. But, the appellant has not submitted any material to displace the presumption. In the absence of any material to the contrary, this Court would presume that all rules were complied with. Therefore, the contention that the matter was never referred to the Vice Chancellor is bereft of merit.

The last leg of the contentions of learned counsel for the appellant is that answer sheets were sent to the fourth examiner only to cover the wrong committed by the valuers of the University. This contention also cannot be accepted. The action was taken by the University in accordance with the resolution dated 23-5-1995 and it was just, fair and reasonable. The University took all such steps which were necessary to arrive at a correct valuation of the answer sheets. The learned single Judge has rightly concluded that statutory provisions of the Ordinance were complied with and in view of the marks awarded by the fourth examiner any change in the marks awarded to the appellant was rightly not effected.

For the reasons stated hereinabove, we do not find it appropriate to interfere with the order impugned. The appeal is devoid of merit and the same is dismissed.