
(2009) 12 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15003 of 2009

M.B. Shashank Mathur

APPELLANT

Vs

NTR University of Health Sciences

RESPONDENT

Date of Decision : 31-12-2009

Acts Referred:

Citation : (2010) 1 ALD 828 : (2010) 2 ALT 181

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : C. Sindhu Kumari, for the Appellant; D.V. Nagarjuna Babu, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is studying Psychiatric Medicine in Mamata Medical College, Khammam. After completing M.B.B.S., he was admitted to Post Graduate Diploma course. The final examinations of First Year course were held in April/May, 2009. He passed in all the papers. But, he failed in General Psychiatry Paper-II. The pass mark is 150 out of 300 and he got 149 falling short by one mark. He, therefore, applied for re-totalling/re-verification of answer script in Psychiatry theory paper. As advised, he visited respondent. He was shown the answer script in Paper-II. According to him, he had written answer to question No. 8, which carries ten marks, on two sheets, but only one sheet was valued and sheet behind it was not at all valued. He also alleges that the answer written by him is correct, but he was given only three marks by examiner by inadvertence in not looking at second sheet which was behind the sheet valued by examiner. The petitioner also alleges that all the answers given to eight questions are substantially correct in accordance with the standard textbooks and the marks awarded to question No. 8 are not proper.

2. The petitioner gave a representation on 16.07.2009 requesting respondent to revalue the paper by the same examiner or by any other examiner or by outside examiner, in vain. Therefore, he filed instant writ petition seeking a writ or order

or direction declaring the valuation of petitioner's Paper-II as arbitrary, illegal and unjust and for consequential direction to respondent to properly value all the questions and ensure that petitioner is given marks for each of the questions answered by him in accordance with the textbooks and key answers prepared by respondent University.

3. The matter was initially listed on 27.07.2009, when this Court directed learned standing counsel for respondent to produce answer sheet of petitioner in Paper-II, General Psychiatry. The matter was again listed on 03.08.2009, on that day, this Court while ordering notice before admission, passed the following order.

The petitioner is a student of PG Diploma in Psychiatric Medicine. He appeared for General Psychiatry Paper-II examination in the month of April, 2009 and scored 149 marks, one mark less for passing the subject. He applied for re-verification of his answer sheet, and on re-verification, he found that the answer to question No. 8 was not valued fully, in that to complete the answer, he used additional sheet. The Examiner, while awarding marks, has taken into consideration the half answer written by him in the main sheet, but did not take into consideration the other half of the answer written by him in the additional sheet.

On 27.07.2009, the learned standing counsel for the respondent University undertook to produce the answer sheet of the petitioner. As undertaken by him, he produced the answer sheet.

I have perused the answer sheet of the petitioner in the presence of the counsel for the petitioner and the learned standing counsel for the respondent University.

Prima facie, a perusal of the answer sheet of the petitioner, disclosed that there are no marks awarded on the additional answer sheet used by the petitioner for completing the answer to question No. 8, thus giving an indication that the entire answer was not valued.

The learned standing counsel for the respondent University submitted that as directed by this Court in W.P. No. 379 of 2008, dated 16.04.2008, the respondent university has already constituted a Grievances committee, to look into issues of the nature involved in the writ petition, and the said Committee will look into the grievance of the petitioner.

In the circumstances, the respondent University shall refer the case of the petitioner to the Grievances Committee, comprising a subject expert, which shall consider whether or not the answer sheet of the petitioner, relating to Paper-II General Psychiatry, particularly answer to question No. 8 is completely valued or not, and in the event, the Grievances Committee finds that the same is not valued completely, then the subject expert shall value the same. The Grievances committee shall submit its report to this Court, within a period of 15 days from the date of receipt of a copy of this order. The original answer sheet of the petitioner is returned to the learned standing counsel for the respondent

University to enable him to send the same to the Grievances Committee for taking appropriate action in the matter.

4. In obedience to the order of this Court as above, the case of petitioner was referred to Grievance Committee. After undertaking the requisite exercise, respondent placed before this Court the Minutes of the grievance committee Meeting held on 03.09.2009. The matter is heard again after furnishing copy thereof to learned Counsel for petitioner.

5. Learned Counsel for petitioner submits that as per the standard textbooks, petitioner answered question No. 8 (Types of Delusions) correctly and award of three marks by the examiner is too low. According to learned Counsel, petitioner answered question No. 8 on two pages but in all probability, the examiner looked at one page and ignored the other page resulting in awarding of three marks only. He relies on the extracts from the text books on the subject.

6. The scope of judicial review in academic matters is very limited. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, and *State of U.P. and Others Vs. D.K. Singh and Others*, Supreme Court dealing with cases arising in the context of different fact situations laid down that in academic matters, which are dealt with by experts in the field of education, the Courts ordinarily cannot interfere. Deferential review is a standard which is applied. Though there is absolutely no ban, the Courts should hesitate to dislodge the decisions of academic bodies, unless it is shown that the decision maker ignored the ground realities and exercised power arbitrarily and mala fide manner.

7. In case of grievance that petitioner's examination papers are not valued properly or the valuation by the examiners is not as expected by examinee, ordinarily the Court of judicial review must not enter the arena. Of course, if a complaint is made that in the system of examination by objective type or multiple choice questions, the answer is not according to the published key, the Court may to a limited extent look into such complaints. In examinations, in which examinee is requested to write lengthy answers, the Court cannot be expected to be an expert. It cannot act as an examiner of examiner. Examination of examiner's evaluation is certainly outside the purview of judicial review, however liberal the Court may be having regard to generally sympathetic pasture, the Court adopts in dealing with grievances of examinees. If any complaint is made that on re-verification it is found that all the answers to all the questions have not been valid at all, it may be open to the Court to direct the concerned examination Board to look into the matters. When once, such a direction is given and in compliance thereto, the examination Board after undertaking exercise, submits report, the matters must rest there. Any interference even after Board undertakes the exercise of evaluation with reference to the Court Order, would amount to exercise appellate powers, which

are not within the purview of judicial review.

8. In *Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others*, , the petitioner appeared for HI year M.B.B.S., examinations held by University of Puna. After declaration of results, he applied for re-valuation of answer scripts. As many as 167 students also applied for re-valuation. After declaration of re-valuation results, some of the students requested the University to get the answer papers re-valued by the same set of examiners. The University appointed a Committee to make an enquiry. After receiving the report of the Committee, revaluation results were cancelled and University decided to conduct further revaluation. This decision was challenged by the petitioner and the writ petition was dismissed by the High Court of Bombay. Before Supreme Court, it was contended that in the absence of any provision in the University Ordinance for second revaluation, the decision of the University is vitiated. While dismissing the appeal, Supreme Court observed:

We have considered all the materials placed before us in the light of arguments advanced keeping in mind the well accepted principle that in deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. We are satisfied that there had been sufficient material before the Executive Council to proceed in the manner in which it has done. It is not correct to say that the University had acted on non-existent rule for ordering revaluation. Ordinance 146 is comprehensive enough to include revaluation also for further action. The fact that two examiners were also the members of the Committee which recommended for revaluation cannot result in any bias even if they had been directly concerned with the original evaluation. It is true that in the second revaluation also there had been some changes between the original valuation and the revaluation results. However, it is not so glaring or demonstrably unconscionable as seen in the first revaluation. We cannot, therefore, accept the contention of the petitioner that the High Court had erred in not granting the relief sought for. We can only observe that the case of the petitioner, who alone has come before this Court and who had secured higher marks in the first revaluation and is, therefore, aggrieved by the cancellation of the same, would be duly considered in the selection for postgraduate course.

9. From a reading of the decision in *Bhushan* (5 supra), it may be taken as well settled that when an academic body like Executive Council takes a decision in the matter of re-valuation, the Court cannot interfere unless it is vitiated by bias in a restrictive sense.

10. In *Dr. S.A. Hakeem and others Vs. N.T.R. University of Health Sciences, Vijayawada and others*, , five post graduate students in ENT filed writ petition seeking a declaration that theory and practical examinations are vitiated by reason of bias on the part of fifth respondent and for a direction to conduct

practical reexamination without fifth respondent as Examiner. This Court rejected the plea of bias observing as under.

The examining body or Board of Examiners or an individual examiner/evaluator certainly does not perform judicial functions. It is doubtful whether the Board of Examiners performs quasi-judicial function while evaluating the examination papers and declaring the results. Thus, when the knowledge of a student after completion of the course is tested by the examiners which results in awarding of pass certificate the function is akin to that of a Selection Committee selecting an eligible, suitable and meritorious candidate for being appointed to a job. The Board of Examiners, therefore, performs an administrative function leading to an administrative decision. The fact that the examiners are not under legal obligation to give reasons as to how they evaluated the papers in certain manner lends support to such view. It is settled that administrative authority is under no legal obligation to record reasons in support of its decision and that the only requirement is that the administrative authority should follow "fairness" or "fair" procedure. (See National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others,). Therefore, if there is a lone examiner and he acts with proven malice or bias in a given case the same can be challenged before appropriate University authority. But, in my considered opinion when a body of persons takes a decision resulting in "collectivity of opinion", the aggrieved person cannot complaint bias or malice. That is to say ordinarily it cannot be heard that the Board of Examiners acted with bias or malice.

11. In this case, as directed by this Court, the Grievance Committee again valued/verified the answer script of petitioner and especially, answer to question No. 8 and came to the conclusion that the valuation is proper and that before awarding the marks, the examiner has taken into consideration the entire answer rather than leaving answer on the additional sheet. The Grievance Committee consisted of the Director of Medical Education (Academic); Principal of Siddhartha Medical College, Vijayawada; Professor of Psychiatry, Guntur Medical College and the Registrar of Respondent University. All of them are experts in Post Graduate Medical Education, and therefore, their decision must be treated as final. If the Court undertakes to examine the answers of the petitioner with reference to the textbooks published before this Court, there cannot be any end for such exercise. Therefore, this Court is not inclined to accept the writ petition.

12. The writ petition, for the above reasons, is dismissed without any order as to costs.