
(1978) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 889, 1016 and 1311 of 1976

Mirza Shokat Beg, etc.

APPELLANT

Vs

University of Rajasthan

RESPONDENT

Date of Decision : 20-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1979 Raj 37 : (1978) RLW 527 : (1978) 11 WLN 694

Hon'ble Judges : M.L. Joshi, Acting C.J.

Bench : Single Bench

Advocate : B.L. Sharma and M.R. Calla, for the Appellant; N.M. Kasliwal, for the Respondent

Final Decision : Allowed

Judgement

M.L. Joshi, Ag. C.J.

1. These three writ petitions arise on facts which are closely parallel and also are based on identical grounds. They are, therefore, being disposed of by a common judgment,

2. The petitioners in all these writ petitions appeared in the examination of LL, M. Part I held in the year 1974, The petitioners Mirza Shokat Beg and Murarilal appeared as ex-students whereas petitioner Azeez Hasan Khan Majeedi appeared as a regular student in the said examination, There were four papers prescribed by the University for the LL. M, Part I examination. They were--

(1) Legal Theory.

(2) Legislation -- Principles, Methods and Interpretation.

(3) Legal History of India; and

(4) Comparative Law,

3. In the year 1974 LL, M. Part I examination the examinees were required to

attempt four questions in each question-paper but later on choice was given to the examinees to attempt three questions. The examiners were instructed to give marks to the examinees for the three questions attempted by them and further to add 1/3 of the total marks obtained in three questions in respect of the fourth question which would be taken to be the aggregate marks secured by the examinee in that particular subject.

4. All the three petitioners took the LL, M. Part I examination, in the year 1974 but were declared failed at the said examination. The grievance of all the three petitioners is that the result of the examination was vitiated on the ground that as per the rules and instructions of the University their answer books were not sent to the third examiner although there was difference of more than 15 per cent in the two awards allotted in the paper though it was incumbent upon the University to do so as per the rules and instructions contained in Annexure I. The submission of the petitioners is that there was a mechanism for double evaluation of the answer books to ensure the accurate evaluation of the examinee's answer books. It was incumbent upon University to send the answer books to the third examiner in the concerned paper where the difference in two awards was more than 15 per cent of the maximum marks allotted in the paper. The petitioners therefore say that despite the fact that there was difference of more than 15 per cent in maximum marks allotted in the paper their answer books of that, paper were not sent to the third examiner without any sufficient justification. They, therefore, claim that in the absence of reference of their answer books to the third examiner they were entitled to get their result sheet framed on the basis of advantageous marks given by any of the two examiners and if so done they will be entitled to be declared successful at the examination,

5. The petitioners further go on to aver in the petitions that for the year 1975 examination, the University introduced semester system whereunder candidates who failed at LL, M. Part I examination in the year 1974 were permitted to join LL, M, Part II examination subject to the condition that besides taking examination in LL, M, Part II they will have to appear in those papers in which they had failed and further to pass in the aggregate also. This system was permitted under the decision of the academic council taken in its meeting held on 16-12-74 and 17-1-75. Accordingly the petitioners got benefit of admission in LLM, Part II and to appear in the said examination to be held in the year 1975.

6. The petitioners appeared in the L.L.M, Part I examination in the year 1975 in those subjects in which they had failed under the semester system but they were not declared successful in those subjects and consequently all the petitioners were declared failed. Accordingly the results of the petitioner's examination of the year 1975 for LL.M. Part II examination has been withheld and it has not been declared till today.

7. As regards the result of Part II LL.M. examination under the semester system, the grievance of petitioners is that the system of re-evaluation was revised and it was directed by the University authorities that the answer books of the

examinees could be referred to third examiner only if there was difference of more than 20% marks between the two awards. The petitioners aver to their petitions that despite the fact that there was difference of more than 15 per cent of marks to two awards in some of the papers their answer books were not referred to the third examiner and they were thus deprived of the vested right as there could be no subsequent revision in the system of evaluation of the answer books to their disadvantage in contravention of the system which was already in vogue in the year 1974 when the petitioners appeared in the 1974 LL.M. part I examination. The petitioners have, therefore, prayed for a writ or direction to the University for either to refer their answer books of Part I, 1974 examination to the third independent examiner and if the answer books were not available then to give the petitioners benefit of giving advantageous marks and to declare result on that basis and thereafter declare their result of LL.M, Part II.

8. The University has opposed the writ petitions and taken the stand that although in case of difference of more than 15 per cent of marks in two awards the answer books were to be referred to the third examiner but on account of the railway strike the answer books could not be sent for the evaluation of the marks by the third examiner. It has been alleged by the University that the railway strike commenced from 7th of May, 1974 and ended on 23rd of May, 1974 and therefore on account of circumstances beyond the control of the University, the answer books of the petitioners could not be sent for the evaluation of the third examiner despite the fact that there was difference of more than 15 per cent of marks between the two awards in some papers. The University had taken the shelter under the resolution of the academic council duly approved by the syndicate for not sending the answer books to the third examiner. It may be pointed out here that the LL.M. Part I examination commenced from 25th of May, 1974, i.e. 2 days after the strike was over. As regards the grievance of the petitioners that their marks were not added against question No, 4, the University categorically denied the assertion of the petitioner and inter alia contended that the candidates whose marks were not added against question No. 4 by the examiner, their mark-sheets were revised by adding the marks against the 4th question and so the petitioners cannot make any grievance in this behalf. The University further asserted its right to vary the percentage of difference between two awards while considering the question of re-evaluation by the third examiner in regard to the examination of LL.M. Part I for the year 1975 and has contended that it had right to make such alteration even though such change was to the detriment of the candidates because the alteration was made well in advance of the holding of the semester examination. The University accordingly contested the claims of the petitioners for declaring them successful in LL.M. Part I examination and further justified its action in withholding the result of LL.M. Part II examination held in the year 1975 as according to the University all the three petitioners had failed in LL. M. Part I examination.

9. The learned counsel for the petitioners have raised the following contentions in support of their petitions:--

(i) That even when there was difference of more than 15 per cent of marks in the two awards in LL. M. Part I examination, the University failed to send the answer books for the revaluation by the third examiner. The University was under an obligation to send the answer books for the revaluation by the third examiner, Having failed to send the answer books to the third examiner, the petitioners were entitled to get the benefit of advantageous marks secured by them in the paper concerned and to get the computation of their result on the basis of advantageous marks obtained by them. If so done, the petitioners are entitled to be declared "pass" in the LL. M. I examination held in the year 1974.

(ii) The University has not added the marks in some papers against question No. 4 for the examination held in the year 1974 and so the petitioners are entitled to get their mark sheet revised by getting addition of marks against question No. 4.

(iii) The University has no jurisdiction to alter the system of revaluation of the answer books during the LL.M. study course for the year 1975 to the detriment of the petitioners by curtailing their right to get the answer books examined in case there was difference of more than 20 per cent marks between the two awards. The petitioners' submission in this behalf is that in the year 1974 examination the petitioners were entitled to have the answer books referred for the revaluation by the third examiner if there was difference of more than 15 per cent in two awards,

10. The first question that calls for consideration is whether the petitioners are entitled to get the advantageous marks computed in their result sheets on account of the remissness on the part of the University to refer the answer-books to the third examiner even though there was difference of more than 15 per cent of marks in the two awards in their answer books of LL.M. Part I Examination. It has not been denied that there was difference of more than 15 per cent in two awards in some papers of the petitioners. The University has further admitted that the petitioners' answer books were destroyed and are therefore not available for evaluation by the third examiner.

11. The question that straightway arises is whether the petitioners are entitled to get the advantageous marks computed in the result-sheet of the examination held in the year 1974. Indisputably where there was difference of more than 15 per cent between the two awards in the answer books for the 1974 examination, the same were to be referred for the evaluation by the third examiner. It has also not been denied that even in such eventuality the answer books of the petitioners were not sent to the third examiner for re-evaluation. The University's defence is that the answer-books could not be sent on account of the railway strike. Now the railway strike commenced from 7th of May, 1974, and ended on 23rd of May, 1974. The examination of the LL.M. Part I examination commenced on 25th of May 1974. The answer books, therefore, could have been sent by rail, but the same was not done. The contention that the academic council by its resolution dated 5th of May, 1975 dropped the scheme of third evaluation under the scheme of double evaluation is not at all justified. The

system of double evaluation was introduced to safeguard the interest of the examinees for their benefit. The strike having ended on 23rd of May, 1974, the third evaluation could be easily arranged without any hindrance. The University has justified its action on the basis of Annexure R. I. The relevant portion of the resolution is extracted below :--

"Resolved to recommend that looking to the abnormal situation that has recently developed this year, the Vice Chancellor be authorised to take such action as it deems fit depending on the exigencies of the circumstances.

"Resolved further to recommend that for this year third evaluation (under the scheme of double evaluation) of answer books are dropped."

Now the above mentioned results are contradictory to each other. The University on one hand has authorised the Vice-Chancellor to take such action as may be deemed fit in certain circumstances. On the other hand the academic council recommended to drop the third evaluation under the scheme of double evaluation of answer books. This resolution is said to have been approved by the syndicate. The wholesale dropping of the scheme of evaluation by the third examiner in pursuance of the academic council resolution dated 5th May, 1975, is wholly unjustified. The examinations for LL.M. Part I were to commence from 25th of May, 1975. It is also worthy of note that the stage of third evaluation would come after the answer books have gone through the ordeal of the examination by the two evaluators. The occasion for third evaluation in case of difference of more than 15 per cent between the two awards would only come after a month or so after the completion of evaluation work by the two examiners. In such circumstances the decision of the academic council so also the syndicate in regard to the dropping of the scheme of examination by third evaluator besides being arbitrary is illegal. All the three petitioners had acquired vested right of getting their answer books examined by the third evaluator in case there was difference of more than 15 per cent between the two awards in 1974 LL.M. Part I examination. It was not at all within the competence of University authorities to make any change in the scheme of evaluation on the eve of the examination. The petitioners having taken examination on the faith of certain state of things, the University as a statutory body was, under a duty to act up to that faith, but the University did not act up to the faith reposed by the petitioners. The petitioners therefore have a justification to make valid grievance calling for redress from the University.

12. Likewise the Vice-Chancellor was also under a duty to act up to that faith on which the petitioners undertook 1974 LL.M. Part I examination. The Vice-Chancellor acted wholly arbitrarily when he failed to restore the system of double evaluation although he was bestowed with that power under the academic council resolution duly approved by the syndicate. The examination for 1974 LL.M. Part I examination commenced from 25th of May, 1974, The railway strike had already ended two days prior to the holding of the said examination and at least over a month would have been taken for referring the matter to the third

evaluator. In these circumstances, in all fairness it was incumbent upon the Vice-Chancellor to have exercised his power to restore the scheme of examination by the third evaluator as there was ample time left from the commencement of the examination and the time when the answer books would have been referred to the third examiner. But this was not done and the result of the examination was declared on the basis of average of two awards which is wholly inconsistent with the scheme of double evaluation introduced by the University for that examination. The result of the petitioners in respect of 1974 LL.M. Part I examination obviously therefore is vitiated and the petitioner cannot be declared unsuccessful on the basis of the system resorted to by the University. In this connection reference may be aptly made here to *Virendra Kapur Vs. University of Jodhpur and Others*, and *Gurvinder Kaur and Another Vs. Punjab University, Chandigarh and Another*,

In *Virendra Kapur Vs. University of Jodhpur and Others*, the petitioner Virendra Kapur had joined the Bachelor of Engineering course in Engineering College Jodhpur, This college was affiliated to the Rajasthan University at that time. In 1962 the University of Jodhpur was established and the affiliation of the college was transferred from Rajasthan University to the University of Jodhpur. In 1962 the petitioner appeared in the second year B. E. examination and secured more than 55% of marks in aggregate but failed in one of the papers. According to regulation 38 of the University of Rajasthan he was entitled to keep term in the next higher class and to reappear and pass in the paper in which he had failed. As the petitioner fulfilled the conditions of the regulation he was permitted to appear in the supplementary examination held in August, 1963 but he failed again in the same subject. According to the regulation, of the University he was entitled to appear again in that subject and to keep attending the higher class as well. The regulation 38 of the Rajasthan University had been adopted by the University of Jodhpur with certain modifications according to which the petitioner was required to revert to the second year bachelor classes and attend classes in that class as a regular student. It was contended by the petitioner in that case that he was governed by the regulations which were in force when he joined the Engineering course in 1961 and that the regulations could not be changed to his detriment unless he had gone through the entire course. The petitioner, therefore, claimed that he should be permitted to continue in the third year Bachelor of Engineering classes and be allowed to reappear in the subject in which he had failed, This he was entitled to do in accordance with the Regulation 38 of the University of the Rajasthan as originally formulated. One of the main point of attack raised on behalf of the petitioner was that the modification in the regulation introduced by the Jodhpur University did not repeal its counter part as formulated by the Rajasthan University, and the petitioner's case was governed by regulation 38 without any modification.

Modi J. speaking for the Full Bench while dealing with the contention was pleased to observe as follows

"The correct position, therefore is that whether we call a right like this a vested right of the student or not in the state of things which existed at the time he took his admission in the University or at any rate like juncture may be a matter of mere terminology, but the point of substance is that he had joined the University or taken an examination on the faith of a certain state of things and the University as a statutory body was and would be under a duty to act up to that faith, and if it commits a breach of that faith, then aggrieved party would have a legitimate cause of grievance of calling for redress (vide para 38 of Virendra Kapur Vs. University of Jodhpur and Others,

It was further held that the University must obey the rules and regulations by which it professes to be bound and not adversely affect the rights of others. While dealing with the contention of the University that the modifications in the regulation were intended to have retrospective effect it was observed as follows :--

"It also seems to ask that accepting that the old Regulation 38 stands by necessary implication repealed and replaced by the new regulation Ex. 1, the latter should be given a prospective effect only. For it is a fundamental principle of Indian no less than English law relating to the interpretation of statutes that a statute should have a prospective and not a retrospective effect and that it shall not be construed so as to have a retrospective operation unless its language is such as plainly and necessarily to require such a construction. It has been further laid down, that a statute should not be construed so as to have a greater retrospective operation than its language renders necessary. We have closely examined the new regulation as enacted by the Vice-Chancellor and are unable to hold from its language that it is expressly or by necessary intendment retrospective in its operation in the sense that it deprives a candidate of the benefit, of the old Regulation 38 which he had doubtless acquired, it being already in force in the case of the petitioner when he had taken his annual examination for the Second Year B. E. in April 1963,"

(Vide para. 41 of Virendra Kapur Vs. University of Jodhpur and Others,

Modi J. therefore held that the petitioner having joined the University and took examination on the faith of a certain state of things, the University as a statutory body was and would be under duty to act up to that faith and if it commits a breach of that faith then the aggrieved party could have legitimate cause of grievance calling for redress. The same is the view taken in Himendra Chandra v. Gauhati University (AIR 1954 GIU 65); S. K, Ghose v. Vice-Chancellor Utkal University (AIR 1952 Qri 1) and Gurvinder Kaur and Another Vs. Punjab University, Chandigarh and Another,

13. The position which emerges from the above decisions is that parties having the benefit of advantageous system acquired a valuable right or privilege and (are) entitled to be governed by the same and that right could not be interfered with by subsequent notification to their disadvantage. As a natural

corollary thereof if the opportunity which party is entitled to is the advantageous position which is not available, then the party is entitled to the beneficial or advantageous position which may be available in the facts and circumstances of the case.

14. In the instant case the petitioners were deprived of the right of getting their answer books examined by the third examiner with no fault of theirs. They are, therefore, entitled to get their result-sheet computed on the basis of the advantageous marks given by any of the examiner. This is in consonance with the principle of equity, justice and fair play. The petitioner cannot be blamed for the omission on the part of the University to refer their answer books to the third examiner. They having obtained advantageous marks in the hands of one examiner have a right to get those advantageous marks computed in their result-sheet. The University had ample opportunity to send the petitioners' answer books for the evaluation by the third examiner but it having failed to do so was under an obligation to give the benefit of advantageous marks given by any one of the two examiners. I am, therefore, inclined to hold that the petitioners' result should be compiled by considering advantageous marks received by them from any one of the two examiners in a particular subject in case of difference of more than 15 per cent of marks between the two awards for the LL.M. Part I examination held in the year 1974. The University cannot put the petitioner to disadvantageous position on account of its own fault,

15. In the light of the above I now proceed to examine the case of each petitioner.

(Civil Writ Petition No. 889 of 1976),

16. Mirza Shokat Beg secured in legal theory first paper 33 marks from the one examiner whereas he got 55 marks from the second examiner. The difference between the two awards being more than 15 per cent he would therefore be taken to have secured 55 marks. In the second paper Legislation he got 59 marks from the one examiner and 44 from the another. The difference between the two awards being not more than 15 per cent the average of the two awards will have to be taken which will work out to 52 marks. In the Legal History, third paper Mirza Shokat Beg secured 36 marks from one examiner and 39 from another, 38 marks will be taken to be the average marks as the difference between the two awards is not more than 15 per cent. Under the University Rules he is entitled to get up to 3 per cent as grace marks. Therefore 2 marks being added to 38 will come to 40 marks. He will therefore be deemed to have secured 40 marks in the third paper. In Comparative Law (Fourth paper) he got 46 marks from the one examiner whereas he got 48 marks from the other examiner, However, he under the semester system appeared again in the fourth paper and got 56 marks from the one examiner and 36 marks from the other. The difference between the two awards is more than 16 per cent although for the 1975 examination the advantageous marks were to be taken into account if there was difference of more than 20 per cent, but the University could not have

varied the difference by raising it from more than 15 per cent to more than 20 per cent as already held by me, 56 marks therefore will be deemed to have been secured by him. The marks therefore which he will be deemed to have obtained shall work out as under

(1)

Legal theory First paper

55 marks.

(2)

Legislation second paper

52 marks

(3)

Legal History third

paper

40 marks.

(4)

Comparative law fourth paper

56 marks.

Total

203

Thus he will be deemed to have secured 203 marks. The candidate who obtained 200 marks was entitled to be declared pass. Shokat Beg having secured 203 marks is therefore to be declared pass,

17. I next take up the case of Aziz Hasan Khan, In his case one examiner gave him 53 marks and the another 54 marks in the first paper viz. Legal theory. In the second paper, namely, Legislation, one examiner gave him 31 marks and the second examiner 54 marks. There was thus the difference of more than 15 per cent between the two awards so 54 marks will be taken to have been secured by him being the advantageous marks. In the third paper he was given 40 marks by one examiner and 56 marks by the second examiner. The advantageous marks being 56 he will be deemed to have got 56 marks in the fourth paper, namely, Comparative law. He got 48 marks in the hands of one examiner whereas he got 44 marks in the hands of the second examiner. There being difference of less than 15 per cent between the two awards, the average of two awards will have to be taken which will come to 46 marks in this paper. Thus he will be deemed to have secured in each paper the marks as follows :

(1)

Legal Theory First Paper

54 marks.

(2)

Legislation Second Paper

54 marks.

(3)

Legal History Third Paper

56 marks.

(4)

Comparative Law Fourth Paper

46 marks

210 marks.

Thus he will be deemed to have secured 210 marks. The pass marks being 200, Aziz Hasan is entitled to be declared successful,

18. This takes me to the case of Murarilal (Civil Writ Petn. No. 1131 of 1976) (Raj). Murarilal in Legal Theory secured 27 marks and 54 marks in the hands of first and second examiner respectively, There being difference of more than 15 per cent of marks in the two awards 54 which are advantageous marks shall be deemed to have been secured by him, In the Legislation (second paper) Murarilal was given 44 marks by one examiner and 59 marks by the second examiner. Difference between the two awards being not more than 15 per cent he will be deemed to have secured 52 marks being the average of two awards. In the third paper, namely, Legal History Murarilal was given 43 marks by the one examiner and 34 marks by the second examiner, difference being less than 15 per cent of marks, 39 marks being the average of two awards shall be deemed to have been secured by him. In the fourth paper, namely, Comparative Law Murarilal was given 56 marks by one Examiner and 60 by the second examiner. Difference being less than 15 per cent between the two awards 58 marks will be deemed to have been secured by him, Murarilal, therefore, shall be deemed to have secured the marks in each subject as follows :--

(1)

Legal Theory

54 marks.

(2)

Legislation

53 marks.

(3)

Legal History

39 marks.

(4)

Comparative Law.

58 marks.

204 marks.

Murarilal, therefore, is entitled to be declared successful in the examination.

19. As regards second contention at the petitioners that their mark-sheet was not revised by adding fourth paper I may straightway say that there is no substance in it. I have perused the original mark list submitted before me by the University for my perusal. Having perused the result-sheet I am satisfied that where the marks against question No. 4 were not added the revision was made by adding the same in such paper.

20. In view of my finding on the first two contentions I do not think it necessary to deal with the third contention of the petitioner.

21. As a result of the foregoing discussion I accept the writ petitions and direct the University to compute the marks of the petitioners in their result-sheet as shown in the body of judgment while dealing with the case of each petitioners and declare them successful in the LL.M. Part I examination. I further direct the University to declare the result of the petitioners" LL.M. Part II examination held in the year 1975, In the facts and circumstances of the case I leave the parties to bear their own cost.