

**(2010) 09 AHC CK 0325**  
**In the Allahabad High Court**

Monika Singh (Km.)

APPELLANT

Vs

Vice Chancellor, R.M.L. Avadh University, Faizabad & Anr.

RESPONDENT

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**Date of Decision :** 17-09-2010

**Acts Referred:**

**Citation :** (2010) 09 AHC CK 0325

**Hon'ble Judges :** Anil Kumar, J

**Final Decision :** Dismissed

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## Judgement

Anil Kumar, J.

Heard Sri S.K.Singh, learned counsel for the petitioner and Dr. Ravi Kumar Mishra, learned counsel for the respondents.

1. Facts in brief as submitted by the learned counsel for the petitioner are that the petitioner appeared in the examination of M.Sc.(Previous) in Microbiology in Kamla Nehru Institute of Physical and Social Science, Sultanpur affiliated by Dr. Ram Manohar Lohiya Avadh University, Faizabad held in the year, 2010. Result of the said examination was declared and petitioner was unsuccessful in two papers of the said examination, as such present writ petition has been filed by the petitioner for reevaluation of the answer books.

2. Dr. Ravi Kumar Mishra, learned counsel for the respondents submits that there is neither any rule nor any provision in Dr. Ram Manohar Lohia Avadh University, Faizabad for rechecking the answer books.

3. Sri S.K. Singh, learned counsel for the petitioner very fairly submits that there is no such Rules.

4. I have heard learned counsel for the parties and perused the record.

5. Needless to mention herein that the issue of reevaluation of answer books is no more res integra. In view of the law as laid down by the Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher

Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmarsheth & Ors, AIR 1984 SC 1543, wherein it is held that "in absence of provision for reevaluation, a direction to this effect can be issued by the Court. The Hon"ble Supreme Court further held that even the policy decision incorporated in the Rules/Regulations providing for rechecking/verification/reevaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision." The Hon"ble Supreme Court held as under :

"In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation whether a rule or regulation or other type of statutory instrument is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulationmaking body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational basis within the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulationmaking power conferred on the delegate by the Statute. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulationmaking body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by

the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulationmaking power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. "

6. This view has been referred to approved, relied upon and reiterated by the Hon"ble Supreme Court in the case of Pramod Kumar Srivastva V. Chairman, Bihar Public Service Commission, Patna & Others J.T. 2004 SC 380 observing as under :

"Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for reevaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the purpose of checking whether all the answer given by a candidate have been examined and whether there has been any mistake in the totaling of marks of each question and nothing them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for reevaluation has got any right whatsoever to claim of ask for reevaluation of his marks."

7. In view of the above said facts, the relief which claimed by the petitioner cannot be granted under Article 226 of the Constitution of India, as admittedly there is neither provision nor any rule for reevaluation of the answerbooks in respect to the student who appeared in the examination which is conducted by the Dr.Ram Manohar Lohiya Avadh University, Faizabad.

8. However, the petitioner is permitted to move a fresh representation for the scrutiny to the competent authority/Vice Chancellor, Dr. Ram Manohar Lohiya Avadh University, Faizabad within a period of two weeks after completing the necessary formalities as required for the said purpose before the concerned authority and the said Authority after receiving the same shall dispose of within further period of six weeks, the concerned authority shall consider the petitioner"s request.

With the above observation, the writ petition is dismissed.