
(2015) 12 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 14493, 14460 and 14518/2015

Mukesh Atal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Citation : (2015) 12 RAJ CK 0032

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Sanjeev Prakash Sharma, Sr. Advocate, S.S. Shekhawat and Saransh Saini, for the Appellant; M.A. Khan, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.—By this common order aforesaid three writ petitions bearing S.B. Civil Writ Petition Nos. 14493/15, 14460/15 and 14518/15, shall be decided together as in all the three writ petition common prayer has been made.

2. Petitioners to the above said three writ petitions are students of Third Professional M.B.B.S. Part-II Course. It was second attempt of the students as earlier in the papers of Medicine and Pediatrics they had failed. Admittedly, a student who undertake re-appear examination as a second attempt is not entitled to re-evaluation. However, Ordinance of the respondent University has kept a narrow window open for these students. It provides that a student who is able to make a case of prejudice on the part of the examiner, can invoke Clause 157-B of the University Ordinance, which empowers the Vice Chancellor to cause intervention. This court on 23.11.2015 had passed the following order:-

"Main case is listed today along with application bearing Inward No. 51024 dated 28.10.2015 filed by the petitioners for taking additional documents on record.

Reply to the said application has been filed today in Court.

The same is taken on record.

Arguments in the main case have been heard.

The learned counsels appearing for the petitioners has read Ordinance 157-B of the Rajasthan University of Health Sciences. Ordinance 157-B of the Rajasthan University of Health Sciences is reproduced as under:-

"O. 157-B. If a written complaint is made by or on behalf of a candidate within one month from the date of declaration of result about prejudiced evaluation of his answer-book of a written paper by an examiner affecting the character of his result and neither double evaluation of answer-books is in vogue nor is revaluation permitted at that examination under the rules, and the Vice-Chancellor is satisfied about the prima facie genuineness of the complaint on the basis of the evidence before him or the circumstances of the case, he may order revaluation of the answer-book by two external examiners appointed for the purpose and accept majority opinion where the candidates are simply declared "Approved" or "Not Approved" or the average of the two nearest awards where marks are awarded, provided such opinion/award affects the character of the candidate"s result."

Mr. Ashish Kumar Singh, the learned counsel appearing for the respondents, has very fairly conceded that the complaint within meaning of Clause 157-B of the Ordinance was received by the Vice Chancellor and Vice Chancellor had sent the same to the Controller of Examination. The Controller of Examination, as follow-up had constituted a Single Man Committee. That Committee found no irregularities in the evaluation of the papers. It has been further submitted by the learned counsel that the report of the Committee, till today has not been placed by the Controller of Examination before the Vice Chancellor. Counsel appearing for the respondents has contended that since petitioners are not having any vested right, therefore, the report of Committee is not required to be put before the Vice Chancellor.

Counsel appearing for the petitioners has referred to Para 9 of the reply, which reads as under:-

"9. That, the contents of Para No. 9 are admitted to the extent of reproduction of Ordinance 157-B. That Ordinance 157-B applies to specific cases of prejudiced evaluation of answer book. In the present case, after the receipt of the complaint by the petitioners as aforementioned, the controller of examination appointed a committee of experts to examine the correctness of the marking done for the petitioner"s answer scripts. After receiving the reports of the experts in sealed cover, the controller of examination concluded that no error has been committed in the correction of petitioner"s answer scripts. Therefore, the respondents have exercised their discretion in an impartial manner."

It has been admitted that the report of Committee, which was examined by Controller of Examination, has not been placed before Vice Chancellor.

Counsel appearing for the respondents contends that since Controller of

Examination has examined report and formulated his conclusion, the report is not required to be placed before Vice Chancellor. Counsel further contends that no decision thereupon has been taken by Vice Chancellor.

As per Ordinance 157-B of Rajasthan University of Health Sciences, subjective satisfaction of Vice Chancellor is required.

A bare perusal of Clause 157-B make it clear in explicit terms that complaint is to be decided by the Vice Chancellor, hence, Controller of Examination was bound to place the report of Single Man Committee, along with his conclusion before the Vice Chancellor.

On the complaint within ambit of 157-B of the Ordinance the Single Man Committee had submitted its report on 10.09.2015 and thereafter, Controller of Examination had drawn his conclusions. As to why complaint along with opinion of the Controller was not placed before the Vice Chancellor immediately, no satisfactory explanation has been furnished by the Counsel appearing for the University.

In matters pertaining to education be it admission, examination or right of reevaluation is concerned, officials of the University have to act swiftly and with promptness for obvious reasons.

Taking totality of circumstances, it is ordered that the Vice Chancellor shall take a decision upon the report of the Committee within three-days from the receipt of copy of this order.

The order to be passed by the Vice Chancellor shall be placed before this Court on or before next date of hearing.

Let the matter be listed on 07.12.2015, along with the connected matters.

Copy of this order, under the seal and signature of the Court Master, be handed over to Shri Ashish Kumar Singh, Counsel for the respondents for onward transmission and necessary compliance."

3. In consonance of the above said order, the Vice Chancellor, Rajasthan University of Health Sciences on 5.12.2015 had passed the following order:-

"Subject: Complaints of Students of Final M.B.B.S. Part-II (Remanded) Examinations June, 2015 dated 28.8.2015, 31.08.2015, 1.9.2015 & 7.09.2015.

1. We have received aforesaid complaints of the students of M.B.B.S. Part-II (Remanded) Examinations June, 2015 wherein the said students have alleged that the examiners have awarded too less marks in the answer-books relating to the subjects of Medicine and Pediatrics.

2. The said students had appeared in remanded (Supplementary) examinations and there is no provision of revaluation in remanded/Supplementary examination, as per Ordinance 157-A(2)(iii). Therefore, by invoking powers conferred by ordinance 157-B, I referred the matter to the Controller of

Examination (C.E.) to look into the genuineness of the complaints.

3. The Controller of Examination got the sample answer-books examined by the subject experts in order to enquire into the allegations of the complaints.

4. The experts submitted their opinion dated 10.9.2015 and opined that there was no significant change in the assessment and they were satisfied with the evaluation of the main (Original) examiner.

5. The Examination Committee in its meeting dated 4.12.2015 has gone through the opinion of the subject experts and being satisfied with the opinion of the subject experts found that the allegations levelled in the complaints made by students were devoid of any substance.

6. I have gone through the opinion of the subject experts, Minutes of the meeting of Examination Committee dated 4.12.2015 & also perused the complaints of the students, I am satisfied with the opinion of subject experts & Examination Committee & do not find any genuineness in the complaints made by the students. The aforesaid complaints are disposed of accordingly for the reasons given herein above and does not require any further action at this end. The application is filed.

Sd/- Dr. Raja Babu Panwar, Vice Chancellor, RUHS, Jaipur."

4. Copy of the above said order has been handed over to this court by the counsel for the petitioners.

5. Dr. Jyoti Paliwal, Controller of Examination, is present in court. She has stated that the above two papers of Medicine and Pediatrics, were also undertaken by the students, studying in various colleges as a first attempt. Students who had failed in first attempt, were entitled to re-evaluation. Out of lot of first attempt, thirty students applied for re-evaluation. Result of six students had changed and hence, it can be safely inferred that 20% result had changed in re-evaluation. So far present students are concerned who had appeared in second attempt, Dr. Paliwal submits that in Medicine subject, out of 235 total answer sheets, 192 answer sheets and in Pediatrics subject 72 answer sheets out of 178 answer sheets were examined by the second examiner for the purposes of sampling and after all confidentiality was maintained, there was only increase and decrease of 1-3 marks on either side. As per Controller of Examination, since in the sampling done by the second examiner, result had not substantially changed, therefore a decision was taken not to get the papers re-evaluated as per Ordinance 157-B of the respondent-University.

6. Shri Sanjeev Prakash Sharma learned senior counsel appearing on behalf of the petitioners has contended that if the order passed by the Vice Chancellor is examined, there is no subjective satisfaction of the Vice Chancellor. It is stated that Clause 157-B of the Ordinance require the Vice Chancellor to go through the complaints and answer sheets himself and thereafter he should have formulated his opinion.

7. I am not impressed with the argument raised by Shri Sharma. The Vice Chancellor is not an expert in each subject. He may be having expertise in another subject, so far subjects of Medicine and Pediatrics are concerned, he has to rely and has relied upon the opinion of the expert of the subject.

8. It is next contended by Shri Sharma that the University had not called the second examiner from outside the State of Rajasthan. It is urged that there is a nexus between local examiners and therefore, the papers should have been got examined by the examiner out of State.

9. Again I am not impressed with the above said argument raised by Shri Sharma. No malafide has been alleged against the examiner. The examiner is an expert and this court should rely upon the wisdom of the expert. This court cannot substitute its opinion with the opinion of expert. Qualified expert had examined the answer sheets of the petitioners and his subjective satisfaction is final. It is for the examiner to award marks. There can be harsh examiner or there can be lenient examiner, but any examiner who had awarded marks cannot be questioned in the court. It is a settled legal proposition that in matter of academics, awarding of marks etc., court has to give due credence to the opinion of the expert in the field. University has already got sampling of the papers done from the second examiner. In the second sampling result has not changed substantially. There has only been variation of 1-3 marks on either side, i.e. towards increase or decrease. Therefore, this court also cannot cause interference.

10. However, it is admitted fact that in the case of candidates who were entitled to re-evaluation as first attempt result had changed 20%. Hence, this court leave to the discretion and wisdom of the Controller of Examination, that she may in order to uphold the name and reputation of the University, if deem appropriate may get the answer sheets of the candidates (who availed second attempt), re-evaluated from an expert from outside the State of Rajasthan. Needless to say, Controller of Examination is the one, who has to safeguard the reputation and goodwill of the University. This court has no doubt that the Controller of Examination will act in the best interest of the institution, i.e. the Rajasthan University of Health Sciences.

11. At this stage, the Controller of Examination who is present in court has stated that in view of peculiar facts and circumstances of the case, if it is not considered as precedent binding, to maintain reputation, goodwill and name of the University, she will obtain consent of the Vice Chancellor and get the answer sheets of all students who had undertaken second attempt re-evaluated from the examiner from outside the State of Rajasthan.

12. This court appreciate the concern of the Controller of Examination of the respondent University. So long the good officers like the Controller of Examination are there, not only the grievance of the students can be redressed amicably but academic excellence can also be ensured. This court appreciate the

gesture of the Controller of Examination that no student should carry any rancour that since result in case of students who appeared in first attempt had varied to the extent of twenty percent, he has been unfairly dealt with.

13. Without commenting on merits of the case appreciating the gesture of the Controller of Examination and expecting that the grievance of the students will be redressed, the present petitions stand disposed of in terms of statement made by Controller of Examination before this court.

14. In peculiar facts and circumstances of the case this order has been passed on the concession extended by the Controller of Examination of the University, hence the present order shall not be construed as precedent binding.