

(2003) 01 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5437 of 2002

Rachna Choubey

APPELLANT

Vs

Rani Durgawati University, Jabalpur

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Citation : (2003) 4 MPLJ 541

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : N.K. Tiwari, for the Appellant; S. Aole, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The petitioner, in this instant writ petition, has prayed for relief to direct re-valuation of the answer sheets of Mathematics first paper and Physics second paper and to issue mark sheet after proper revaluation in both the subjects.

The petitioner submits that she appeared in B.Sc. Part II examination in the year 2002 from Hitkarni Science, Art and Commerce College, Deotal, Jabalpur. She obtained 71.5% marks in B.Sc. 1st year examination. She has answered all the question in the subject of Mathematics as well as Physics but she was given "00" marks in Mathematics and 07 marks in Physics. She has not been granted proper marks in Mathematics first paper and Physics second paper. She applied for re-valuation. The result was published in August/September,

She has been given 13 marks in Physics instead of 7 marks no change has been made in the Mathematics. The marks awarded are not proper.

A Return has been filed by the respondent. It is stated in the return that on re-valuation there was increase of six marks in the second paper of Physics which has been mentioned in the mark sheet. There is no change in first paper of Mathematics. First paper of Mathematics was sent for checking to two different

valuers at Indore and the second paper of Physics was sent for checking at Indore and Bhopal. The process of revaluation has been duly followed. It is apparent from the documents R/4 and R/5 filed with the return that in second paper of the Physics, the petitioner has been awarded by two re-valuers 17 and 20 marks respectively. Original valuer has awarded only seven marks and in mark sheet supplied after revaluation in the second paper of physics University has awarded 13 marks and in Mathematics two valuers have given "00" and "02" marks.

Shri N.K. Tiwari, counsel for the petitioner, has submitted that the action of the University in awarding 13 marks in second paper of Physics is not in accordance with Clause 8 of the Ordinance No. 71. Clause 8 prescribes that average of the marks awarded by two examiners out of three i.e. original examiner and two re-valuers has to be arrived at by working out the average of the two marks nearest to each other out of the three valuers. He submits that the average marks ought to have been awarded out of two nearest i.e. computing 17 and 20 as the nearest to each other. The figure of 7 has been chosen to be nearest to 17 which is impermissible approach not permitted as per clause 8 of the Ordinance No. 71 of Rani Durgawati Vishwavidyalaya, Jabalpur. With respect to first paper of Mathematics counsel submitted that the re-valuation has not been properly done as marks awarded on revaluation are "00 and 02". The original valuer had also wrongly awarded "00" marks. Thus, he submitted considering past year performance of B.Sc., the case is made out to direct re-valuation through the intervention of the Court from third re-valuer.

Shri S. Aole, learned counsel for the respondent University has disputed the submission raised by the learned counsel for the petitioner and submits that the average of the marks is to be awarded. Considering the marks awarded by the original examiner and the marks nearest to the same, awarded "by the two re-valuers, thus the average of 7 and 17 has to be worked out which has been done by the University and marks awarded by the University in Physics are proper and no case has been made out to direct revaluation in the first paper of Mathematics and enhance marks in second paper of Physics as the process of revaluation provided in Clause 7 of the Ordinance No. 71 has been followed and scope of interference in academic matter is limited.

Coming to the submission now average marks is to be worked out. Clause 8 of Ordinance No. 71 is relevant, the same is quoted below :

8. If the marks awarded in the paper by any of the two examiners varies from the marks given by the original examiner by more than 10% of the maximum marks in the paper, the average of the marks awarded by two of the examiners, the original examiner and the two revaluers and nearest to each other will be taken to represent the correct valuation. This average of marks will be awarded to the candidate for the revision of his result.

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. Provided further that if the average of the marks thus arrived at is lesser than the original marks, the original marks will not be reduced and the result shall remain unchanged. The result of revaluation shall be communicated to the candidate, even if there is no change in the marks.

It is clear from the bare reading of first proviso and clause 8 that in case there is difference of "more than 10%" the average has to be worked out by working out the average of marks awarded by "two of the examiners" i.e. original examiner and two revaluers and nearest to each other will be taken to represent the correct valuation and two marks to the best of advantage of candidate shall be taken into account. The provision does not say that the marks awarded by the original examiner are to be computed necessarily to work out the average when difference is more than 10%. Full meaning has to be given to the expression "two marks to best of advantage of candidate shall be taken into account. The marks awarded on valuation/revaluation which are nearest to each other have to be taken for working out the average marks to represent the correct valuation in case of difference of more than 10%. Thus, in my opinion out of figure of 7, 17 and 20 the two nearest figure are "17 and 20" and the average of 17 and 20 has to be taken to represent the correct valuation in accordance with clause 8. Thus, University has erred in not properly considering/working out the average to be awarded to the petitioner in second paper of physics on revaluation. The petitioner is, thus, entitled to average of 17 and 20 which comes to 18.5 which has rounded off to 19 as correct valuation in the second paper of physics. The University is directed to award 19 marks.

Coming to the second submission as to the improper valuation done in the first paper of Mathematics the valuation made by the three examiners i.e. original examiner awarded zero and two revaluers have awarded zero "00" and "02" marks which shows that petitioner's performance is definitely poor in the first paper of Mathematics. No objective material has been placed by the petitioner in the writ petition so as to warrant an interference. There is no allegation of mala fide. The revaluation is done by the two different outside examiners as mentioned in the return. On the basis of the last year performance, the petitioner has not made a case as no objective material has been placed the averment of the petition reflects mere subjective satisfaction of the petitioner and this Court cannot direct the re-valuation by third re-valuers until unless a clear case is made out of victimization. Revaluation has been done no change has been found in Mathematics. It has not been stated that what were the answer given by the petitioner and what were the questions, which is the text book on the basis of which petitioner claims the answer given were correct. No such material has been placed on record. Hence for the aforesaid reasons, I am not inclined to make an interference in the revaluation done by the University in the subject of Mathematics.

In the result, the writ petition is partly allowed to the extent indicated above. Let the correct mark sheet be issued by the University within 15 days from today correcting the marks of second paper of the physics. There is no order as to costs.