

(1998) 03 AHC CK 0134

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18706 of 1996

Rishi Joshi

APPELLANT

Vs

University of Allahabad and Others

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Citation : (1998) 3 UPLBEC 2098

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Yatindra Singh and Vikram Singh, for the Appellant; Ashok Bhushan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner appeared in B.A. I examination held in 1995 in Psychology, Economic and English Literaturer. He was dissatisfied with the result of Economic paper II. Therefore, he applied for scrutiny on 14.11.1996. Later on, he applied for and appeared in the second examination in all the three papers in English. However, on scrutiny there was no change in the number secured by the petitioner in Economics II. In the second examination of English, the petitioner had improved substantially. On this background the petitioner claims that in view of provisions "Contained Regulation 14 of Chapter 31 of the University Calendar it was incumbent upon the Allahabad University to reevaluate the answer book of Economics paper-II. On the other hand, the University had illegally exercised the power conferred on it under Regulation 13 in that it had only scrutinised with regard to the marks allotted/awarded without reevaluating. It has been strongly contended that the petitioner would have secured much better result if it was properly evaluated. Therefore, the petitioner prayed for the following relief :-

"It is therefore most respectfully prayed that the Court be pleased to issue a suitable writ, order or direction in the nature of mandamus directing the respondents to recheck the answer book of the petitioner of paper two of Economics of B.A.-I Examination, 1994-95, and any other of further relief which

the Court deems fit and proper in the interest of justice be passed in favour of the petitioner."

2. Shri Vikram Nath, learned Counsel for the petitioner contended that Regulation 13 prescribes scrutiny with regard to the marks obtained by a candidate. According to him, Regulation 13 is confined to checking if any question or part of a question has been left unmarked or if a mistake has been made in the addition of marks and to arrange for the rectification of such omission or mistake. Whereas Regulation 14 uses the word "recheck" which means re-valuation, since Regulation 14 has not confined the rechecking as has been specifically confined in Regulation 13. According to him, re-checking is inserted after the checking as contemplated in Regulation 13. Therefore, re-checking has to be given a distinct and separate meaning and something other than the checking contemplated in Regulation 13. Thus according to him, the word "rechecking" connotes revaluation.

3. Mr. Ashok Bhushan, learned Counsel for the respondents on the other hand contends that Regulations, 13 and 14 deal with scrutiny. According to him Regulation 13 deals with scrutiny to be made by the University itself on its own accord on certain conditions. While Regulation 14 permits a candidate to apply for scrutiny, therefore, it would be rechecking for scrutinising the script in terms of Regulation 13. According to him, the procedure for re-valuation is very much in existence in Chapter 27 which has since been deleted by a resolution dated 19.4.1985 by the Arts Faculty of the University. According to him, Chapter 26-A was introduced for second examination with effect from 1980 permitting a candidate to improve his marks through second examination on the same subject and paper if such a candidate is dissatisfied with the result of the first examination. Thus the scope of scrutiny and re-valuation having been dealt with in different Chapters cannot overlap each other simply because of Regulations 13 and 14 being in existence in Chapter 31. He points out that the petitioner had appeared in second examination in all the three papers in English whereas he has applied for scrutiny under Regulation 14 in respect of Economics II paper. Therefore, according to him, the writ petition should be dismissed.

4. I have heard learned Counsel for the parties at length. The facts are not in dispute. The question raised is a pure question of law. The point that emerges for consideration of the Court is as to whether Regulation 14 encompasses altogether a different scope than that of Regulation 13 and requires the University to re-value the script when Regulation 14 is invoked by a candidate.

5. In order to appreciate the situation, it is necessary to refer to the relevant provisions relating to examination as are relevant for our present purposes. Regulations 13 and 14 of Chapter 31 is quoted as hereinafter:-

"13. The answer-books of a candidate who fails by not more than three marks in any one subject, or in any one paper (in examinations in which minimum pass marks are required in individual papers), or by not more than six marks in the

aggregate of all the subjects, shall be scrutinised by the Vice- Chancellor in consultation with the Head of the Department concerned, with a view to check if any question or part of a question has been left unmarked or if a mistake has been made in the addition of marks and to arrange for the rectification of such omission or mistake.

14. If any candidate desires to have his marks checked, he should apply to the Registrar within one month of the publication of the results and pay a fee of Rs. 10/- and the Vice-chancellor shall have the answer-books re-checked and communicate the result to the applicant."

6. It appears that Regulation 13 is exercised even without the application of a candidate by the Vice-Chancellor, if a candidate fails by not more than three marks in any one subject, or in any one paper or by not more than six marks in the aggregate of all the subjects. Such scrutiny is to be made in consultation with the Head of Department concerned. The scope of such scrutiny is confined with the view to check if any question or part of a question has been left unmarked or is a mistake has been made in the addition of marks and to arrange for the rectification of such omission or mistake. Whereas Regulation 14 prescribes that if a candidate desires to have his marks checked, he may apply to the Registrar within one month from the publication of results, and if such application is made his answer book should be rechecked and the result should be communicated to him. It may be noted that the word "recheck" has been used in Regulation 13 as well as in Regulation 14. The word "recheck" has been used in Regulation 14. This expression has been sought to be capitalised by Shri Vikram Nath. learned Counsel, for the petitioner and sought to argued that rechecking means re-valuation.

7. But the said contention of the learned Counsel for the petitioner appears to be misconceived. Inasmuch as Regulation 13 casts a duty on the Vice-Chancellor in consultation with the Head of Department to scrutiny the subject or subjects of paper or papers, as the case may be, whenever a candidate fails by not more than three marks or he secures 6 marks less that the aggregate of all the subjects. It is a general duty cast upon the authority to prevent mistakes and errors in marginal cases. Regulation 13 is an in built safeguard provided in the statute. Thus scrutiny is made with a view to check if there is any mistake in adding the marks or omission to award marks in any question or part of it. Such scrutiny is made irrespective of the fact whether a candidate applied or not provided he fails in any one subject only for three marks or is unable to secure aggregate less by six marks. On the other hand, under Regulation 14 any candidate who desires to have his marks checked irrespective of the fact whether he fails in any quantity of marks or he has passed in any one or more subjects or by aggregate. Regulation 14 can be availed of by any candidate without any limitation or precondition at the instance of a candidate himself, if he so desires and applies within the prescribed time limit. It uses the expression if any candidates desires to have his marks checked. Therefore, any candidate other

than the candidate mentioned in Regulation 13, and including the candidate mentioned in Regulation 13, if desires to get his marks checked irrespective of any restriction or limitation he may apply to the Registrar for getting his marks checked. When such application is made, his marks may be re-checked. Regulation 14 supplements regulation 13 to the extent that even at the instance of a candidate scrutiny may be made.

8. Therefore, on the basis of the plain reading of the said two regulations together, it does not appear that the expression "re-checked" used in Regulation 14 would mean "re-valuation". This is more so because of the existence of Chapter 27 at the time when Chapter 31 was enacted. Chapter 27 specifically dealt with re-valuation of scripts which laid down elaborate procedure for re-valuation of answer scripts. Therefore, the scope of Chapter 27 cannot be imported within the scope of Chapter 31. The said two chapters having been separately placed cannot overlap each other. In order to re-valuation altogether a different procedures have been laid down. The procedure appears to be very elaborate and had laid down the details, how and in what manner it has to be translated. Therefore, there is no question of overlapping the scope of the said chapters between each other.

9. Then again the deletion of Chapter 27 through resolution dated 19.4.1985 indicates that there would be no re-valuation of answer scripts. The introduction of Chapter 26-A supports such a view. Inasmuch as by introduction of Chapter 26-A since 1980 allowing the second examination to improve marks if a candidate is dissatisfied with the result. A candidate has been given the right to improve instead of applying for re-valuation; On the basis of Chapter 26-A, deletion of Chapter 27, clearly indicates the intention of the legislature to do away with the re-valuation system and giving opportunity to a candidate to improve his marks through second examination.

10. Thus the provisions for revaluation having been specifically provided in Chapter 27, incorporation of Chapter 31 providing for scrutiny in Regulations 13 and 14 clearly indicates that the Regulations 13 and 14 would be altogether on different field than revaluation as provided in Chapter 27 and was confined to scrutiny only which is to be checked or re-checked. Checking and re-checking has a different meaning than evaluation or re-valuation when statute itself used two different expressions in two different chapters namely evaluation or re-valuation on the one hand and checking and re-checking on the other. The expression re-checking cannot mean re-valuation or evaluation when admittedly as contended by learned Counsel for the petitioner, checking was confined to scrutiny. Then again the expression checking was also used in Regulation 14 that a candidate if desires to get his paper checked means desires to get his paper scrutinised then it will be again checked. The Regulation 14, following the Regulation 13, applied to two different class of candidates in two different manner in the matter of checking. In that view, re-checking cannot bring the same outside the scope of the said Regulation and widen and amplify the scope

of the said regulation even to the extent of evaluation or re-evaluation dealt with in different chapters.

11. The petitioner having not applied for re-valuation and having applied under Regulation 14 cannot contend otherwise. Then again Chapter 27 having been deleted, there is no scope for re-valuation and the petitioner could never apply for re-valuation. Admittedly, the petitioner himself had appeared in second examination of English paper. On account of existence of Chapter 26-A enabling candidate to improve his result, it was not open to him to apply for re-valuation when the scope of revaluation has been altogether deleted from the statute itself. When the statute itself concisely used different Chapter for re-valuation and had thereafter omitted the same, it is not open for the Court to Interpret Regulation 14 so as to re-introduce the scope of Chapter 27 since been deleted. The Court is not empowered to legislate. It cannot Interpret any provision of the statute so as to give a meaning which directly or indirectly amounts to legislation. The Court cannot encroach upon the sphere of legislation even indirectly while interpreting the statute. The statute has to be interpreted in a manner which further the aims and objectives for which it has been so introduced. The Court cannot substitute particular kind of procedure or process by the omitted chapter through interpretation of another chapter both of which were in existence at a particular given point of time and one of them having since been omitted at a subsequent stage, concisely while adding Chapter 26-A with a view that Chapter 26-A was sufficient substitute for the field that was encompassed in Chapter 27.

12. For all these reasons. I have not been able to persuade myself to agree with the contention of Shri Vikram Nath, learned Counsel for the petitioner. On the other hand, the contention of Mr. Ashok Bhushan, learned Counsel for respondents appears to be of substance and with which I have agreed as indicated above namely that Regulation 14 does not include within it the scope of revaluation.

13. In the result, the writ petition fails and is accordingly dismissed. There will, however, be no order to cost.