
(2010) 09 AHC CK 0372
In the Allahabad High Court

Shekhar Singh S/O Dr. S.P. Singh & Ors.	APPELLANT
Vs	
Ram Manohar Lohia Avadh University, Thru V.C. & Ors.	RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0372

Hon'ble Judges : Anil Kumar, J

Final Decision : Disposed Of

Judgement

Anil Kumar, J.—Heard Sri H.G.S. Parihar, learned counsel for the petitioner, Dr. Ravi Kumar Mishra, on behalf of O.P. Nos. 1 to 3 and Sri Dhruv Mathur on behalf of O.P. Nos. 4 and 5.

2. With the consent of the learned counsel for the parties who are present today, writ petition is disposed of finally at the admission stage.

3. In brief the facts of the present case as submitted by the learned counsel for the petitioners are that petitioners are students of BDS Course in the Institution known as Saraswati Dental College, Lucknow affiliated to Dr. Ram Manohar Lohia Avadh University, Faizabad.

4. Sri H.G.S. Parihar, learned counsel for the petitioner submits that they appeared in BDS Third Professional examination conducted by the opposite parties in the month of May, 2003 and their marksheets were issued on 31st of August, 2010, in the marksheet the marks which awarded to the petitioners are less, so aggrieved by the said facts, they submitted application for reevaluation of their answer books in which they had obtained less marks to the authority concerned, but no heed have been paid in respect to their grievances, hence present writ petition has been filed by the petitioners with the following main prayer:

(i)"issue a writ, order or direction in the nature of mandamus commanding the opposite parties to get the reevaluation of the petitioner no. 1 to 4 of theory paper of Oral Pathology and Microbiology and also the petitioner no. 4 in General

Surgery of BDS Third Professional examination in the subject the petitioners are fail (as mentioned in para 9 and 10 of this writ petition) done and correct the result accordingly.

(ii) Issue a writ direction or order in the nature of mandamus restraining the opposite parties from conducting any further examination of BDS Fourth Professional before reevaluating the answersheets of theory papers of Oral Pathology and Microbiology and Oral Surgery of the petitioners of BDS Third Professional."

5. Sri H.G.S. Parihar, learned counsel for the petitioners submits that at this stage he does not want to press the relief No. (ii) as claimed by the petitioner. But he press only the relief No. (i) for the said purpose he submits that in view of the Regulation known as "Regulation for the Degree of Bachelor of Dental Surgery 2007" (hereinafter referred to as the Regulation) framed by the Dental Council of India in exercise of powers as conferred by Section 20 of the Dentist Act, 1948, notified on 25th of July, 2007, published on 10th of September, 2007 (Annexure 2) there is a provision of reevaluation, the same is reproduced hereinbelow:

"Reevaluation: The objective of reevaluation is to ensure that the student receives a fair evaluation in the university examination and to minimize human error and extenuating circumstances. There shall be two mechanisms for this purpose."

6. So, the action on the part of the opposite parties thereby not considering the grievances of the petitioner for reevaluation of their answerbooks is an action of arbitrary in nature and contrary to the law as laid down by this Court vide judgment dated 23.02.2010 in Writ Petition No. 970 (MS) of 2010 M/S Deepti Chauhan and others Vs. Dr. Ram Manohar Lohia Avadh University, Faizabad, relevant portion of the same is reproduced hereinbelow:

"Writ petition under Article 226 of the Constitution of India has been preferred by the petitioner for scrutiny/revaluation of Orthodontics theory paper of Fourth Professional of BDS Course and also conduct the supplementary examination of fourth Professional of BDS course.

Dr. Ravi Kumar Mishra learned counsel for the respondents University admits that under the amended rule of Dental Council of India revaluation has been permitted.

Since right of revaluation has been conferred by amended rules the opposite parties are directed to consider the petitioner's application for revaluation and after completing necessary formalities revaluation may be done expeditiously and preferably within a period of one month from the date of receipt of a certified copy of this order. So far as holding of examination is concerned respondent may consider in accordance with law. Writ petition is disposed of accordingly."

7. He further relied on the judgment passed by this Court on 09.06.2010 in Writ Petition No. 3542 (MS) of 2010 Ms. Rishika Chhabra Vs. Dr. Ram Manohar Lohia Avadh University, Faizabad, which is reproduced hereinbelow:

"Present writ petition under Article 226 of the Constitution of India has been filed for issuing a direction in the nature of mandamus directing the opposite parties to reevaluate the Orthodontics theory paper of fourth professional of B.D.S. Course.

The petitioner has already submitted a representation to ventilate his grievances.

Accordingly, without entering into the merit of the controversy, the writ petition is finally disposed of directing the opposite parties to look into the matter and take a decision on the petitioner's representation in accordance with law by passing a speaking and reasoned order expeditiously and preferably within a period of one month from the date of receipt of a certified copy of this order and communicate the decision to the petitioner. Liberty is given to the petitioner to submit a fresh representation.

Subject to the above, the writ petition is finally disposed of."

8. And also on the judgment dated 10.03.2010 and 27.04.2010 respectively as contained in Annexure No. 5 to the writ petition passed by this Court in Writ Petition No. 1200 (MS) of 2010 Ms. Shalini Parihar Vs. Dr. Ram Manohar Lohia Avadh University, Faizabad and Writ Petition No. 2381 (MS) of 2010 Ms. Daljeet Kaur Vs. Dr. Ram Manohar Lohia Avadh University, Faizabad & others.

9. Accordingly, Sri H.G.S. Parihar, learned counsel for the petitioner submits that the relief as claimed by the petitioners may be granted to them in the instant case.

10. Dr. Ravi Kumar Mishra, learned counsel for the opposite party Nos. 1 to 3 submits that the provisions of reevaluation is enforced in the University by means of the regulation published on 27th of September, 2007, and applicable only w.e.f. the academic session . 200809 of BDS Course (five years course) whereas the petitioners are students of BDS Course 200607 (four years Course), the same is not applicable in their case, so they cannot derive any benefit from the provisions of reevaluation as provided under the regulation (Annexure2) as such the present writ petition filed by the petitioners is liable to be dismissed. However, he submits that in case the petitioners submit a representation for consideration of their grievances which they have raised in the present writ petition, the same may be considered sympathetically in accordance with law.

11. Sri H.G.S. Parihar in rebuttal submits that the examination in question has taken place after the enforcement of the regulation, as such the petitioners cannot be denied the benefit of reevaluation. In support of his submission he relied on the judgment of the Apex Court in the case of D.S. Nakara and others Vs. Union of India (1983) 1 SCC 305.

12. I have heard the counsel for the parties and gone through the record.

13. So far as the facts of the present case are concerned that the petitioners were admitted in BDS Course 200607 (four years) and presently they appeared in the IIIrd Professional Examination conducted by the University and their results have already been declared, marksheets given on 31st of August, 2010, but they secured less marks in some subjects, so they have applied for reevaluation.

14. Needless to mention that So far as the law on the subject is that in the absence of any provisions under the statute or statutory regulations the Court should not generally direct reevaluation.

15. Recently Hon"ble the Apex Court in the case of Himachal Pradesh Public Service Commission Vs. Mukesh Thakur and another (2010) 6 SCC 759, has held as under:

Para 24. The issue of reevaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmarsheth etc.etc. AIR 1984 SC 1543, wherein this Court rejected the contention that in absence of provision for reevaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not 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 Court held as under:

"14.....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...

16.....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....."

Para 25. This view has been approved and relied upon and reiterated by this Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors, AIR 2004 SC 4116 observing as under:

"7.....Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re evaluation of his answerbook. There is a provision for scrutiny only wherein the answerbooks are seen for the purpose

of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answerbook. 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 of answerbooks in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re evaluation of his marks." (emphasis added)"

16. A similar view has been reiterated in Dr. Muneeb Ul Rehman Haroon & Ors. Vs. Government of Jammu & Kashmir State & Ors. AIR 1984 SC 1585; Board of Secondary Education Vs. Pravas Ranjan Panda & Anr. (2004) 13 SCC 383; President, Board of Secondary Education, Orissa & Anr. Vs. D. Suvankar & Anr. (2007) 1 SCC 603; The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das & Ors. AIR 2007 SC 3098; and Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors. (2009) 1 SCC 599.

17. Further, a Division Bench of this Court in the case of ViceChancellor, Veer Bahadur Singh Purvanchal University, Jaunpur and others Vs. Smt. Shashikala and another [2009(2) ESC 1223 (All)(DB)] has held as under:

"Para 12 Normally, in the absence of any provision for revaluation of the answerbooks in the relevant Rules etc., the Court will not give any direction for revaluation of the answerbooks. Reference in this regard may be made to the following decisions:

(I) Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Partosh Bhupesh Kurmarsheth etc., AIR 1984 SC 1543 (paragraphs 25, 26, 27, 28 and 29)

(II) Kshitiji Singh Vs. Joint Secretary Central Board of Secondary Education, Allahabad and others, 2001 (3) AWC 2191(paragraph 7).

(III) Anuj Gupta (Minor) Vs. Central Board of Secondary Education, Delhi through its Secretary and another, (2003) 1 UPLBEC 44 (paragraphs 9, 10, 11, 12 and 13).

Para 13 However, there may be cases where glaring errors are found in the answerbook indicating that the examiner has not at all applied his mind while evaluating the answerbook, i.e. there has been total nonapplication of mind while evaluating the answerbook. Such cases will be very rare and exceptional. In such cases, the Court may direct for revaluation of the answerbook of a candidate. This is because if the evaluation is done by the examiner without application of his mind and glaring errors are found in the answerbook marking it evident that the examiner has not at all applied his mind while evaluating the answerbook, i.e., there has been total nonapplication of mind while evaluating the answerbook, then such a case will be treated to be a case of nonevaluation of the answerbook and direction for revaluation will be deemed to be direction for

evaluation of the answerbook, and not its revaluation.

18. In view of the abovesaid facts, the interest of justice will subserve, if the petitioners are permitted to submit representation to the ViceChancellor/any authority who is authorized by him for redressal of their grievances which they have raised in the instant case.

19. For the foregoing reasons, the petitioners are permitted to file fresh representation within a period of one week from today raising their grievances raised in the present case annexing all the relevant documents and material in support of their case before the ViceChancellor, any authority duly authorized by him, after receiving the representation of the petitioners, dispose of the same within a further period of ten days as per law with reasoned and speaking order.

20. With the above observation, the writ petition is finally disposed of.

No order as to costs.