

(2013) 08 MAD CK 0298

In the Madras High Court

Case No : W.A. (MD) No. 825 of 2013 and M.P. (MD) No's. 1 and 2 of 2013

State of Tamil Nadu and Others

APPELLANT

Vs

J. Amritha

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 6 MLJ 665

Hon'ble Judges : P. Devadass, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Advocate : K. Chellapandian, A.A.G. assisted by R. Karthikeyan, A.A.G, for the Appellant; M. Ajmalkhan, for Md. Imran, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasantha Kumar, J.—This writ appeal has been filed against the order, dated 18.7.2013, passed in W.P. (MD) No. 9978 of 2013, allowing the writ petition filed by the respondent herein. The respondent herein filed the writ petition praying for a writ of mandamus, directing the appellants to revise the marks obtained by her in the Higher Secondary Public Examination held in March, 2013, in accordance with the key answers issued by the Director of Government Examinations, Chennai, and consequently prayed for a direction to the appellants to award four marks for Question Nos. 57, 65(a) and 68(a) in Chemistry Subject, taking into consideration the answers written by her and to issue revised mark sheet so as to enable her to participate in the Medical Admission counselling for the academic year 2013-2014. It was the case of the respondent that she appeared in the Higher Secondary Examination held in March 2013 with Regn. No. 168643 and secured the following marks:

According to the respondent, in Chemistry Theory Paper, marks have not been properly awarded, in respect of Question Nos. 57, 65(a) and 68(a), though she has written correct answers. The respondent has scored 145 out of 150 in Chemistry Theory paper. Question No. 57 carried 5 marks and respondent was awarded 4 marks out of 5 marks in the original valuation. Insofar as question No.

65(a) is concerned, 4 marks were awarded initially by the Examiner and in respect of Question No. 68(a), 3 marks were awarded. The respondent obtained xerox copy of the valued answer sheet in the Chemistry subject and applied for revaluation. The result of revaluation was informed to the respondent stating that there was no change in the marks awarded for Question Nos. 57, 65(a) and 68(a). Hence the respondent filed the writ petition.

2. After going through the answer scripts and key answers in comparison of the answers given in the leading text books, the learned single Judge ordered to award totally four marks for the answers given by the respondent for question Nos. 57, 65(a) and 68(a). The said order was challenged by the appellants contending that the learned single Judge ought not to have verified the answers given by the respondent for Question Nos. 57, 65(a) and 68(a), as he is not an expert in the subject Chemistry and even if the marks are to be awarded, the learned single Judge should have obtained expert's view regarding the answers given by the respondent for the above referred questions.

3. Pursuant to the above said contention raised, the learned Additional Advocate General appearing for the appellants as well as the learned senior counsel appearing for the respondent submitted a list of experts and this Court, by an interim order dated 6.8.2013, constituted a two member expert committee from the names of nine experts sponsored by the learned Additional Advocate General and the learned senior counsel for the respondent, on the choice of one each, and the said expert committee, namely G. Victor, PG Assistant (Chemistry Department), Jayaraj Nadar Higher Secondary School, Nagamalai Pudukkottai, Madurai and one Vasanthi, PG Assistant, Kumararaja Muthiah Higher Secondary School, Chennai - 29, to value the answers given by the respondent in respect of Question Nos. 57, 65(a) and 68(a). After revaluation, the said Expert Committee found that for Question No. 57, the respondent was awarded 4 marks and she is entitled to get additional half mark. In respect of Question No. 65(a), the Expert Committee found that the respondent is entitled to get additional 1 (one) mark, apart from four marks already awarded. In respect of Question No. 68(a), the respondent was awarded three marks earlier and she has to be awarded additional two (2) marks. Thus, in toto, the respondent is entitled to get additional 3.5 marks in Chemistry subject (theory).

4. The learned senior counsel for the respondent as well as the learned Additional Advocate General submitted that if mark is in fraction, it should be rounded off to the next number. Therefore, during revaluation, the respondent was found to get 4 (four) additional marks and if four additional marks are taken into consideration for calculating M.B.B.S. selection cut-off mark, the respondent is entitled to get additional 1 (one) mark in the cut-off marks and the total cut-off marks comes to 197/200. The respondent is a B.C. candidate. It is an admitted position that B.C. candidates secured 197 marks were given admission through counselling in Government Medical College, Sivagangai. Taking note of the said factual aspect, on 13.8.2013, this Court directed the appellants as well

as the Dean, Government Medical College, Sivagangai, to keep one M.B.B.S. seat as vacant, pending further orders, pursuant to which one seat is also kept vacant in Government Medical College, Sivagangai.

5. When the matter was taken up for further hearing on 21.8.2013, the learned Additional Advocate General appeared for the appellants submitted that revised mark sheet has been issued to respondent on 19.8.2013, giving 199 marks out of 200 in Chemistry subject, i.e. 149 marks out of 150 in theory paper and 50 out of 50 in practical, to the respondent and also submitted that one seat having been available in Government Medical College, Sivagangai, the certificate of the respondent will be verified by the Secretary, Selection Committee, the 4th appellant herein, on 22.8.2013 and if the respondent is found eligible, selection/allotment order will be issued by the 4th appellant on the same day. Recording the said submission, the matter adjourned to 23.8.2013.

6. Pursuant to the said order, the respondent also appeared before the 4th respondent on 22.8.2013 for certificate verification and thereafter the 4th appellant sent the Plus Two mark certificate to the Director of Government Examinations, Chennai, to find out its genuineness. According to the learned Additional Government pleader appearing for the appellants, so far no reply is received from the Director of Government Examinations, Chennai, and therefore the 4th respondent is not in a position to issue allotment order to the respondent.

7. It is not the case of the appellants that genuineness of the certificates of all the candidates, who have been given allotment order, was verified with the Director of Government Examinations, Chennai, before giving allotment order. Merely because the respondent approached this Court, she is being discriminated by the 4th appellant by delaying the process of allotment order being issued. The said action of the 4th respondent is discriminatory as other students, who participated in the counselling having been issued with allotment order, without verifying genuineness of the certificates. The 4th appellant is not justified in postponing the issuance of allotment order to the respondent from 22.8.2012 onwards. The action of the 4th respondent is also contrary to the assurance given before this Court by the learned Additional Advocate General, who appeared on behalf of the 4th appellant. The respondent was given the revised mark sheet on 19.8.2013 itself and the respondent also submitted a letter on 20.8.2013 to the 4th appellant requesting him to issue allotment order to enable her to pursue 1st Year M.B.B.S. course. Thus, the respondent is prevented from attending classes by the action of the 4th appellant for about 10 days.

8. This case is a classic example as to how answer papers of the students are being valued casually, without any responsibility, by the Examiners. Even during revaluation, the Examiners have not applied their mind and not awarded correct marks to Question Nos. 57, 65(a) and 68(a). Only during the second revaluation ordered at the instance of this Court, correct marks were awarded to the respondent. In spite of the mistake committed by their own department, the appellants are treating the respondent with hostility and not giving allotment

order for joining in the I-Year M.B.B.S. Course in Government Medical College, Sivagangai, where she is eligible to be admitted as per the marks obtained by her.

9. In the decision reported in *The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another*, , the Supreme Court explained the importance of evaluation of answer papers by Examiners. In paragraphs 6 and 8, it is held thus:

6. Award of marks by an examiner is to be fair, and considering the fact that re-evaluation is not permissible under the statute, the examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping stone on career advancement of a student. Absence of a provision for re-evaluation cannot be a shield for the examiner to arbitrarily evaluate the answer script. That would be against the very concept for which re-evaluation is impermissible.

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8. It has to be ensured that the examiners who make the evaluation of answer papers are really equipped for the job. The paramount consideration in such cases is the ability of the examiner. The Board has bounden duty to select such persons as examiners who have the capacity, capability to make evaluation and they should really be equipped for the job. Otherwise, the very purpose of evaluation of answer papers would be frustrated. Nothing should be left to show even an apprehension about lack of fair assessment.....

(emphasis supplied)

10. In the decision reported in *B.C. Chaturvedi Vs. Union of India and others*, , the Hon"ble Supreme Court, approved the Full Bench Judgment of the Orissa High Court in *Krishna Chandra Pallai Vs. Union of India (UOI) and Another*, , and held that High Court being a Court of plenary jurisdiction has inherent power to do complete justice between parties similar to Supreme Court's power under Article 142 of the Constitution of India.

11. In the decision reported in *Union of India (UOI) and Others Vs. R. Reddappa and Another*, , the Hon"ble Supreme Court observed that once the Court is satisfied of injustice or arbitrariness, then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice.

12. In the decision reported in *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, , the Hon"ble Supreme Court has held that it is not only unfortunate, but apparently unfair that a meritorious candidate is denied admission.

13. Applying the said judgments to the facts of this case and the undertaking given by the learned Additional Advocate General having been recorded in the

order dated 21.8.2013, the 4th appellant is directed to issue selection/allotment order to the respondent for admission to 1st year M.B.B.S. course in Government Medical College on or before 3.9.2013. The respondent having been compelled to approach this Court and the results having been published in March, 2013 and the respondent is put to mental agony and trauma for the past three months, the 3rd appellant is directed to pay a compensation and costs of Rs. 30,000/- to the respondent. The 4th appellant having denied allotment order to the respondent from 22.8.2013, the 4th appellant is directed to pay a sum of Rs. 5,000/- as compensation to the respondent. The 4th appellant is directed to issue allotment order of M.B.B.S. course seat to the respondent along with a demand draft for Rs. 5,000/- when the respondent appears for getting allotment order, along with a copy of this order. The writ appeal is dismissed with the above directions. Connected M.P. (MD) No. 1/2013 is dismissed, and M.P. (MD)No. 2 of 2013 is closed.