

(2019) 02 DEL CK 0571

In the Delhi High Court

Case No : Civil Writ Petition No. 11551 Of 2018, Civil Miscellaneous Application No. 44694 Of 2018

Subhash Chand

APPELLANT

Vs

High Court Of Delhi

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 02 DEL CK 0571

Hon'ble Judges : S. Ravindra Bhat, J;Prateek Jalan, J

Bench : Division Bench

Advocate : Satyakam, Saahila Lamba, K.Parameshwar

Final Decision : Dismissed

Judgement

Prateek Jalan, J

1. The petitioner is an officer of this Court serving in the post of Administrative Officer (Judicial). He participated in a departmental examination for the post of Senior Judicial Assistant in the year 2017 but was unsuccessful. His representation for re-evaluation of his answer sheet has been rejected by the establishment of the High Court vide communications dated 13.04.2018 and 30.05.2018, which are challenged in this writ petition.

2. It is pointed out at the outset by Mr. K. Parameshwar, learned counsel for the respondent that this Court has declined similar relief to another candidate in respect of the same examination. The order of this Court dated 14.12.2018 in WP(C) 5283/2018 Lalit Kumar Rawal vs High Court of Delhi reads as follows:

"The petitioner complains of arbitrariness in marking of the answer-sheets in the departmental examination held for recruitment to the post of Senior Judicial Assistant (SJA). It is contended that at least in respect of four questions, the respondent - High Court Establishment has arbitrarily marked the petitioner's answer-sheets inasmuch as the comparisons between the answers given with the

model answer, so to say provided in Swamy's Compilation, are closely similar. It is therefore submitted that the whole marking is unsustainable and violation of his rights under Article 14 of the Constitution.

The High Court relies upon a ruling of Taniya Malik vs. The Registrar General, Delhi High Court [W.P.(C) No. 764/2017 decided on 16.02.2018]. In that case, it was held as follows:

"In Mukesh Thakur (supra) it was laid down that in the absence of provision for re-evaluation it cannot be resorted to and the observations which were made in the case of CPIL v. Registrar General of High Court of Delhi (supra), the decision was rendered in 2016 after the examination had already been held, thus the provision for re-evaluation could not have been introduced after the examination had been held. In our opinion, for examination in question in the absence of provision for revaluation when the examination was held, it could not be resorted to."

This court is of the opinion that the clear rule indicated in Taniya Malik (supra) is binding. Even otherwise, from the arguments of the petitioner even if he is to be awarded the marks that he seeks, he may not be selected having regard to the circumstances that the minimum marks required in each paper of a candidate are 40 out of 100, and he has been awarded only 22 marks in one of the papers in question.

In view of the aforesaid the writ petition is dismissed."

3. We note that the petitioner in the aforementioned case also sought review of the order dated 14.12.2018, (Review Petition No. 24/2019) which has been dismissed today with the following observations:

"The review petitioner urges that despite taking the grounds in the writ petition, the court did not address his grievance that question Nos.1, 10, 11 and 12 were out of syllabus. Looking at the writ petition it is found that whilst his grounds were there but it is admitted that during the course of hearing, the writ petitioner, who represented himself, did not urge these grounds to make his submissions. The court furthermore notices that the order, dismissing the writ petition, was dictated in open court. The ground urged now cannot be construed as sufficient grounds or as an error apparent on the face of the record to compel the court to review its order dated 14.12.2018.

The review petition is consequently dismissed."

4. Mr. Satyakam, learned counsel for the petitioner, however, sought to submit that the present case is distinguishable from the case of Lalit Kumar Rawal and also drew our attention to the very recent judgment of the Supreme Court in High Court of Tripura through the Registrar General vs. Tirtha Sarathi Mukherjee (2019) SCC OnLine SC 139 (Civil Appeal No. 1264/2019, decided on 06.06.2019) (hereinafter, "the Tripura case") which, according to him, permits re-evaluation even in the absence of any enabling provision in the Rules.

5. On facts, it is pointed out that the examination in question consisted of two papers and a candidate was required to obtain 40% marks in each of them to be called for an interview. Further, to qualify for appointment as Senior Judicial Assistant/Reader/Court Officer, the candidate was required to obtain an aggregate of 40% in the written test and interview. The prescribed syllabus for each of the papers was as follows:

" The syllabus prescribed for the exam for the post of Senior Judicial Assitant is as under:-

Written Paper-1

Marks: 100

Duration: 3 Hours

- i. High Court Rules & Orders Volume V.
- ii. Delhi High Court (Original Side) Rules, 1967
- iii. Civil Procedure Code: Sections 96 to 115 and Order 5, 22, 32 and 41.
- iv. Criminal Procedure Code: Sections 28 to 31, 372 to 405.

Written Paper-II

Marks: 100

Duration: 3 Hours

- i. Drafting - 50 marks
- ii. Office Noting - 50 marks"

6. By a notice dated 21.08.2017, candidates were informed that the books relating to Paper-I will be provided during the examination, which was held on 09.09.2017. The petitioner secured 51 and 38 marks in Paper-I and Paper-II, respectively, and was therefore not called for the interview, being short of the pass mark in Paper-II. After the declaration of results on 17.03.2018, the petitioner sought copies of his evaluated answer sheet and by a representation dated 03.04.2018, sought re-evaluation of his answer sheet for Paper-II. After the rejection of this representation by the impugned communication dated 13.04.2018, the copy of the answer sheet was provided to the petitioner. This led to a further representation dated 27.04.2018, in respect of the method of evaluation of Paper-II, which was rejected by a communication dated 30.05.2018. (The petitioner claims to have received the communication dated 30.05.2018 only on 21.08.2018, pursuant to a reminder sent by him on 01.08.2018.)

7. Mr. Satyakam has taken us through a copy of the petitioner's answer sheet in support of his submission that the evaluation has been unjustly conservative, to such an extent that it has been rendered arbitrary and perverse, calling for the

interference of the Court. He also urged that some of the questions in Paper-II (which related to drafting and office noting) were, in fact, out of the syllabus for that paper, as they required reference to the High Court Rules and Orders, which were in fact part of the syllabus of Paper-I. He emphasized that Paper-I related to substantive provisions of the High Court Rules and Orders, Civil Procedure Code and the Criminal Procedure Code for which, the books were also provided during the examination, whereas Paper-II was not intended to test the candidates' substantive knowledge of the materials covered in Paper-I, but his/her skills in drafting and office noting. In his submission, requiring reference to particular rules in this context was unexpected and inappropriate.

8. Dealing first with the legal position relating to re-evaluation of answer sheets, we note that a long line of authority lays down that no re-evaluation can be ordered by the Court in the absence of rules providing for the same. This principle, articulated in *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. vs. Paritosh Bhupeshkumar Sheth & Ors.* (1984) 4 SCC 27, was followed in *Pramod Kumar Srivastava vs. Chairman, Bihar Public Service Commission, Patna* (2004) 6 SCC 714, wherein the Supreme Court held as follows:

"7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books 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 answer-book. 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 re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* [(1984) 4 SCC 27 : AIR 1984 SC 1543]. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be

issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

9. The judgments of the Supreme Court in Board of Secondary Education vs. Pravas Ranjan Panda & Anr. 2004(13) SCC 383, Himachal Pradesh Public Service Commission vs. Mukesh Thakur & Anr. (2010) 6 SCC 759 and Central Board of Secondary Education vs. Khushboo Shrivastava & Ors. (2014) 14 SCC 523, are to the same effect.

10. With regard to the Rules of this High Court, the matter has been considered in Taniya Malik vs. The Registrar General of the High Court of Delhi and connected matters (2018) 14 SCC 129. The Supreme Court held in that case as follows:

"16. Now we take up the second submission with respect to revaluation of answer scripts. It is settled proposition of law that in the absence of provision it cannot be ordered. In H.P. Public Service Commission v. Mukesh Thakur (2010) 6 SCC 759, this Court has considered various decisions and observed: (SCC pp.766-67, paras 24 - 26)

"24. The issue of revaluation 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 and Anr. v. Paritosh Bhupesh Kurmar Sheth (1984) 4 SCC 27, wherein this Court rejected the contention that in absence of the provision for revaluation, 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/revaluation 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: (SCC pp. 39-40 & 42, paras 14 & 16)

"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.

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16. ...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making 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. "

25. This view has been approved and relied upon and re-iterated by this Court in *Pramod Kumar Srivastava v. Bihar Public Service Commission*, (2004) 6 SCC714 observing as under: (SCC pp. 717- 18, para 7)

"7.Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer-book. There is a provision for scrutiny only wherein the answer book 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 answer book. 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 revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks."

A similar view has been reiterated in *Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State* (1984)4 SCC 24; *Board of Secondary Education v. Pravas Ranjan Panda* (2004) 13 SCC 383; *Board of Secondary Education v. D. Suvankar* (2007) 1 SCC 603; *W.B. Council of Higher Secondary Education v. Ayan Das* (2007)8 SCC242; and *Sahiti v. Dr. N.T.R. University of Health Sciences* (2009) 1 SCC 599."

26. Thus, the law on the subject emerges to the effect that in absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation."

17. In *Mukesh Thakur* (supra) it was laid down that in the absence of provision for revaluation it cannot be resorted to and the observations which were made in *Centre for Public Interest Litigation v. High Court of Delhi* (2017) 11 SCC 456, the decision was rendered in 2016 after the examination had already been held, thus the provision for revaluation could not have been introduced after the examination had been held. In our opinion, for examination in question in the absence of provision for revaluation when the examination was held, it could not

be resorted to."

11. Two recent judgments of the Supreme Court recognize the general principle discussed above, but also carve out an exception. These are *Ran Vijay Singh vs. State of Uttar Pradesh & Ors.* (2018) 2 SCC 357 and the Tripura case (supra). The Court in *Ran Vijay Singh* (supra) drew, inter alia, these conclusions:

"30.2 If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalization" and only in rare or exceptional cases that a material error has been committed;

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30.5 In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

12. Several of the aforementioned decisions were cited in the Tripura case (supra), and the Court held as follows:

"19. We have noticed the decisions of this Court. Undoubtedly, a three Judge Bench has laid down that there is no legal right to claim or ask for revaluation in the absence of any provision for revaluation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction under Article 226 of the Constitution to direct revaluation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of revaluation.

20. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situate where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the

writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.

22. We would understand therefore the conclusion in paragraph 30.2 which we have extracted from the judgment in *Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors.* 2018 (2) SCC 357 only in the aforesaid light. We have already noticed that in *V.S. Achuthan vs Mukesh thakur*'s case reported in 2010 (6) SCC 759, a two Judge Bench in paragraph 26 after survey of the entire case law has also understood the law to be that in the absence of any provision the Court should not generally direct revaluation."

13. In the light of the above authorities, the question for our determination is whether the petitioner has been able to demonstrate that he has been denied marks, despite having given correct answers in respect of which there can be "no dispute", or even the "slightest manner" of doubt, as indicated in paragraph 19 of the Tripura case (supra). It is only in these circumstances that the Court would be justified in departing from the general principle and ordering re-evaluation even in the absence of rules / regulations so providing. In case of any doubt or dispute as to the correctness of the answer, paragraph 30.5 of *Ran Vijay Singh* (supra) and paragraph 19 of the Tripura case (supra) mandate that we resolve that in favour of the establishment rather than the candidate.

14. The first contention advanced on behalf of the petitioner is that the marks awarded to him in some of the questions were inadequate for the answers given. Mr. Satyakam drew our attention to Questions 6, 8 and 9 of Paper-II and submitted that the petitioner's answers merited more than the marks awarded: 1 out of 4, 2 out of 5, and 5 out of 9 respectively. The remit of the Court, even after *Ran Vijay Singh* (supra) and the Tripura case (supra), does not extend to a wholesale reassessment of the paper in order to direct re-evaluation. Some degree of subjectivity is part and parcel of assessment of a paper like the one with which we are concerned. It is not possible to say that there was one undisputed "correct" answer to any of the questions in issue, so as to hold that the petitioner's marks have been illegally withheld. Indeed, the petitioner does not say so either. His complaint is that the deduction of marks in some questions was disproportionate and excessive.

15. Similarly, we do not see any justification in the petitioner's second contention, that questions in Paper-II were not part of the prescribed syllabus. The reference to Rules required to answer those questions were part of the syllabus for Paper-I, which was held the previous day. It is not too much to expect candidates to carry the knowledge required for Paper-I into their answers for Paper-II. That books were provided for Paper-I and not for Paper-II does not

detract from this conclusion. The examiner is entitled to substantial leeway in prescription of the syllabus, setting the paper, laying down the conditions in which the paper must be answered, and assessing it. To expect a basic knowledge of the legal provisions prescribed, even without access to the books, was not arbitrary or illegal.

16. Viewed from this perspective, the petitioner has not been able to show any error in the marking of his paper, which can be regarded as beyond dispute or doubt. His grievances therefore do not call for our interference under Article 226 of the Constitution.

17. For the reasons aforesaid, the writ petition is dismissed. No order as to costs.