

**(1996) 05 MP CK 0013**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 1525 of 1994**

Sunil Garg

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 17-05-1996

**Acts Referred:**

Madhya Pradesh Vishwavidyalaya Ordinance, 1973 — Ordinance 5

**Citation :** (1997) 1 MPLJ 436

**Hon'ble Judges :** T.S. Doabia, J

**Bench :** Single Bench

**Advocate :** R.K. Shrivastava, for the Appellant; K.N. Gupta, for the Respondent

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## **Judgement**

T.S. Doabia, J.

The petitioner who happened to be first in the original valuation, has been brought down when the awards of respondent No. 5 were subjected to revaluation. It is the further grievance of the petitioner that by this revaluation a "gold medal" to which he had become entitled to would not be given to him but would be awarded to respondent No. 5.

The following contentions have been raised by the petitioner :

(i) that, the revaluation was not done as per the rules and regulations dealing with this subject. For this, reliance is being placed on clause 22 of Ordinance 5. According to the petitioner, the answer-books were supposed to be sent to two examiners other than the one who initially valued them and both of them are supposed to be outside the University. It is submitted that ten answer-books valued by the same examiner and a copy of the memorandum of instructions for the guidance of examiners if prepared by the paper setter were also required to be sent to the two examiners so that they could evaluate the answer-book of the respondent No. 5 in the light of the standard set up by the examiner and the standard contained in the memorandum of instructions;

(ii) that, respondent No. 5 is related to an official who is working in the G. R. Medical College, Gwalior, and therefore, the University has favoured respondent No. 5; and

(iii) that, the question of grant of "gold medal" should be done on the basis of first award and the determination made in the second award should not be taken note of.

The stand taken by the University is that it is not concerned in any manner with the grant of "gold medal". According to the University, one Doctor by the name of Hiranandani, a noted specialist in Ear, Nose and Throat (E.N.T) has donated a gold medal and this medal is awarded in accordance with the wishes of the donor. It is submitted that the University of its own does not award any gold medal and it is merely acting as per the wishes of the donor. It is the further case of the University that the gold medal would naturally go to the person who gets highest marks and is placed at serial number one. If, on revaluation, a candidate comes on the top, then, such a candidate would be entitled to the gold medal.

The petitioner filed a rejoinder. In the rejoinder it has been specifically mentioned that the provisions of clause 22 of Ordinance 5 which deal with the subject of revaluation were not followed. According to the petitioner, it was mandatory to send ten answer-books evaluated by the same examiner and a copy of the memorandum of instructions. These have to be sent to the examiners outside the University by the Kulpati. According to the petitioner, this has not been done. It has also been pleaded that as per the resolution passed by the Executive Council, the revaluated marks are not to be taken into consideration for the purposes of awarding gold medal. The rejoinder was filed in this Court on 13th of February, 1995, and was duly received by the counsel for the respondents.

There is no reply to the rejoinder.

Before dealing with respective contentions of the parties, it would be apt to notice clause 22 of the Ordinance 5. This reads as under :

"Where a candidate applies for revaluation the answer-book in which revaluation is sought will be sent for valuation by the Kulpati, to two examiners (other than the one who initially valued it) both shall be from outside the University jurisdiction. Ten answer-books valued by the same examiner and a copy of the memorandum of instructions for the guidance of examiners if prepared by the paper-setter will be sent to each of the two examiners to enable them to evaluate the answer-book concerned in the light of the standard set by the examiner and the memorandum of instructions. If less than ten candidates had appeared at the examination in the paper concerned the answer-books of all the candidates shall be sent to each of the examiners. Each of the two examiners shall receive a remuneration of Rs. 20/- for the revaluation of an answer-book.

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 per cent 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 per cent of the maximum marks in the paper if two difference 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."

A perusal of the above clause indicates that following steps are required to be taken when answer-books are sent for revaluation :

(i) the answer-books in which revaluation is sought will be sent for revaluation by the Kulpati;

(ii) these are to be sent to two examiners and these examiners should be outside the University;

(iii) ten answer-books evaluated by the same examiner and a copy of memorandum of instructions is also be sent for the guidance of the examiners so that they are in a position to find out as to what was the standard set by the earlier examiner and paper setter;

(iv) if the marks awarded in the paper by any of the two examiners varies from the original examiner by more than ten per cent maximum marks in the paper, the average of the marks awarded by two of the examiners and the original examiner and the two evaluators, the nearest to other will be taken to represent the correct valuation.

(v) the University has taken a stand that papers were sent for revaluation as per the rules. It has not stated in categorical terms that ten answer-books of which valuation was done by the examiner originally were also sent to the two examiners in question.

A specific plea was taken by the petitioner in this regard by the petitioner in the rejoinder. This plea as contained in paras 2 and 3 be noticed. These read as under :

"(2) that, the Respondents Nos. 3 and 4 in their return have relied on clause 22 of the Ordinance No. 5 wherein a detailed procedure has been laid down regarding the revaluation. It is submitted that in the present case the aforesaid rules have been completely overlooked. It is specifically mentioned that the answer-book in which the revaluation is sought was not sent for valuation by-the Kulpati to two examinees (other than the one who initially valued it) from outside the University jurisdiction.

(3) that, as per the aforesaid rule, it was mandatory to send 10 answer-books

valued by the same examiner and a copy of the memorandum of instructions for the guidance of examination to each of the examiners to evaluate the answer book concerned in the light of the standard set by the examination and the memo of instructions."

As indicated above, the rejoinder was taken on record by this Court on 13th of February, 1995. No further reply was filed. If the assertions of the petitioner made in the rejoinder are taken as correct, then, a finding can be recorded in favour of the petitioner that the result of revaluation was not in terms of clause 22 of Ordinance 5. As indicated above, regarding this aspect of the matter, the University has not taken a categorical stand. As such, it would be apt to direct to the Vice-Chancellor of the University to take notice of this dispute and settle the same in terms of Madhya Pradesh Vishwavidhyalaya Adhiniyam, 1972.

There is another aspect of the matter which also requires to be taken note of. The respondent No. 5 originally got 24 marks out of 40. On revaluation, the tally of marks has gone to 34 out of 40 marks. The increase is as such 9 marks. This is more than ten per cent of the maximum marks, and therefore, it was necessary for the University to take notice of paragraph 2 and also proviso to clause 22 of Ordinance 5. As the marks awarded on revaluation are more than ten per cent of the maximum marks the average of the marks given by the two examiners and the original examiner were required to be taken note of. This aspect of the matter would also be taken note of by the Vice-Chancellor of the University while deciding the dispute.

The question whether the gold medal can be awarded on the basis of marks obtained on revaluation would also be examined by the Vice-Chancellor of the University. In this regard, the decision taken by the executive Council on 25th of December, 1993, at item No. 78, would also be taken note of. It be seen that if there is a provision to the effect that gold medal is to be awarded on the basis of original valuation, then, that has to be given due regard. The decision given by the Punjab and Haryana High Court in *Raj Kumari Goyal Vs. Punjabi University, Patiala and Others*, : does support such a proposition. Accordingly, the matter is left to be decided by the Vice-Chancellor in accordance with law.

The Vice-Chancellor of the University would also decide;

- (i) Whether there was compliance of clause 22 of Ordinance 5 referred to above inasmuch as ten answer-books valued by the same examiner and a copy of memorandum of instructions for the guidance of the two examiners were sent or not;
- (ii) Whether in the matter of giving awards, the guidelines contained in para 2 of clause 22 of Ordinance 5 and the proviso be taken note of or not;
- (iii) Whether the resolution passed by the executive Council on 25th of December, 1993, at item No. 78 is binding on the University or not;

Let a decision be taken as early as possible. Till a decision is taken status quo as

ordered by this Court on 8th of December, 1994 would continue to operate. This petition is disposed of accordingly.