(2000) 01 KL CK 0031

In the High Court Of Kerala

Case No : W.A. No. 2492 of 1999

University of Kerala and Others APPELLANT

Vs

E.C. Muralidharan RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala University Act, 1974 — Section 83
Kerala University First Ordinances, 1978 — Ordinance 22

Citation : AIR 2000 Ker 185 : (2000) KLJ 484

Hon'ble Judges : D. Sreedevi, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : S. Gopakumaran Nair, for the Appellant; K.P. Sarvothaman, for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, J.—The University of Kerala and 2 others are the appellants. The respondent filed the Original Petition praying for a direction to the University to take immediate steps to re-value the paper "Investment Analysis and Portfolio Management" of the 3rd Semester Examination attended by him by an independent Professor and to publish the result of the same before the commencement of the supplementary examination. It is further prayed that the Controller of Examinations may be directed to consider the dispose of Exhibit P6 representation preferred by him.

2. The respondent-writ petitioner''s contentions in brief are as under : He is a student of "Master of Business Administration" (MBA) in the Thangal Kunju Musaliar Institute of Management, Kollam, affiliated to the appellant-University. He has completed all four Semesters of the course and appeared for the examinations. In the first three Semesters, the respondent has fared well and has secured high marks, but for paper No. 3 in the 3rd Semester written examination on the subject of "Investment Analysis and Portfolio Management",

he could secure only 26 marks out of 75 marks and hence he could not clear the subject. The minimum marks required for a pass in the subject is 37.5 out of 75 marks. According to the respondent, he has even secured 95% marks in the sessional examinations of the subject, as evidenced by Exhibit P3 and that Exhibits P1 to P3 would reveal that he has secured high marks in all subjects of each Semester except in paper No. 3 of 3rd Semester as evidenced by Ext.P3. He has relied on Exhibit P4 and P5 to show that he is a brilliant student and has high aptitude in the elective paper "Investment Analysis and Portfolio Management" and hence the publication of the result of the written examination of the said paper must be either due to a bona fide error or mala fide exercise of power. The respondent is a top scorer of the class in the internal assessment for all the subjects including the failed subject and had been performing excellently well in all the Semesters and has secured 80% marks in 3rd Semester in spite of losing one subject. It is the respondent''s case that according to the reliable sources at the first valuation in the subject he got 60% marks and on second valuation he got 80% marks and it is on the third valuation of the paper that the marks have been reduced to 26 marks without any analysis. The respondent preferred an application for re-valuation on 12-7-1999. Though the application for re-valuation has been submitted, no steps have been taken to re-value the papers. The current result will be a hindrance and will have further repercussions to his career. Since the supplementary examinations of the 3rd Semester was likely to be commenced in the first week of November, 1999, the respondent approached this Court for its intervention. It is submitted by the respondent that the denial of the right of a Post-Graduate student to get his papers re-valued is against the principles of natural justice.

3. The Original Petition was resisted by the University by filing a detailed counter-affidavit. The University denied the statement of the respondent-writ petitioner that he has scored very high marks for written paper of all subjects of each Semester examination except "Investment Analysis and Portfolio Management" and stated that as is evident from Exhibits P1, P2 and P3, the respondent has scored only 50 to 60% marks for many subjects. Similarly he has scored only 77.47% marks for the 3rd Semester and not 80% as stated by him. Paragraph 6 of the counter-affidavit filed in the Original Petition is reproduced hereunder :--

"The M.B.A. Course being a Post-Graduate course, the system of double valuation Is taken for the evaluation of answer scripts. The first valuation is conducted by the internal examiner, who is a member of the teaching faculty of the institute who deals with the subject concerned, after which the scripts are sent to the external examiner for the second valuation. In cases where the marks awarded by both the examiners carry variation exceeding 15%, the scripts are valued by a third examiner whose assessment (the marks awarded by him) would prevail. In the instant case, the Internal examiner awarded him 76% and the external 50.6% marks for the impugned subject. Since there was variation of marks in the first two valuations exceeding the prescribed limit, the script was subjected to a third valuation, wherein the petitioner was awarded 34.66%

(26/75) which has been taken into account. As per the existing procedure, the marks obtained by a candidate in the first and second valuations are retained in the records of the University confidentially and only the average of these two marks or the third valuation marks as the case may be, are made known to the candidate. The Chairman of the examination (third respondent) in the present case is under an obligation to preserve the confidential nature of the matter. The revelation of the petitioner that he came to know about the marks awarded to him in the three valuations from the Chairman is rather embarrassing."

It is stated that the request for re-valuation of the answer book on the subject was not conceded to as the University Rules forbid re-valuation of answer-books of Post-Graduate Examinations--vide Chapter VII, Ordinance 22 of the Kerala University First Ordinance, 1978.

4. A learned single Judge of this Court by Judgment dated 6-10-1999 disposed of the writ petition by observing as follows :--

"In fact, even though there is no question of revaluation for Post-Graduate courses, on the facts of this case and considering the earlier performance of the petitioner, I am of opinion that the University may either award average marks by the internal and external examiners as per rules or in view of the fact that third examiner''s mark is more than 15% below the average marks, as a special case, petitioner''s paper may be sent for another valuation without creating a precedent. The Original Petition is disposed of with the above direction."

Aggrieved by the above judgment, the University has filed the appeal.

5. The appeal was admitted on 23-11-1999 and the University was directed to produce the answer script in question and the mark list and they were produced in a sealed cover. We have perused the same. Our attention was drawn to the University Regulations and also the grounds raised in the writ appeal. Mr. Gopakumaran Nair. learned Counsel for the appellants, submitted that the finalisation of the respondent''s marks is strictly in conformity with the rules of the University and that the request made by him vide Exhibit P6 representation for revaluation of his answer-script was not conceded to as the University Rules forbid re-valuation of answer books of the Post-Graduate Examinations--vide Chapter VII, Ordinance 22 of the Kerala University First Ordinance, 1978. It was further contended that the M.B.A. course being a Post-Graduate course, the system of double valuation is taken for the evaluation of answer scripts. The first valuation is conducted by the internal examiner, who is a member of the teaching faculty of the institute who deals with the subject concerned. After the above valuation, the scripts are sent to the external examiner for the second valuation. In cases where the marks awarded by both the examiners carry variation exceeding 15%, the scripts are valued by a third examiner and the marks awarded by him would prevail and be final. It is seen from the records that in the instant case the internal examiner awarded the respondent 76% and the external examiner awarded 50.6% marks for the subject in dispute. Since there was

variation of marks in the first two valuations exceeding the prescribed limit, the script was submitted to a third valuation wherein the respondent was awarded 34.66%. i.e. 26 marks out of 75. It is also not in dispute that the marks obtained by the candidate in the first and second valuations are retained in the records of the University confidentially and only the average of these two marks or the third valuation marks as the case may be are made known to the candidate. The Chairman of the examination is also under an obligation to preserve the confidential nature of the matter.

6. The learned Judge, by the impugned judgment directed the University to award either the average marks by the internal and external examiners as per rules or to send the paper as a special case for another valuation without creating a precedent in view of the fact that third examiner''s mark is more than 15% below the average marks. Mr. Gopakumaran Nair says that this judgment is contrary to law and that such a direction cannot be issued against the University Rules, practice and precedent. As already noticed, the University Ordinance 22. Chapter VII forbids re-valuation of answer scripts of the Post-Graduate Examinations. Therefore, the direction given by the learned single Judge to send the respondent''s answer books for 4th re-valuation, in our opinion, is not correct and against the facts and University Ordinance and Regulations. The learned Judge in fact ought to have found that as per the University Rules if there is a difference of more than 15% of marks between the first and second valuation, i.e. the internal and the external valuations, the answer script will be sent for a third valuation and the marks ''awarded in the 3rd valuation will be accepted as the actual marks. A perusal of the records would show that the University has followed this rule strictly and that there is, therefore, no discrimination as alleged by the respondent. This apart, a re-valuation is not permissible in the case of Post-Graduate Examinations by rules because the answer scripts of the Post-Graduate Examinations are subjected to two valuations, one by an internal examiner and the second by an external examiner. In such a case, there is no rationale or justification for ordering a 4th re-valuation unless there is marked difference in the marks in the two evaluations. When there is a marked difference between the internal and external examinations in the Post-Graduate Examinations, i.e. more than 15% marks, the answer scripts will be subjected to a third valuation, which is not a revaluation because a re-valuation has already taken place in the form of the second valuation, i.e. the external valuation. This apart, the respondent has not challenged the validity and vires of the above rules of the University regarding the evaluation of the Post-Graduate answer scripts. Therefore, there is no justification for deviating from the same or for ignoring the rules in the respondent''s case. We are of the opinion that there is no justification for such a direction on the facts of the case and the Rules of the University on the academic matters like the present one. Prescribing the mode and manner of evaluation of answer scripts of examinations is nothing but an academic function of the University, which cannot be interfered with by the Courts, who are not specialists or competent bodies to decide efficacy, pragmatism and

reasonableness of such matters.

In the light of the foregoing discussions, we are of the opinion that the respondent/writ petitioner is not entitled to get any relief. The judgment passed by the learned single Judge dated 6-10-1999 in the Original Petition, which is impugned in this appeal, is set aside and the Writ Appeal is allowed. There will be no order as to costs.