

(2019) 01 RAJ CK 0340
In the Rajasthan High Court
Case No : Civil Writ Petition No. 18522 Of 2018

Yuvraj Sharma

APPELLANT

Vs

State of Rajasthan And Ors

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 21

Citation : (2019) 01 RAJ CK 0340

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Ajay Garhwal, M.A. Khan, Vikram Singh, Sanjeev Kumar Singhal

Final Decision : Dismissed

Judgement

This writ petition seeks to challenge the provisions of Ordinance 157A(2) of the Rajasthan University Hand Book with the prayer that the same be declared arbitrary, discriminatory and violative of Articles 14, 15 and 21 of the Constitution of India.

Learned counsel for the petitioner submitted that the petitioner has taken admission in the course of M.Sc. (Med.) from the subject of Anatomy conducted by the respondent-Rajasthan University of Health Sciences after completion of his graduation from science stream and he has been allotted SMS Medical College for his post graduation course. The respondents also allotted guide to the petitioner for his post graduation vide order dated 08.11.2016. The respondents issued programme of examination for Post Graduate M.Sc. (Med.) Part-I Examination March-2018 on 12.03.2018. The petitioner being eligible in all aspects appeared in the examinations conducted by the respondents for M.Sc. (Med.) Part-I from the subject of Anatomy. The result of the examination was declared in March, 2018. The petitioner was surprised to find that he had been declared fail in Paper-I, although according to him, he worked hard for the same and answered all the questions. The petitioner approached the respondents for revaluation of his answer sheet of Paper-I but was informed that the same could

not be done as there is no provision for the same in the University Ordinances. It is argued that the respondent-RUHS has adopted the guidelines and rules framed by the Rajasthan University and the same are applicable on all the candidates, who had appeared in the examinations conducted by the respondents. It is pertinent to mention here that revaluation of the answer sheet are even allowed by the respondents but it is the examination of the petitioner, which has been excluded from revaluation. It is argued that there is no intelligible differentia which lies beneath such classification and the same has no rational relation to the object sought to be achieved. It is argued that right to revaluation is a legal right of the petitioner which cannot be done away with in a cursory manner particularly when the respondents have been extending benefit of revaluation to the students of all other subjects. It is therefore prayed that present writ petition be allowed and the Ordinance 157A(2) of the Rajasthan University Hand Book be declared arbitrary, discriminatory and violative of Articles 14, 15 and 21 of the Constitution of India.

Mr. M. A. Khan, learned counsel appearing on behalf of the respondent-Rajasthan University of Health Sciences opposed the writ petition and argued that the examination of M.Sc. (Medicine) Anatomy is governed by the Ordinance 278-F(B) of the University Ordinances. Note 1(v) of the said Ordinance provides that each section of paper-I will be set by the external examiner of the subject concerned and will be examined by the internal examiner of the subject concerned. It is submitted that before commencement of examinations, the University appoints specific external and internal examiner. Only that particular external examiner is entitled to set question paper and can be evaluated by the specific internal examiner. In view of the specific provisions of Ordinance 278-F (B) of the University, revaluation in the M.Sc. (Medicine) Examination is not permissible. The petitioner had submitted an application dated 30.07.2018 for certified copy of the answer book for part-I Section A of M.Sc. (Medicine) Anatomy Part-I Examination 2018 under Right to Information Act, 2005. The respondent No. 2 has supplied the certified copy of the said answer book vide letter dated 28.08.2018. It is argued that there is logic in not permitting revaluation of answer books in respect of (i) M.E. examination in the faculty of Engineering, M.D., M.S., M.Sc. (Med.), D.M. and M.Ch. Examination in the faculty of medicine and M.Phil. Examinations, (ii) the scripts of practical examinations, sessional/periodical tests, dissertation, thesis and viva-voce and (iii) all supplementary examinations, special examinations, part examinations, back papers and boycotted papers. It is based on opinion of the experts that the University Ordinance has provided for such a provision.

We have given our anxious consideration to rival submissions and carefully perused the material on record.

Ordinance 157A(2) of the Rajasthan University Ordinance Hand Book is reproduced hereunder for the facility of reference:

"O.157-A.(2)Notwithstanding the provisions of clause (1) above, revaluation of

answer books shall not be permitted in respect of (i) M.E. examination in the Faculty of Engineering, M.D., M.S., M.Sc. (Med.) D.M. and M.Ch. Examinations in the Faculty of Medicine and M. Phil. Examinations, (ii) the scripts of practical examinations, sessional/periodical tests, dissertation, thesis and viva-voce and (iii) all supplementary examinations, Special examinations, Part examinations, back papers and boycotted papers."

The aforesaid provision cannot be declared ultra vires on the supposed argument of discrimination. The aforesaid provisions equally applies on all those who appear in M.Sc. (Med.) Part-I Examination.

The Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27 held that the principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. It was further held by the Supreme Court that 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. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. It was further held that in absence of a specific provision conferring a right upon an examinee to have his answer book re-evaluated, no such direction can be issued.

The Supreme Court following the aforesaid judgment of Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth (supra) in CBSE Vs. Khushboo Shrivastava, (2014) 14 SCC 523 reiterated that there must be finality attached to the result of a public examination and in the absence of a statutory provision re-evaluation of answer scripts cannot be permitted and that it could be done only in exceptional cases and as a rarity.

The Supreme Court in Ran Vijay Singh & Others Vs. State of Uttar Pradesh & Others (2018) 2 SCC 357, after following the aforesaid judgments held that if a

statute, rule or regulation permits re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then it must be permitted and if not, court may also permit it only if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalisation and only in rare or exceptional cases that a material error has been committed.

In view of above, we do not find any merit in this writ petition and the same is accordingly dismissed. Stay application also stands dismissed.