2023 LiveLaw (SC) 131

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DINESH MAHESHWARI; J., SANJAY KUMAR; J.
February 14, 2023.
CIVIL APPEAL NO.1141 OF 2023 (Arising from SLP(C) No. 27252/2019)
DR. B R AMBEDKAR UNIVERSITY, AGRA *versus* **DEVARSH NATH GUPTA & ORS.**

Re-evaluation of answer sheets- Supreme Court disapproves of High Court ordering re-evaluation of answer sheets when there was no statutory provisions- Moreover, the award of marks in the descriptive type answers essentially remains a matter of subjective assessment and the Court would not be entering into that arena of assessment, which remains reserved for the examiner/evaluator.- However, having regard to peculiar facts, SC refuses to interfere with the relief granted by the HC to the student, but does not endorse the process. *Follows Dr. NTR University of Health Sciences vs Dr. Yerra Trinadh, 2022 LiveLaw (SC) 909, Ran Vijay Singh and Others. v. State of Uttar Pradesh and Others, (2018) 2 SCC 357, Himachal Pradesh Public Service Commission v. Mukesh Thakur and Another, (2010) 6 SCC 759 (Para 13)*

(Arising out of impugned final judgment and order dated 21.05.2019 in WC No. 871/2019 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Ms. Astha Sharma, AOR Mr. Ravinder Singh, Adv. Mr. Srisatya Mohanty, Adv. Ms. Raveesha Gupta, Adv. Mr. Sanjeev Kaushik, Adv. Ms. Mantika Haryani, Adv. Mr. Shreyas Awasthi, Adv. Mr. Himanshu Chakravarty, Adv. Mr. Devvrat Singh, Adv. Ms. Muskan Surana, Adv.

For Respondent(s) Mr. Syed Mehdi Imam, AOR Mr. Atif Suhrawardy, Adv. Mrs. Shamama Anis, Adv. Mr. Tabrez Ahmad, Adv. Mr. Omar Siddiqui, Adv. Mr. Ardhendumauli Kr. Prasad, AAG Mr. Vishnu Shankar Jain, AOR Ms. Marbiang N. Khanwir, Adv. Mr. Ashish Madaan, Adv.

J U D G M E N T

DINESH MAHESHWARI, J.

Leave granted.

2. Having regard to a short point involved, we have heard learned counsel for the contesting parties finally at this stage itself.

3. The appellant–Dr. B R Ambedkar University, Agra[1] has preferred this appeal being aggrieved by the judgment and order dated 21.05.2019, as passed by the Division Bench of High Court of Judicature at Allahabad in Civil Misc. W.P. No. 871 of 2019, whereby the High Court has allowed the writ petition filed by the respondent No. 1[2], seeking issuance of a writ of mandamus for re-checking of his answer sheet of Paper-II of the subject Physiology through different examiners and to accept the amended result, if marks were increased in re-checking.

3.1. While dealing with the writ petition aforesaid, the High Court, after taking note of the peculiar facts and circumstances of the case, got the answer sheet in question re-evaluated from three different examiners and, after noticing that the re-evaluated marks awarded by three different examiners were broadly similar but were much higher than the original marks, ordered that average of the marks so awarded by the three examiners be awarded to the writ petitioner in relation to the said Paper-II of Physiology. Not only this, the High Court further proceeded to award costs in the sum of Rs. 1 lakh to the writ

[1] Hereinafter referred to as 'the appellant-University'.
[2] Hereinafter referred to as 'the writ petitioner'.

petitioner with liberty to the appellant-University to recover the amount from the examiner concerned, after such inquiry as provided in law. Yet further, the High Court provided that if any student who had appeared in the examination of the University in the preceding three years were to apply for re-assessment/reevaluation, the same be not declined only on the ground that no such procedure was prescribed in the Statute of the University. The High Court further directed that a copy of the judgment be forwarded to the Secretaries of Higher Education and Secondary Education Departments to look into the matter and to ensure that evaluators were deployed '*in a reasonably efficient manner*'.

4. With reference to the subject-matter of the writ petition, the nature of order passed by the High Court and challenge thereto in the present appeal, we may take note of the relevant background aspects, in brief, as follows:

4.1. The writ petitioner of this case (respondent No. 1 herein), being a student of M.B.B.S. Course at S.N. Medical College, Agra, affiliated to the appellant-University, appeared in M.B.B.S. (1st Professional) Examination held in the month of December, 2018. In the result of the said examination, the writ petitioner was declared as failed even after securing 344 marks out 600 for the reason that in Paper-II of Physiology, he got only 6 marks out of 50.

4.2. Dissatisfied with the marks so awarded, the writ petitioner obtained a copy of the answer sheet of the said Paper-II of Physiology and also applied for scrutiny of marks and re-checking of answer sheet. When no action was taken by the appellant-University for scrutiny or rechecking, the writ petitioner approached the High Court, seeking the following reliefs:-

"A. Issue a writ of Mandamus directing the respondents to get the answer sheet of the Petitioner be rechecked through different examiner so that a proper checking of the answer-sheet of the Petitioner for Paper-II subject Physiology for M.B.B.S. (1st- Prof) Examination 2018 is done and it is further prayed that this Hon'ble Court may also be pleased to direct the Respondents that in case the marks of the Petitioner are increased in the rechecking then an amended result may also be issued in favour of the Petitioner within a stipulated time as may be directed by this Hon'ble Court.

B. To issue any other suitable writ, order or direction in favour ofthe petitioner as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case.

C. Award cost of the petition in favour of the petitioner."

5. After examining the material placed on record, the High Court took note of the fact that the paper in question contained 5 questions with first 4 questions being of descriptive nature carrying 10 marks each; and the 5th question being divided in two parts, requiring short notes carrying 5 marks each. The High Court further took note of the fact that as per the copy of answer sheet supplied to the writ petitioner, virtually it was not evaluated by the examiner and without application of mind, abruptly 2 marks each were awarded in relation to three answers. On perusal of the answer sheet and taking note of the submissions made on behalf of the parties, the High Court, in its order dated 12.04.2019, put the appellantUniversity to notice as to why serious action be not taken against it and also considered expedient to adopt the procedure of getting the answer sheet evaluated by independent examiners. Accordingly, and in terms of the directions of the High Court, three sets of answer sheet were prepared and were sent to three different examiners, who respectively awarded 19, 20 and 21 marks in their individual and independent evaluations. After finding material discrepancy in the marks awarded by the original examiner, particularly in view of the marks awarded by the said three independent examiners, the

High Court stated its impressions and part of conclusions in the following terms (in paragraphs 15 and 16 of the order impugned): -

"15. Evaluation made by above three Examiners broadly is similar and there is no marked difference in evaluation made by them. In the original marks awarded, petitioner has been given 2 marks each in questions 1, 3 and 4 while in questions 2, 5(a) and 5(b) all the three Examiners, who have made evaluation under the orders of this Court have awarded reasonably good or some marks to petitioners. Even on questions 1, 3 and 4, marks awarded by original Examiner do not come any closer to marks awarded by these three Examiners.

16. Since, we have gone through copy of answer sheet, which petitioner has obtained under Act 2005 and find that virtually it is unchecked copy and apparently it was evident that Examiner has not awarded marks by application of mind and, stand now fortified from evaluation made by three expert Examiners in the report."

6. Thereafter, in paragraphs 17 to 28, the High Court expressed its anguish and disappointment that a beginner professional student was made to suffer because of an irresponsible and negligent examiner who did not care to evaluate the answer sheet with due application of mind and then, proceeded to make observations that the facts of the case reflected upon the lack of efficiency and supervision on the part of the appellant-University. The High Court further made various comments as regards career of the students and the requirements of improving the education system while curbing such infirmities where the examiners/evaluators were not serious enough in discharge of their duties. The High Court also made extensive observations as regards the status assigned to a teacher and that the traditional belief in the teachers was being demolished by the persons like the examiner concerned of the present case. Yet further, the High Court expressed its serious concern as to how the examiners/evaluators were selected by the appellantUniversity while underscoring that the future of even a single student cannot be compromised. Having said so, the High Court reverted to the facts of the case and found it just and proper to direct the appellantUniversity to award the average of the marks awarded by the said three examiners to the writ petitioner and thus, to treat that he has been awarded 20 marks in the said Paper-II of Physiology, and to allow him to appear in further examinations accordingly.

7. After the aforesaid discussion, the High Court proceeded to award costs in the sum of Rs. 1 lakh to the writ petitioner payable by the appellant-University at the first instance with liberty to recover the amount from the examiner. The High Court also expressed hope and trust that the appellant-University would take appropriate steps so that such examiners/evaluators were not deployed to evaluate the answer sheets. Moreover, the High Court even provided that if any student, who had appeared in the examination of the appellant-University in the preceding three years, were to apply for re-assessment or re-evaluation, the request be not declined only on the ground that there was no provision of reevaluation in the Statute of the appellant-University. A copy of judgment was also directed to be forwarded to the Secretaries of the Departments concerned with the requirement that they would ensure that examiners/evaluators were deployed '*in a reasonably efficient manner*' with strict instructions so that no student might suffer on account of negligence/carelessness on the part of the examiners/evaluators. We may usefully reproduce the concluding paragraphs of the order impugned as follows: -

"29. Coming back to facts of this case, we have no option but to direct University to award average marks of three Examiners, awarded to petitioner under order of this Court and treat that he has been awarded 20 marks in Physiology, Paper-II and accordingly correct his marks sheet and result and allow him to appear in further examinations accordingly.

30. We also find it appropriate to award a cost of Rs.1,00,000/(i.e. rupees one lac) to petitioner, which at the first instance shall be payable by Agra University but it shall have liberty to recover the amount from concerned Examiner, after holding such enquiry as provided in law.

31. We hope and trust that Agra University, now shall takeappropriate steps so that such irresponsible, scrupulous, unmindful and negligent Examiners/Evaluators are not deployed in future to evaluate answer sheets, whether it is a professional examination or general subjects or otherwise.

32. We also provide that, if any student who had appeared inexamination of Agra University in the preceding three years, apply for reassessment or re-evaluation, taking present case as illustration, Agra University shall make reassessment/re-evaluation of answer sheet(s) of such student(s) and such case(s) shall not be declined for re-evaluation/reassessment only on the ground that there is no provision for re-evaluation in the Statute of University.

33. Copy of this judgment be also forwarded to PrincipalSecretary (Higher Education) as well as Secretary (Secondary Education), so that they may also look into the matter and ensure that Examiners/Evaluators of answer sheets are deployed in a reasonably efficient manner and there should be strict instructions so that no student may suffer on account of negligence/carelessness etc. on the part of Examiners/Evaluators."

8. Aggrieved by the directions and requirements aforesaid, the appellant-University has approached this Court. It may be observed that after taking note of the facts and circumstances of the case, while entertaining the petition seeking leave to appeal on 25.11.2019, this Court stayed the operation of the impugned order dated 21.05.2019. We have been informed that before passing of such stay order by this Court, a few other writ petitions were filed in the High Court while relying upon the impugned order dated 21.05.2019 and therein, the High Court passed the orders for re-evaluation while following the decision in question. Be that as it may, we are not commenting upon any other order which is not in challenge before this Court.

9. We have heard the learned counsel for the parties at some length in relation to the observations made and the directions issued by the High Court in the impugned order dated 21.05.2019.

9.1 Learned counsel for the appellant would submit that the procedure as adopted and the directions as issued in the present case by the High Court are of uncontrollable ramifications, and do not stand in conformity with the requirements of law. It is submitted that when the Statute of the University makes no provision for re-evaluation of the answer sheets, directions by the High Court practically make the Statute of the University redundant and that remains impermissible in law. A decision of this Court in the case of ***Himachal Pradesh Public Service Commission v. Mukesh Thakur and Another*: (2010) 6 SCC 759** has been referred to. It has also been submitted that the High Court has failed to consider that the question paper being a subjective one, the marking style and manner of different examiners cannot be equated as it has not been a case of objective type question paper where only one answer out of possible options may be correct. It has further been submitted that the original examiner had, in fact, scored out the other answers while giving no marks, which was equivalent to awarding 'zero' mark; and his style of awarding marks could not have been taken as an irresponsible manner of evaluation. The learned counsel has also relied upon the decision of this Court in ***Ran Vijay Singh and Others. v. State of Uttar Pradesh and Others*: (2018) 2 SCC 357.**

10. *Per contra*, learned counsel for the writ petitioner (respondent No. 1) has duly supported the order impugned with the submissions that he was required to approach the Court when left with no other option; and the present one had clearly been a case of the

examiner failing in his duty to properly evaluate the answer sheet of the writ petitioner. Learned counsel would submit that in the given set of facts and circumstances, the reliefs granted by the High Court do not call for any interference.

11. Having given anxious consideration to the rival submissions and having examined the record, while we do not feel inclined to upset the substantive relief granted to the writ petitioner in paragraph 29 of the impugned order in the peculiar circumstances of the case but, we have not an iota of doubt that all other directions and mandate issued by the High Court in the order impugned cannot be approved.

12. As regards the question of re-evaluation, the principles enunciated by this Court could be usefully recapitulated as follows:

12.1 In the case of ***Mukesh Thakur*** (supra) this Court observed and held as under: -

"**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* v. *Paritosh Bhupeshkumar Sheth* [(1984) 4 SCC 27 : AIR 1984 SC 1543], wherein this Court rejected the contention that in the 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. …

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 reiterated by this Court in *Pramod Kumar Srivastava* v. *Bihar Public Service Commission* [(2004) 6 SCC 714 : 2004 SCC (L&S) 883 : AIR 2004 SC 4116] 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 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 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."

***** ***** *****

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

(emphasis supplied)

12.2 Further, in the case of ***Ran Vijay Singh*** (supra), this Court has observed and held as under: -

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

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 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**;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

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

(emphasis supplied)

12.3 Recently, in the case of ***Dr. NTR University of Health Sciences v. Dr. Yerra Trinadh & Ors.*: 2022 SCC OnLine SC 1520**, this Court has, after referring to the previous decisions, including that in the case of ***Ran Vijay Singh*** (supra), thoroughly disapproved the process of the Court calling for answer sheets for satisfying as to whether there was a need for re-evaluation or not and thereafter, issuing directions for re-evaluation. This Court has observed and held as under: -

"9. Applying the law laid down by this Court in the aforesaid decisions to the facts and circumstances of the case on hand, we are of the opinion that the High Court was not at all justified in calling the record of the answer scripts and then to satisfy whether there was a need for re-evaluation or not. As reported, the High Courts are calling for the answer scripts/sheets for satisfying whether there is a need for re-evaluation or not and thereafter orders/directs re-evaluation, which is wholly impermissible. Such a practice of calling for answer scripts/answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant rules for re-evaluation and that too while exercising powers under Article 226 of the Constitution of India is disapproved."

13. It is hardly a matter of doubt that the Statute governing the examination in question does not provide for re-evaluation and scrutiny of the answer sheets. Moreover, the award of marks in the descriptive type answers essentially remains a matter of subjective assessment and the Court would not be entering into that arena of assessment, which remains reserved for the examiner/evaluator. Therefore, in the ordinary circumstances, with reference to the enunciations aforesaid, the process as adopted by the High Court could not have been given our imprimatur. However, on the peculiar facts and in the exceptional circumstances of the present case, we are refraining from interfering in the substantive part of the relief granted to the writ petitioner, particularly for the reasons that a direct prohibition in the Statute in question has not been shown; the original examiner seems to have totally omitted to award the marks in relation to answer Nos. 2, 5(a) and 5(b); the process of evaluation by other examiners has been adopted and taken forward by the High Court by providing for awarding of average of the marks of the three examiners; and any interference at this length of time might entail serious adverse

consequences to the writ petitioner. However, we need to make it clear in no uncertain terms that non-interference in the present case is not to be construed as any endorsement by this Court to the process adopted by the High Court.

14. Moving on to the other relevant aspects of the matter emanating from the observations and directions in the order impugned, we are clearly of the view that even if we do not disturb the relief of award of modified marks as granted to the writ petitioner, the other observations and directions in the impugned order dated 21.05.2019 cannot be approved.

15. Having gone through the impugned order dated 21.05.2019, weare constrained to observe that major part of the observations occurring in paragraphs 17 to 28 thereof had been rather unnecessary. At any rate, in the adjudicatory process dealing with a prayer for issuance of a writ of mandamus with reference to the grievance of the writ petitioner and the facts emerging on record, the observations as to the status of teachers in the society and other co-related observations were, in our view, not even required. Be that as it may, even if we assume that the High Court was impelled to make such observations for its anguish in view of the infirmities referable to the original examiner, imposition of costs in the sum of Rs. 1 lakh on the appellant-University does not appear congruent to the subject-matter of the petition and consistent with role of the University.

16. Yet further, forwarding a copy of the judgment to the Principal Secretary (Higher Education) as also to the Secretary (Secondary Education) to ensure deployment of examiners/evaluators '*in a reasonably efficient manner*' does not appear to be of giving specific directions which are capable of implementation with certainty. In any case, such general expectations of reasonable efficiency are applicable to every area of activity, whether of an individual or of the State or of an instrumentality of the State but, stating such expectations as a part of mandamus of the Court cannot be said to be in conformity with the requirements of concluding an adjudicatory process with certitude. In other words, while rendering decision in a litigation, the Court would be expected to issue only such directions which could be executed/implemented with certainty. The observations of the nature made by the High Court, which are largely of general expectations, are difficult to be approved as a mandamus from the writ Court.

17. Apart from the above, what has been directed in paragraph 32 ofthe order impugned is required to be disapproved *in toto*. In the said paragraph 32, the High Court has proceeded to issue directions in the manner that all the examinations of the appellant-University during the preceding three years are thrown open for re-assessment or reevaluation. With respect, we are unable to find any logic or rationale in such directions.

17.1. In our view, in a Court of law, when a particular litigation in reference to its subject-matter is taken up for final decision, ordinarily, the decision ought to remain confined to the issues arising for determination in the matter. Even if an ancillary relief or direction is considered appropriate, the same could be granted or issued by the Court only in direct correlation with the facts and circumstances of the case and not beyond. Moreover, for one particular fault of one individual in one particular matter, all the concluded matters cannot be ordered to be reopened. In a matter of the present nature, if the assessment by one examiner/evaluator has been found questionable by the High Court, neither all the examiners could be presumed to be irresponsible nor every result declared by the University could be re-opened. As noticed, on 25.11.2019, while entertaining the petition leading to this appeal, this Court stayed the operation of the impugned order dated 21.05.2019. However, before granting of stay by this Court, several other writ petitions

were filed in the High Court, seeking the same relief of re-evaluation or re-checking; and the learned Single Judge of the High Court had no option but to grant the prayers. We are constrained to observe that all such unnecessary litigations had their genesis only in the unwarranted directions, as contained in the said paragraph 32 of the order impugned.

17.2. As aforesaid, we would not be re-opening any concluded matter which is not in challenge before us but, with respect, we need to observe that the directions contained in paragraph 32 of the order impugned remain wholly untenable and are required to be annulled all together. In this regard, we may also observe that when there is no provision for reevaluation in the Statute of the University, issuance of any writ of mandamus of this nature would practically amount to issuing directions for doing something which is not provided for by law.

18. We could summarise by saying that in a given case, even if theCourt is to express its dissatisfaction as regards any particular state of affairs, the circumspection requisite of the Court even as regards the expressions cannot be forsaken; and the relief to be granted in a given case ought to remain confined to the subject-matter of litigation before the Court. Even the process of granting of ancillary or other relief or issuance of other direction cannot travel beyond the real questions in controversy before the Court. It gets perforce reiterated that one particular fault or infirmity at one particular level, when being appropriately dealt with by the Court, cannot be generalised and all other similar processes in any institution or by the person concerned cannot be presumed to be suffering from illegalities or infirmities. The High Court in the present case, while expressing its dissatisfaction, and presumably to provide for a cleansing process, has inexplicably travelled far beyond the issues at hand and has issued untenable directions apart from making unnecessary observations. All this, in our view, was avoidable; and ought to have been avoided. We say no more.

19. For what has been discussed and observed hereinabove, while not disturbing the directions and mandate in paragraph 29 of the order impugned as also the expressions of hope and trust in paragraph 31 of the order impugned, we are clearly of the view that the directions contained in paragraphs 30, 32 and 33 of the order impugned cannot be approved and deserve to be set aside.

20. Accordingly, and in view of the above, this appeal succeeds andis allowed in part and to the extent that paragraphs 30, 32 and 33 of the order impugned are annulled and are set aside. No costs.

21. Needless to reiterate that the relief otherwise given to the writ petitioner (respondent No. 1) by other part of the order impugned remains undisturbed only for the peculiar circumstances of the present case.