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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., M.M. SUNDRESH; J.
NOVEMBER 04, 2022
CIVIL APPEAL NO. 8037 OF 2022 WITH CIVIL APPEAL NO. 8038 OF 2022
Dr. NTR University of Health Sciences *versus* **Dr. Yerra Trinadh & Others**

Constitution of India, 1950; Article 226 - 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 - In absence of any regulation for re-evaluation of the answer scripts, the High Court is not justified in ordering re-evaluation of the answer scripts - Sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation. *(Para 9-10)*

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J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 31.10.2019 passed by the High Court of Andhra Pradesh at Amravati in Writ Appeal Nos. 363 & 364 of 2019, by which the Division Bench of the High Court has dismissed the said writ appeals and has confirmed the common judgment and order dated 19.09.2019 passed by the learned Single Judge in Writ Petition Nos. 10376/2019 and 9486/2019 ordering/directing the re-evaluation of the answer scripts of the respective original writ petitioners who appeared in post-graduation in diploma course in the NTR University of Health Sciences (appellant herein), the University has preferred the present appeals.

2. That the original writ petitioners appeared in post-graduation diploma course conducted by the appellant – University. There was a digital evaluation of the answer scripts. In the first round of litigation, certain directions were issued by the learned Single Judge how to evaluate the answer scripts. The respective students – original writ petitioners were not satisfied with the evaluation of the answer scripts and therefore they filed writ petitions before the learned Single Judge praying for re-evaluation of their answer scripts, which were evaluated digitally.

2.1 The learned Single Judge called for the record and after perusing the record, the learned Single Judge was of the opinion that the evaluation of the answer scripts was not in line with the directions issued by the learned Single Judge issued in the earlier round of litigation and that there was no proper evaluation of the answer scripts. By observing so, the learned Single Judge ordered re-evaluation of the answer scripts afresh as per the

prevalent MCI norms by identifying four fresh examiners. While allowing the writ petitions, the learned Single Judge directed/ordered as under:

"Hence, the writ petition is allowed. The respondents are directed to get the petitioners' answer scripts once again evaluation as per the prevalent MCI norms by identifying four fresh examiners. They are also directed to give clear and categorical instructions to the said new set of examiners to physically put the marks etc. on the uploaded answer script. The identified Globerana Technologies Pvt. Ltd., Hyderabad should be directed to teach the examiner, the manner of evaluating the digital/upload answer sheet (if necessary). The corrected sheet must be preserved for future review and in order to seek whether the examiner has applied his mind while evaluating the answer scripts or not. The entire exercise should be completed within a period of six weeks from today."

2.2 The common judgment and order passed by the learned Single Judge was the subject matter of writ appeals before the Division Bench. Before the Division Bench, it was specifically contended on behalf of the appellant – University that as there was no provision for re-evaluation and therefore in absence of having any such provision, the learned Single Judge was not justified in ordering re-evaluation. It was submitted that though the said plea was specifically taken before the learned Single Judge, the learned Single Judge did not address on the said objection. That by the impugned common judgment and order, the Division Bench of the High Court has dismissed the writ appeals preferred by the University. Hence, the present appeals.

3. At the outset, it is required to be noted that while issuing notice in the present appeals, this Court passed the following order on 9.4.2021:

"Delay condoned.

The learned senior counsel for the petitioner submits that the results for the final year PG Degree/Diploma examination pertaining to respondent Nos.1-23 have already been declared. Some of them have passed in the re-evaluation and the others have passed in the subsequent supplementary examination. He submits that the results announced in respect of respondent Nos. 1-23 shall not be disturbed in any manner. However, the learned senior counsel submits that there is no provision for re-evaluation in spite of which the High Court has directed re-evaluation of MBBS/PG Examinations. He further submits that there are a number of matters pending in the High Court on the same point.

Issue notice returnable in four weeks.

Dasti service, in addition, is permitted."

4. Therefore, in view of the order passed by this Court dated 9.4.2021, the results declared on the basis of the re-evaluation pursuant to the order passed by the learned Single Judge, confirmed by the Division Bench, shall not be disturbed in any manner. It is reported that not only the results on re-evaluation have been declared, even the respective original writ petitioners who were declared passed on reevaluation are also issued respective degrees in their favours in PG Degree/Diploma course. However, as observed in order dated 9.4.2021 that number of matters are pending in the High Court on the same point, learned counsel appearing on behalf of the University has prayed to consider the issue on merits, namely, "whether, in absence of any provision for re-evaluation, the High Court was justified in ordering reevaluation, while exercising powers under Article 226 of the Constitution of India"?

5. Learned counsel appearing on behalf of the University has vehemently submitted that in absence of any provision for re-evaluation, the High Court was not justified in ordering re-evaluation of the answer sheets/answer scripts and that too while exercising powers under Article 226 of the Constitution of India. In support of his submission, heavy

reliance is placed on the decision of this Court in the case of ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Others, (2004) 6 SCC 714) (paragraph7 & 8);*** *and* the recent decision of this Court in the case of ***Vikesh Kumar Gupta & Another v. State of Rajasthan & Others, (2021) 2 SCC 309***.

5.1 Learned counsel appearing on behalf of the appellant-University has taken us to the affidavit of the Registrar, filed pursuant to the order passed by this Court on 17.01.2022, by which the University was permitted to file an affidavit giving the details of the digital evaluation of the answer sheets. It is submitted that the University has introduced digital evaluation (online evaluation) for the answer scripts of PG Degree/Diploma Examinations. It is submitted that initially the pilot project was entrusted to M/s. Globarena Technologies Pvt. Ltd., Hyderabad which had scanned the answer sheets for online evaluation and the same were evaluated online by the examiners. It is submitted that after satisfying the pilot project for digital evaluation, the University placed the same in 221st meeting of the Executive Council held on 13.07.2016 and the Executive Council verified the method of digital evaluation and the services of the nodal company under the supervision of the University. It is submitted that thereafter the resolution was passed by the Executive Council to go for digital evaluation. It is submitted that in pursuance of the said resolution, the University has evaluated the answer scripts digitally for every examination and there is no manual evaluation after the resolution by the Executive Council for digital evaluation.

5.2 It is further submitted that thereafter and after passing the judgment by the High Court in Writ Petition No. 26929/2016, the University has taken steps to rectify the defects pointed out by the High Court and improved the system of digital evaluation. It is submitted that subsequently the present digital evaluation system after improvements and modifications has been approved by the High Court in the recent decision in Writ Petition No. 15865/2022.

6. Learned counsel appearing on behalf of the respective original writ petitioners have submitted that so far as the original writ petitioners are concerned, as they are declared pass after re-evaluation and/or appearing in the supplementary examination and their results have been declared and they are awarded degrees, the same may not be disturbed as observed by this Court in order dated 9.4.2021.

7. The short question which is posed for consideration before this Court is, "whether in the absence of any provision for re-evaluation, the High Court was justified in ordering re-evaluation after calling for the record of the answer scripts?

8. While considering the aforesaid issue/question, few decisions of this Court including two, referred to hereinabove, which have been relied upon by the learned counsel appearing on behalf of the University, are required to be referred to and considered.

8.1 In the case of ***Pramod Kumar Srivastava (supra)***, it is observed and held by this Court that in absence of any provision for re-evaluation in the relevant rules, examinees have no right to claim or demand reevaluation. In paragraphs 7 & 8, it is observed and held as under:

"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 reevaluation 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."

8.2 In the case of ***Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357***, in paragraph 32, it is observed and held as under:

"32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

8.3 In the case of ***Vikesh Kumar Gupta (supra)***, after considering catena of decisions on scope of judicial review with regard to reevaluation of the answer sheets, it is observed

and held that the court should not re-evaluate or scrutinise the answer sheets of a candidate as it has no expertise in the matter and the academic matters are best left to academics.

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 reevaluation 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.

10. Even otherwise, in the present case, the University has adopted the digital evaluation which has been subsequently modified/improved and the deficiencies have been removed, which has now been approved by the High Court in the recent decision in Writ Petition No. 15865/2022. The digital evaluation process is reported to be scrupulously followed by the University. From the affidavit filed on behalf of the University on use of digital evaluation, it appears that all precautions are being taken to have the accurate evaluation digitally. There are specific instructions and trainings to the examiners while conducting digital evaluation. It is reported that the faculty has utilised the updated software by using the tools and annotations incorporated in the software adopted by the University. In any case, in absence of any regulation for re-evaluation of the answer scripts, either in the MCI rules or in the University Rules, the High Court is not justified in ordering re-evaluation of the answer scripts. As observed and held by this Court in the case of ***Ran Vijay Singh (supra)*** that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet.

11. In view of the above and for the reasons stated above, the common judgment and order passed by the learned Single Judge ordering re-evaluation of the answer scripts, confirmed by the Division Bench by the impugned common judgment and order, is unsustainable. However, as observed hereinabove, as the results of the original writ petitioners after re-evaluation or appearing in the supplementary examination have been declared, while quashing and setting aside the impugned common judgments and orders passed by the learned Single Judge as well as Division Bench of the High Court, the same shall not be affected and/or disturbed. The impugned common judgments and orders passed by the learned Single Judge as well as Division Bench ordering re-evaluation of the answer scripts in absence of any such provision in the relevant rules are hereby quashed and set aside. However, as observed hereinabove, the same shall not affect the declaration of the results of the original writ petitioners on re-evaluation or appearing in the supplementary examination.

12. Accordingly, both these appeals are allowed. No order as to costs.