

IN THE HIGH COURT OF ANDHRA PRADESH ::
AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

WRIT APPEAL NO: 877 OF 2023

Writ Appeal under clause 15 of the Letters Patent present the above Writ Appeal questioning the order dt. 22-08-2023 in WP.No. 15426/2023 passed by the learned single Judge on the file of the High Court.

Between:

1. Y.S.R. University of Health Sciences, Vijayawada, NTR District, AP
Rep.by its Registrar
2. The Controller of Examinations, Dr.Y.S.R. University of Health
Sciences Vijayawada, Krishna District, AP

...APPELLANT(S)

AND

2. National Medical Commission Pocket No 14, Sector-8, Dwaraka
Phase-1, New Delhi
3. Medical Council of India, Rep.by its AIWAM-E-Galib Marg Kotla
Road, New Delhi - 110 002
4. Fathima Medical College, Rep.by its Principal Kadapa District, AP
5. The State of Andhra Pradesh, Rep.by its Principal Secretary
Medical, Health and Family Welfare Department Secretariat,
Velagapudi, Amaravati Guntur District.

...RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the judgment dt.22-08-2023 passed in W.P.No.15426/2023 pending disposal of the writ appeal and pass

Counsel for the Appellants: Sri. Guttapalem Vijaya Kumar (SC FOR Dr. NTR HEALTH University)

Counsel for respondent No.1: Corpus Juris Law Panel LLP

The Court made the following:

PER DHIRAJ SINGH THAKUR, CJ:

The present Letters Patent Appeal has been preferred against the judgment and order, dated 22.08.2023, passed in W.P. No.15426 of 2023, whereby while allowing the writ petition, the learned single Judge has directed the re-evaluation of the answer scripts of the petitioner in respect of General Medicine Papers - I & II by a third examiner.

With a view to understand the background in which the present controversy has arisen, it is necessary to give in brief the material facts.

2. The petitioner was admitted to the MBBS course in the year 2018. She appeared in the final year MBBS examination conducted in the month of December, 2022, and is stated to have failed in the subject of General Medicine. The petitioner applied for recounting of

the marks as per the statutes, which did not result in any change in her result. She then applied for verification of her papers - I & II in the subject of General Medicine and was called to verify her answer scripts.

The petitioner's stand before the learned single Judge was that upon verification of the answer scripts, she noticed that only 0.5 marks had been allotted to her in regard to a question which carried ten marks. According to her, even when she had answered the question correctly, less marks were allotted to her on account of negligence or carelessness of the evaluator. Her confidence and faith in her academic capacity is attributed to the fact that she had done extremely well in the past examinations which she had undertaken during the rest of her MBBS course. It is in that backdrop that she prayed for issuance of writ of mandamus for re-evaluation of the answer scripts by a Committee of three experts.

3. In the reply-affidavit filed by the YSR University of Health Sciences, Vijayawada, as also the Controller of Examinations of the said University, the stand taken was that the University had adopted a double evaluation system for evaluating the answer scripts of the MBBS students whereby each theory paper of a student is evaluated by two eligible and qualified examiners

independently. The papers, it is stated, are evaluated digitally according to the prescribed guidelines. It is further stated that if the difference between two evaluations is more than 20%, then that particular theory paper is sent to a third eligible qualified evaluator for evaluation and award of marks. Whereas in the first case scenario, if the difference between the two evaluations is less than 20%, then the marks evaluated by the two evaluators are determined in the following fashion:

“The first evaluator awards 20 marks and a second evaluator awards 26 marks in a particular paper, then the marks, which will actually be awarded to a candidate, will be $20 + 26 = 46/2 = 23$ marks.”

4. In the present case, the stand of the respondents was that the petitioner had been awarded the following marks on individual evaluation of papers - I & II of MBBS General Medicine:

	VALUATION-I	VALUATION-II	AVERAGE
THEORY PAPER-I	21	23	22
THEORY PAPER-II	18	24	21

It was also the case of the University that due procedure had been followed and all the questions attempted by the petitioner had been evaluated and that it was not permissible to direct the re-

evaluation of the answer scripts of papers - I & II in the said subject yet again by a third evaluator, as had been prayed for.

5. An additional affidavit also was filed by the petitioner in which it was sought to be projected that while the petitioner had verified her papers on the computer, the same did not contain any ✓ (tick mark) or X mark, as none were seen by her, whereas when the answer scripts were produced by the University in the open Court, there were green ticks found to her surprise. What was stated in her additional affidavit is reproduced hereunder:

“ I further submit that in computer there is no “tick” or ‘X’ marks seen by me and when this Hon’ble Court finds the Answer scripts produced by the University in open cover (promised to place sealed cover), there is a “green tick” which were not found in the computer and it is shocked to me that it is found when it is placed before this Hon’ble Court. This is suspicious one. It is pertinent to submit that when there is “green tick” it is clear that I have done correct answer, then how very low marks from 0.5 to 2 marks were allotted to my answers without any remarks on answer scripts.”

6. The learned single Judge, upon physical verification of the answer scripts of the petitioner, ordered the evaluation of the answer scripts by a third evaluator notwithstanding the fact that the difference in the marks between the marks allotted by the two evaluators was less than 20% and the reason for ordering such an

evaluation by a third evaluator is contained in para No.15 of the judgment, which is reproduced hereunder:

“15. In view of the said contentions of learned senior counsel for the petitioner as well as learned Standing counsel for the Respondents and undertaking for production of answer scripts of the petitioner, this Court convinced and directed the respondent university for production of answer scripts of the petitioner for perusal of this Court. On 12.07.2023, this Court verified answer scripts of General Medicine subject Paper-I and Paper-II. It is observed that the digital tools of ✓ mark or X marks or underlines were utilized, particularly ✓ mark in Green and X mark in Red colour and underlines in Red colour. But, as far as Paper-I is concerned neither ‘X’ mark nor Red line was marked against any question answered by the petitioner. But, awarded only 0.5 marks against 10 marks and with regard to Paper -II is concerned, there are ‘X’ marks regarding question No.3 and 13. Except two, all other questions were labeled with Green colour Right Tick mark. Therefore, after physical observation of the answer scripts, this Court found that answer scripts of the petitioner were not properly evaluated by the concerned examiners.”

7. At this stage, it may be necessary to reproduce the guidelines which have been prescribed for digital evaluation by the evaluators, which read as under:

“1. All the answers shall be marked in the margin either ✓ (tick mark-for answers which are awarded marks) or X (for which ‘O’ marks are awarded i.e. wrong or irrelevant answers). Using these tools is compulsory for every answer.

2. For questions which are not answered – the option NA must invariably be selected.

3. In the Script Marks report, the following comments will automatically appear in the final print.

When marks are awarded**Attempted**.

When 'O' marks are awarded – **Irrelevant answer**

When you select NA**Not answered**

4. When a student writes only question number or writes question number and writes question as a heading or sub heading but doesn't write the actual answer – mark it as NA (Not answered).

5. The University is introducing question wise allocation of pages in the answer booklet. Even then, it is likely that some students may write answers in the pages allotted to some other question. As this is a new introduction, please do valuation and allot marks and mention the same in the comments dialogue box besides marks allocation box.”

It may also be pertinent to mention here that each of the papers i.e., papers - I & II of General Medicine carried sixty as the maximum marks, which were divided amongst two questions carrying ten marks each, six short questions carrying four marks each, and eight very short questions carrying two marks each. According to the digital evaluation conducted by two independent examiners, the following marks were allotted to the petitioner:

Paper - I (I evaluation):

Item	Mark	Annotated Comments

Paper -I (II evaluation):

Item	Mark	Annotated Comments

1	3	Attempted
2	2.5	Attempted
3	1.5	Attempted
4	1.5	Attempted
5	1	Attempted
6	1	Attempted
7	1	Attempted
8	1	Attempted
9	1	Attempted
10	1	Attempted
11	0.5	Attempted
12	1	Attempted
13	1	Attempted
14	0.5	Attempted
15	1	Attempted
16	2	Attempted
Total Mark	20.5	

Paper - II (I evaluation):

Item	Mark	Annotated Comments
1	1.5	Attempted
2	1.5	Attempted
3	1	Attempted
4	1.5	Attempted
5	1	Attempted
6	1	Attempted
7	1	Attempted
8	3	Attempted

1	4	Attempted
2	5	Attempted
3	1.5	Attempted
4	2	Attempted
5	2	Attempted
6	1.5	Attempted
7	1.5	Attempted
8	1	Attempted
9	1	Attempted
10	0.5	Attempted
11	0.5	Attempted
12	0.5	Attempted
13	0.5	Attempted
14	0.5	Attempted
15	0.5	Attempted
16	0.5	Attempted
Total Mark	23	

Paper -II (II evaluation):

Item	Mark	Annotated Comments
1	4	Attempted
2	4	Attempted
3	1	Attempted
4	2	Attempted
5	0.5	Attempted
6	2	Attempted
7	1	Attempted
8	2.5	Attempted

9	0.5	Attempted
10	1	Attempted
11	0.5	Attempted
12	1	Attempted
13	0	Irrelevant Answer
14	1	Attempted
15	1	Attempted
16	1	Attempted
Total Mark	17.5	

9	1	Attempted
10	1.5	Attempted
11	0.5	Attempted
12	1	Attempted
13	0.5	Attempted
14	0.5	Attempted
15	1	Attempted
16	1	Attempted
Total Mark	24	

8. For purposes of satisfying ourselves as to whether there were any questions which had not been evaluated, the records were summoned and were produced before us. From the record, it appears that each of the answers recorded by the petitioner both in papers - I & II had been evaluated and marks allotted to the petitioner. For example, for question Nos. 1 and 2 in Paper-I, the first examiner allotted 3 and 2.5 marks respectively to the said answers out of ten marks reserved for each of these questions, whereas the second examiner allotted four and five marks respectively for question Nos.1 and 2 carrying ten marks each. Similarly, question Nos.3 to 8 carried four marks each for which the evaluators awarded marks accordingly out of the maximum four marks earmarked for each question and similarly eight other questions which carried two marks only.

The contention of the petitioner that the questions had not been evaluated, therefore, to us appears to be absolutely without any basis. Even the answer scripts perused by us do reflect that each of the questions carry the annotations, as were prescribed by the procedure, which was required to be followed by the examiners. We may clarify here that this is certainly not a case where a particular answer to a question had not been evaluated by the examiners and therefore in those circumstances, ordering re-evaluation by a third examiner, as was done in the present case by the learned single Judge, would be a direction contrary to the statutory position, which does not at all permit re-evaluation by a third examiner except in a case where the variation between the marks awarded by the first two examiners exceeds 20%. To that extent, in our opinion, the judgment and order impugned goes contrary to the Apex Court judgment in the case of **Dr. NTR University of Health Sciences vs. Dr. Yerra Trinath and others**¹ where the Apex Court had set aside the judgment rendered by the Division Bench ordering re-evaluation of the answer scripts in the absence of any such provision in the relevant rules.

¹ 2022 SCC Online SC 1520

9. Be that as it may, the judgment and order impugned being unsustainable in law, is accordingly set aside and the Writ Appeal is, accordingly, disposed of. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R. RAGHUNANDAN RAO, J

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HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

WRIT APPEAL No. 877 of 2023

DATE : 23.02.2024

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