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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 06.04.2022

+ W.P.(C) 2503/2021 & CM APPL. 7354/2021(stay), CM APPL. 12119/2021(impleadment)

ANNIE GURMEHER KAUR

..... Petitioner

Through: Ms.Aakanksha Nehra & Mr.Sandeep Bajaj, Advs.

versus

UNIVERSITY OF DELHI & ANR.

..... Respondents

Through: Mr. Mohinder J. S. Rupal and Ms. B. Bhawani, Advs. for University of Delhi

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition preferred under Articles 226 and 227 of the Constitution of India, the petitioner assails the communication dated 18.02.2021 issued by the examination department of the respondent no.1, whereby she was informed that as per the resolution passed by the executive council of the respondent no.1/university on 06.03.2014, medals could be awarded only on the basis of the original marks secured by candidates. The petitioner consequently seeks a direction to the respondent to award her the medal for the highest scorer in B.A. (Hons.) (Economics) for the academic session of 2017-2020.

2. Before dealing with the rival submissions of the parties, the brief factual matrix may be noted.

3. In the year 2017, the petitioner took admission in B.A. (Hons.) (Economics), the respondent no. 2 college affiliated with the respondent no.1 University, which course she completed in 2020. When the result of the sixth semester exams were declared on 02.11.2020, being dissatisfied with the marks obtained by her in the '*Indian Economy 2*' paper, she opted to apply for revaluation in accordance with the guidelines of the University. Upon revaluation, the result whereof was declared on 11.02.2021, her marks in the '*Indian Economy 2*' paper increased from 52 to 58 and consequently, her aggregate CGPA also increased from 9.595 to 9.635.

4. However, before the result of the revaluation was declared, the respondent university on 05.02.2021, released a tentative list of candidates who were to be awarded medals and prizes in its 97th annual convocation to be held on 27.02.2021. Upon the petitioner's marks increasing in the revaluation of the '*Indian Economy 2*' paper, leading to a consequential increase in her aggregate CGPA to 9.635, she approached the Dean, Examination Division with a request that she be also considered for grant of the medal to be awarded to the highest scorer in B.A.(Hons)(Economics).

5. Vide the impugned communication dated 18.02.2021, the petitioner's request was rejected and she was informed that, as per the resolution passed by the executive committee of the respondent no.1 on 06.03.2014, medals could only be awarded on the basis of the original marks secured by the candidate. She was further informed that neither the revaluation nor improvement could be taken into account while deciding the awardees for the medals, and since the petitioner's aggregate CGPA of 9.635, has been

increased only due to the revaluation of her marks in 'Indian Economy 2', she was not entitled to receive medals and prizes for being the highest scorer in B.A. (Hons.) (Economics). The relevant extract of the aforesaid communication reads as under:

"Dear Student

This is with reference to your e-mail dated 15.02.2021 regarding to consider your name for award for University award for scoring highest marks in B.A. (Hons.) Economics in 2020.

In this regard, it is to inform you that as per E. C. Resolution No. 122(6)/03/2014 - award of Gold Medals and Prizes should be considered only in cases who passed the examination on the basis of original results declared by the University. Neither revaluation nor improvement will be taken into consideration. Since your marks have been revised through revaluation, hence your request can not be acceded to.

*Thanks & Regards
Joint Registrar - Exams"*

Being aggrieved by the aforesaid communication, the petitioner has approached this Court.

6. On 25.02.2021, when the present petition was taken up for preliminary hearing, learned counsel for the parties jointly submitted that the issue raised in the petition was similar to that raised in **W.P.(C) 12195/2018** titled as *Shivani Jindal And Ors. vs. University of Delhi And Ors.* This Court, therefore, while issuing notice had granted interim stay directing the respondents to not confer the award for the highest scorer in B.A. (Hons.) (Economics) course for the Academic Session of 2017-2020 during the pendency of the writ petition.

7. Learned counsel for the petitioner submits that once the petitioner's marks have been increased in revaluation, it is clearly evident that there was a mistake on the part of the previous examiner who had erroneously awarded her lesser marks than what she deserved to score in '*Indian Economy 2*'. She contends that the resolution dated 06.03.2014, on which the respondent has placed reliance in its impugned communication dated 18.02.2021, is wholly unsustainable insofar as it debars the candidates whose marks are increased in revaluation from being granted any awards, medals or prizes on the basis of their revised results. This she contends would amount to depriving them from the benefits of the revaluation.

8. In support of her plea, she places reliance on decision of the Punjab and Haryana High Court in *Deepa Vs. Maharishi Dayanand University & Ors. 2002 SCC OnLine P&H 1178*, of the Rajasthan High Court in *Fateh Kumari Sisodia Vs. State of Rajasthan 1997 SCC OnLine Raj 26*, of the Bombay High Court in *Rajendrakumar Chandrakant Nadkarni Vs. University of Bombay & Anr. 1990 SCC OnLine Bom 230* and of the Karnataka High Court in *Ajay Bansal Vs. Bangalore University & Ors. 1989 SC OnLine Kar 388*. In all these cases claims of students, who had emerged as toppers or highest scorers after revaluation were accepted.

9. Ms.Nehra, then places reliance on a decision in *Kumar Saurabh Vs. University of Delhi 2015 SCC OnLine Del 13999* wherein this Court, dealing with the case of a student, who had emerged as the topper after taking into account the marks obtained by him/her in the improvement exams, observed that failure to accept the revised marks obtained upon re-evaluation, would lead to an absurd situation. The Court further held that the resolution dated 06.03.2014 was in the teeth of the dicta in *Nandita*

Narain v. University of Delhi AIR 1983 DEL 170. She therefore, prays that the writ petition be allowed by directing the respondent to treat the petitioner as the highest scorer in B.A.(Hons.)(Economics) 2017-2020 and award the medal, for being the topper, to her.

10. Finally she submits, on instructions from the petitioner, that keeping in view the interest of the other candidate, Ms. Yashwani Shekhawat, who had vide the tentative list issued on 05.02.2021 been declared as the highest scorer in B.A.(Hons.)(Economics) for 2017-2020 by the University in accordance with its resolution dated 06.03.2014, the petitioner is willing to forego the cash amount attached to the awards and has no objection if the cash amount is paid exclusively to Ms.Yashwani Shekhawat.

11. Per contra, Mr. Rupal, appearing for the respondent no.1 University, the main contesting respondent, opposes the writ petition by submitting that once the resolution regarding the award of Gold Medals and Prizes has been passed after considerable deliberations by the Executive Committee of the Delhi University on 06.03.2014, the University has been following the same consistently without permitting any deviation or exception whatsoever. He contends that the University is justified in not treating the marks obtained by a candidate upon revaluation or improvement as the original result of the student. Only the student receiving the highest marks in the original result as declared is entitled to be awarded the Medal or Prize for the topper. Seeking to explain the rationale behind the respondent no.1/university's insistence on considering only the original result while considering the award of Medals and Prizes, Mr.Rupal submits that most of the awardees are desirous of applying for either post graduate courses or employment opportunities immediately after the declaration of final semester result and it

is only for this reason that the University has taken a policy decision to ensure that they are not made to wait for their medals/prizes till the entire process of other students applying for revaluation/improvement is completed. This is necessary since preparation of the results of the revaluation/improvement can take a considerable amount of time. He, therefore, contends that the award of Medals and Prizes, cannot be put on hold until after the revised result has been declared as it would prejudice the majority of the students. He, further draws my attention to the recent decision dated 04.03.2022 of a coordinate Bench of this Court in W.P.(c) 3945/2020 titled as *Dhritiman Ray v. University of Delhi & Ors.* and other connected matters, to contend that in order to prevent any inconvenience to the students, all the timelines mentioned in the circulars issued by the University for issuing of degrees as well as for holding the convocations must be strictly adhered to.

12. Having considered the submissions of learned counsel for the parties, I find absolutely no merit in the submissions of the respondent no.1. No doubt, the Delhi University is one of the premier universities of the country and must adhere to its schedule for declaration of results so as to ensure award of degrees and medals/prizes to the deserving students. It is, however, equally important to ensure that medals and prizes are awarded only to the most deserving candidates. Merely because the University has to strictly adhere to a schedule for conferment of the degree and holding convocations, it cannot be permitted to act in such an arbitrary manner so as to cause injustice to students like the petitioner, who deserve to get the award. The very fact that the marks of the petitioner were increased, after she opted for revaluation of her exam in '*Indian Economy 2*' goes to show that there was a

clear error on the part of the examiner in evaluating her performance. The petitioner must get the benefit of the re-evaluation and the respondent just cannot simply turned a blind eyes to this aspect by contending that, in terms of the resolution dated 06.03.2014, the marks obtained by a student after revaluation cannot be taken into account when determining the topper for award of medals/prizes.

13. The term Re-evaluation has been defined in the Cambridge English Dictionary as being the process or an act of considering or examining something again. It is thus evident that in a case of revaluation, it is not as if the student seeks an opportunity to improve his/her academic performance by re-writing the exam. On the other hand, there is no change in the performance of the candidate, but instead there is only a change in the result, on account of what one may say was a lapse in evaluating the performance of a student, on the part of the previous examiner. I am of the considered view, that in such a situation, if a student like the petitioner whose marks have been indeed increased after revaluation is deprived of the Medal and Prizes to which she/he may be entitled, on the basis of his/her result in the revaluation, it will virtually amount to depriving the student of the benefit of increase in marks for no fault of his/her. I may now refer to the circular dated 06.03.2014 based on which the University has rejected the petitioner's claim. The same reads as:

“6. In approving on 27.11.2013 that award of Gold Medals and Prizes should be considered only in cases who passed the examination on the basis of original result declared by the University. Neither revaluation nor improvement will be taken into consideration.”

14. I, may, now refer to the decision of the Punjab and Haryana High

Court in *Deepa (Supra)* wherein the Court has held a circular like the present to be arbitrary as it resulted meritorious students, who had been disadvantaged because of an error on the part of the examiner, being denied their due on account of a perceived distinction between original results and revaluated results. The relevant paragraph of the decision reads as under:

“9. A candidate would normally seek revaluation of the result with the earnest hope of improving the result. The desire for revaluation is usually based on an apprehension that perhaps some mistakes has been committed by the examiner in evaluating the answer book. In the rules/regulations for re-evaluation, the candidate is given a chance to have the error detected and corrected. There is a legitimate expectation of an increase in marks. We are of the considered opinion that providing such an opportunity to the candidates would be a source of solace to students who are devoted to studies and are meritorious. The rationale underlying the rule of revaluation seems to be that no candidate should suffer for the mistake of the examiner. In other words, every candidate should get the fruits of his/her labour in pursuing the studies with enthusiasm and vigour. The rule is framed to make sure that no candidate is deprived of the result he/she deserves. The principle of certainty as advocated by Mr. Bairam Gupta would put a premium on the mistake committed by the examiner in the first instance. If after revaluation, a candidate secures higher position on merits, there would be no reasonable basis for the denial of consequential awards such as Gold Medals. Clause 4.2, in our opinion, nullifies the benefit of revaluation by declaring that the result of re-evaluation of the papers shall not count towards determining the position in the order of merit, distinction and award of Gold Medal. In such circumstances, revaluation would be sought only by the candidates who have either failed or secured a compartment. The real meritorious candidates like the petitioner in the present case, would be wholly deprived of the benefit of revaluation, when the marks of a candidate are increased on re-evaluation. The un-escapable conclusion is that we see no rationale in depriving the candidate of the benefit of

the re-evaluation marks for the purpose of improving the merit or for award of Medals. In our considered opinion, the aforesaid rule is wholly arbitrary and has no nexus with the object sought to be achieved. We are further of the considered opinion that the judgments relied upon by the counsel for the petitioner are fully applicable in the facts and circumstances of the present case.”

15. It may also be apposite to refer to the decision of the High Court of Karnataka in **Ajay Bansal (Supra)** wherein the Court observed that review or revaluation of the result, will not make the student ineligible to get his/her due rank. Paragraphs 17 and 18 of this decision same read as under:

“17. Therefore, it cannot be said that merely because the petitioner has obtained the benefit of review subject to the condition imposed in the impugned notification, it is not open to the petitioner to seek the benefit of ranking also which is not available to him under the conditions imposed in the said notification. There can be no waiver of the fundamental right of the petitioner.

18. The classification made on the basis of review is unreasonable and offends Art. 14 of the Constitution. I do not see any force in the contention that the impugned portion of the notification is not severable. On the other hand, it is possible to give effect to the notification without enforcing that portion of the notification which is challenged in this writ petition without doing violence to the remaining parts of the same notification. It is made clear that the petitioner is entitled not only to the declaration of class, but also to the declaration of his rank, if he falls within the first ten ranks of B.Com. degree examination of the Bangalore University.”

16. In the light of the aforesaid, I have no hesitation in holding that the respondent's decision to not consider the petitioner as eligible for the award

of medal/prize as the highest scorer in B.A. (Hons.) (Economics) 2017-2020 is clearly unsustainable and arbitrary. The circular dated 06.03.2014, insofar as it provides that the result of the revaluation will not be taken into consideration for award of gold medals and prizes is wholly arbitrary and therefore cannot be sustained.

17. However, since Ms. Yashwani Shekhawat, who was declared as the topper in B.A. (Hons.) (Economics), as per the tentative list issued by the respondent no.1 on 05.02.2021, is not before this Court despite notice having been issued to her on two occasions, it would be unfair to deprive her of the medal/prizes for which she was found eligible as per the circular dated 06.03.2014. Moreover, since the petitioner has already taken a stand before this Court that she is foregoing her claim to the monetary part of the prize, the interests of both the students can be protected by directing the respondent no.1/University to award the medal and prize for the highest scorer in B.A. (Hons.) (Economics) 2017-2020 jointly to the petitioner as also to Ms. Yashwani Shekhawat.

18. A similar approach was adopted by this Court, in ***Abhinav Pandey v. Guru Gobind Singh Indraprastha University & ors.*** 2018 SCC OnLine Del 6797, the relevant extract whereof reads as under:

*“20. This Court would not like to disturb the status of the respondent no.3, as was in the case of **Sovila Mathur** (supra) where in a similar situation, a second Gold Medal had been awarded to the candidate who had approached the Court. Accordingly this Court is of the view that respondent no.1 shall confer a Gold Medal upon the deserving petitioner for the aforesaid academic session.*

19. The writ petition is accordingly allowed by quashing the communication dated 18.02.2021 as also the circular dated 06.03.2014 insofar as it relates to revaluation. The respondent no.1 is directed to issue the awards and prizes for the highest scorer in B.A. (Hons.) (Economics) for the academic session 2017-2020 jointly to the petitioner and Ms. Yashwani Shekhawat. The monetary award will however be granted to exclusively to Ms. Yashwani Shekhawat.

APRIL 6, 2022

ms

(REKHA PALLI)
JUDGE