

WA 35/2008
BEFORE
HON'BLE THE CHIEF JUSTICE MR.J. CHELAMESWAR
HON'BLE MR. JUSTICE HRISHIKESH ROY
WA No. 35/2008

Appellants

1. Gauhati University
Jalukbari, Guwahati
2. Sri P.K. Deka,
Controller of Examinations,
Gauhati University,
Jalukbari, Guwahati

- vs -

Respondent

Miss Punamdita Rai Baruah,
D/O. Sri Arijit Roy
Resident of House No. 22
Near Masjid No.2,
Milanpur Hill Side,
Chandmari, Guwahati ,
Dist. Kamrup, Assam

Before

HON'BLE THE CHIEF JUSTICE MR. J. CHELAMESWAR
HON'BLE MR. JUSTICE HRISHIKESH ROY

Advocates for the appellant : Mr. R.P.Kakati
Mr. A.K. Dutta

Advocate for the respondent : Mr. P.K. Goswami
Mr. D.P. Borah

Date of hearing : 18.2.08
Date of judgment :

Judgment and order

(H.Roy J.)

Heard Mr. R.P. Kakati, learned counsel for the Appellants/Gauhati University. Also heard Mr. P.K. Goswami, learned senior counsel who represents the respondent/writ petitioner.

2. This appeal is presented against the judgment and order dt. 19.12.07 passed by the learned Single Judge in W.P.(C) No. 5532/2007, whereby the writ petition was ordered in favour of the petitioner.

3. The writ petitioner, who appeared for her LL.B. Final Examination from Gauhati University, on declaration of her result on 21.7.07 found that she had failed in paper No.IV (Civil Procedure Code) and paper No.VI (Environmental Law). On application made, the University authorities re-evaluated the answer scripts and declared her as passed in the paper No. IV (CPC). But the University authorities determined that she received only 27 marks in paper No.VI and accordingly ha

s failed to secure the requisite 40 marks necessary for passing the examination.

4. The petitioner approached this Court by filing W.P.(C) No. 4748/2007 and on the basis of Court's order, the re-evaluation of her Environmental Law answer scripts were done and her marks were increased from 27 to 35 through such re-evaluation.

In this process against question No.3 where she had earlier received 0 (zero) marks she was given 5 marks. Against question No.6, which contains two parts, she was earlier given 6 marks for answering the first part of question No.6. Through the re-evaluation process for the second part of question No.6 she was given 4 marks instead of 0 (Zero) marks given to her earlier.

Thus, with 5 marks given to her for question No.3 and 4 marks given to her for the second part of question No. 6, there was an increase of 9 to the 27 marks she had earlier received in her Environmental Law paper.

5. But since even then she was below the pass mark of 40 and the petitioner expected to surely secure the pass marks on the basis of the answers written by her, a second Writ Petition being W.P.(C) No. 5532/07 was filed.

In this proceeding the Gauhati University filed affidavit averring that although there is no rule for re-evaluation of answer scripts, the University will have no objection if the answer script is directly re-evaluated and re-examined by the Judge who was hearing the writ petition.

6. In view of the stand taken by the Gauhati University through their counter affidavit, the learned Single Judge examined the answer script of the writ petitioner and on such examination, the learned Single Judge found that the petitioner deserves to get some marks for the answers she wrote with regard to question No.5 (d), where she had earlier got 0 (Zero), and considered it appropriate to allot her marks for question No. 5(d).

Therefore, with this additional mark against question No.5(d) the petitioner was declared to have secured the pass marks of 40 and accordingly an order was passed to issue corrected mark sheet to the petitioner in respect of paper No. VI.

7. Appearing for the Gauhati University, Mr. R.P. Kakati, learned counsel contends that the judgment of the learned Single Judge is liable to be interfered with since the learned Single Judge instead of re-evaluating the answer script, only awarded marks for question No. 5(d). It is further submitted that even after the marks obtained through re-evaluation and further addition of marks granted by the learned Single Judge, the petitioner could not get 40 marks needed for passing the examination.

8. Mr. P.K. Goswami, learned senior counsel representing the writ petitioner, on the other hand contends that the petitioner has been held to have secured the pass marks by addition of the marks given by the learned Single Judge and the writ petitioner has since secured admission in the LL.M. Course in the prestigious National Law School of India University, Bangalore and she has already completed her first Semester LL.M. study in the said Institution and if the petitioner is now held to have failed in the Environmental Law paper, serious prejudice would be caused to her career. It is also submitted that the writ petitioner has performed very well in her first semester examination and it would not be justified in the present facts to accept the University's Appeal.

9. In the instant case the appellant by filing an affidavit in the writ petition had averred that they have no objection if the answer scripts of the writ petitioner are re-examined by the learned Judge himself. The learned Single Judge after such re-examination found that the petitioner deserves marks for the answer she wrote against question No.5(d) and awarded marks for said question No. 5 (d). Accordingly, by totalling the marks the petitioner had secured through re-e

valuation ($27+9=36$) and also evaluation of the Court ($36+4$), it was found that the writ petitioner had secured total 40 marks which is necessary for clearing the said Environmental Law paper. Accordingly by the impugned judgment, the Appellant University was directed to issue her corrected mark sheet.

10. In the Appellate proceeding, nothing is placed before us by the appellants to take a different view in the matter than the one taken by the learned Single Judge in the impugned order. The Appellant University clearly averred that they have no objection, if the answer script is evaluated by the concerned Court. Accordingly the learned Judge found that the writ petition deserves 4 marks for question No. 4(d) where she was earlier given zero marks. Accordingly a conclusion was reached that writ petitioner has secured the pass marks in paper No. VI.

This was not an unreasonable view considering the fact that the writ petitioner secured additional 9 marks during the first re-evaluation process and by adding these 9 marks to her original marks of 27, she secured total 36 marks ($27+9$).

Now with additional 4 marks given by the learned Single Judge, the total re-evaluated marks becomes 40 ($36+4$), which is the pass mark for the subject. That is how direction was issued to issue corrected mark sheet to the petitioner.

11. It is seen that respondent/writ petitioner has already secured admission through a competitive entrance examination in a prestigious Law Institute for pursuing her LL.M. Course. Therefore in our view it would not be equitable nor it would be legally justifiable to interfere with the decision given by the learned Single Judge in the matter.

12. Accordingly, we are of the opinion that this Writ Appeal ought not to be entertained and the same is accordingly dismissed.