

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**OWP No. 210/2014
CMA No. 250/2014**

Date of order: 29.11.2014

Shravani Sareen. V. University of Jammu and ors.

Coram:

Hon'ble Mr. Justice Tashi Rabstan, Judge.

Appearing Counsel:

For the petitioner(s) : Mr. F.A.Natnoo, Advocate.

For the respondent(s) : Mr. W.S.Nargal, Advocate.

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| i. | Whether approved for reporting
in Press/Media | : Yes. |
| ii. | Whether to be reported in
Digest/Journal | : Yes. |
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1. The case projected by the petitioner is that the petitioner came to be selected to undergo MBBS Course in Session 2009-10 at Acharya Shri Chander College of Medical Sciences (ASCOM), Sidhra, Jammu being a candidate belonging to the Hindu Minority Community. The petitioner after having been admitted to the aforementioned course has passed her 1st year Professional Course. She

appeared in Session 2011-12 in 2nd Professional MBBS Course and had attempted all the papers with full satisfaction. However, on declaration of the result of the 2nd Professional Course by the University-respondent, petitioner was shown in the category of re-appear in Micro-Biology and Forensic Medicines. The detailed awards in the two papers mentioned hereinabove are shown as under:-

S.No.	Subject	Maximum marks	Marks obtained
1.	Microbiology	110	52
	i) Theory & Oral		
	ii) Practical	40	28
	Total	150	80
4.	Forensic Medicine		
	i) Theory & Oral	60	29
	ii) Practical	40	23
	Total	100	52

2. It is contended that since the award in the aforementioned two Papers was not to the satisfaction of the petitioner, she applied for re-checking of the aforementioned two Papers by submitting and filling up the Re-checking form on the duly prescribed format of the respondent-

University, however, the petitioner, vide Communication dated 29.11.2012, while intimating the result of rechecking, was informed that there is no change in the result. The petitioner, being unsatisfied with the original result as well as the result of rechecking, as intimated to her by the respondent-University approached to the University/ Authorities under Right to Information Act, thereby, seeking copies of the answer scripts of the above mentioned Papers, i.e., Microbiology and Forensic Medicines.

3. In response to the Application under the provisions of Right to Information Act, the respondents vide Communication dated 29.10.2012, supplied the copies of the answer scripts. Still the petitioner was not satisfied and had again represented to the respondent-University through its Controller of Examinations, seeking further re-checking/re-evaluation of the Papers/Answer Scripts.
4. It is contended by the petitioner that she was telephonically called in the Re-evaluation Section of the respondent-University, and on the instructions of

the concerned officials/officers, the petitioner filled up the Re-evaluation Form and also deposited the requisite fee of Rs. 2880/- in the Jammu and Kashmir Bank Branch of the University of Jammu but the respondents have not declared the result of the re-evaluation. The petitioner, as such, was again constrained to submit an application under the provisions of Right to Information Act to the Public Information Officer of the respondent-University on 02.04.2013. The Public Information Officer also failed to provide the information within the prescribed period of thirty days. The petitioner then filed Appeal before the Appellate Authority of the University, which, however, was also not satisfactorily replied/disposed of, as such, the petitioner was constrained to invoke the Appellate jurisdiction of the State Information Commission.

5. During the pendency of the aforementioned Appeal before the J&K State Information Commission, the petitioner was handed over the copy of Communication No. PIO/JU/13/10016-17 dated 08.10.2013 along with result of the 2nd Re-

evaluation of the aforementioned two papers of the petitioner. The detailed marks awarded in the said two papers are as under:-

S.No.	Name of the subject	Part	2 nd Re-evaluation Marks
1.	Microbiology	I II	22 16
2.	Forensic	I II	06 11

6. It is contended that the perusal of the aforementioned Communication would indicate that the petitioner as against the paper-II of Micro-Biology has been shown awarded 16 marks as against 13 marks awarded in the original but 'defective result'. But the result of 2nd Re-evaluation in the subject of Forensic Medicines remained the same. However, in terms of Standing Regulations of the University of Jammu, passing out other three papers, the petitioner would be entitled to grace marks for the fourth paper which otherwise was only requiring one mark and the petitioner would thus get passed from the Session April, 2012 in 2nd Professional MBBS course. Additionally, in

the said subject of Forensic Medicines (II) though in the IInd Re-evaluation as well as the result has been shown unchanged, but perusal of the answer script of the said subject would indicate that though as against question–III(b), the award has been shown two marks but in the calculation chart, the same has been shown only $\frac{1}{2}$ marks. Contention of the petitioner, as such, is that in the normal calculation, the total award of the said paper, i.e., Forensic Medicines (II), the actual award of the petitioner goes to $12\frac{1}{2}$ marks as against $10\frac{1}{2}$ marks shown to have been awarded. With the said calculation, the petitioner would not be dependant for grace marks which is otherwise permissible under rules.

7. It is also contended that the petitioner appeared in the subsequent examination conducted by the respondent-University in Supplementary Session held in December, 2012 and has passed in the aforementioned two papers, but the respondent-University, instead of allowing the benefit of better result to the petitioner, as is provided under Regulation 9(a) of the University Regulations,

showed the petitioner as pass in Supplementary examination in respect of the aforementioned two papers, though the petitioner was entitled to be shown pass from Session 2011-12 by giving the benefit of better result of re-evaluation in terms of the aforesaid Regulation, for which the petitioner, by way of written representation dated 09.10.2013, has requested the respondent-University for issuance of marks sheet by allowing the benefit of better result of re-evaluation.

8. The respondent-University vide Communication No, Re-Eval/134458 dated 03.12.2013, intimated the petitioner that her case is closed with a direction to her to have the Re-evaluation fee refunded.
9. Aggrieved by the aforesaid Communication, the petitioner has filed the present writ petition.
10. Per contra, detailed reply has been filed by the respondent-University, wherein it is contended that in terms of Chapter XLVII of the University Statutes, there is no provision which provides for re-evaluation of MBBS Examination Papers. However, re-evaluation of MBBS can only be

ordered in “**exceptional cases**” with the prior approval of the Committee constituted in that behalf comprising of Dean of Faculty, Convener of Board of Studies and the concerned Head of the Department, and in the instant case, the petitioner, knowing very well that there is no provision for re-evaluation in MBBS course and that her case does not fall within the purview of exceptional cases, of her own will, applied for ‘**re-checking**’ of the answer scripts. It is also contended that the process of ‘**re-checking**’ is altogether different from the process of ‘**re-evaluation**’, as the former merely involves afresh evaluation of the marks already awarded, whereas, the latter involves the extensive re-assessment of the answer script. Thus, respondent-University vide communication dated 29.11.2012, categorically had informed the petitioner about her result after re-checking was carried out of her answer scripts. Therefore, the relief sought for by the petitioner is contrary to the Statutes and cannot be granted.

11. In the Counter-Affidavit, it is further contended that the concession of re-evaluation which has been allowed by the University in the past was in respect of the students whose names have been recommended by the Expert Committee constituted in that behalf and not on its own and that too in exceptional cases in conformity with the fresh resolution adopted by the University Council in its meeting of the 17th University Council held on 15.12.2010 vide No. 70.25. The aforesaid recommendations were purely on trial basis for three years and were to be reviewed not later than commencement of Session 2013-14 before extending the same to any other course. It is further contended that Clause vii of the Resolution 3.25.1 deals with the re-evaluation of answer scripts by the Committee consisting of Dean of the Faculty, Convener of Board of Studies and concerned Head of the Department, which Committee can recommend with full justification and if Second Evaluation is to be undertaken and its re-evaluation is subject to furnishing of an undertaking of the

candidate that he/she shall abide by the verdict of second evaluation whether it is to his/her advantage or otherwise. Whereas, in the present case, the name of the petitioner was never recommended by the aforesaid Committee for re-evaluation of her case being an exceptional one, thus she is not competent to claim parity with those whose names were duly recommended by the Expert Committee for second re-evaluation. It is further contended that the case of the petitioner is distinguishable as that of the case of Heena Naz.

12. Heard learned counsel for the parties and perused the writ records and the objections filed by the respondents.
13. The respondent-University vide Communication dated 29.11.2012, intimated the petitioner that her answer scripts have been re-checked by the Committee and on scrutiny, the Committee did not find any variation in the result. As such, the status of the result remained unchanged. Plain reading of the above referred letter would clearly indicate that the answer scripts were got examined by the subject

Expert wherein it was found that the evaluation done by the original Evaluator was in accordance with the performance of the person during the examination. In terms of the University Statutes, there is no provision which provides for re-evaluation in MBBS course. However, as per the Statute, re-evaluation in MBBS course can only be ordered in exceptional cases that too with the prior approval of the Committee constituted in that behalf. In Communication dated 29.11.2012, the petitioner was categorically informed of her result after re-checking was carried out in her answer scripts.

14. The Apex Court in case *A.P.Christians Medical Educational Society v. Government of Andhra Pradesh and another*, (AIR 1986 SC 1490), observed that any direction to allow the students to appear for the examination would be in clear transgression of the provisions of the University Act and the regulations of the University. Para 10 of the said judgment is reproduced hereunder:-

“10. Shri K.K. Venugopal, learned counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical college established by the Daru-Salaam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws. The case of the medical college started by the Daru-Salaam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University did in the case of the Daru-Salaam Medical College as a precedent in the present case to direct the University to do something which it is forbidden from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the

college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time. We are happy to note that the University acted watchfully and wakefully, issuing timely warnings to those seeking admission to the institution. We are sure many must have taken heed of the warnings issued by the university and refrained from seeking admission to the institution. If some did not heed the warnings issued by the university, they are themselves to blame. Even so if they can be compensated in some manner, there is no reason why that may not be done. We are told that the assets of the institutions, which have sprung out of the funds collected from the students, have been frozen. It is up to the State Government to devise suitable ways, legislative and administrative, to compensate the students at least monetarily. The appeal filed by the society is dismissed with costs which we quantify at Rs. 10,000. The writ petition filed by the students is dismissed but, in the circumstances, without costs.

15. Three Judges' Bench of the Apex Court in case *Thapar Institute of Engineering & Technology and anr. V. Gagandeep Sharma and another*, reported as (2001) 9 SCC 157, has observed that prescribing the academic standards falls exclusively in the domain of special bodies like the Senate, Board of Governors and Syndicate etc. The Court would normally not interfere with such prescribed standards and especially when they are intended to improve the academic standards in their respective

institutes. The scope of judicial review in such matters would be very limited.

16. The Apex Court in another judgment rendered in case *Board of Secondary Education. V. Pravas Ranjan Panda and another*, reported as (2004) 13 SCC 383, held in para 6, as under:-

“6. The High Court though observed that the writ petitioner who has taken the examination is hardly a competent person to assess his own merit and on that basis claim for re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation in marks. It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for re-evaluation of answer-books of the students. The question whether in absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer-books has been examined by us in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission* decided on 6.8.2004. It has been held therein that in absence of rules providing for re-evaluation of the answer-books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for re-evaluation of the answer-books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside.”

17. In terms of the University Statutes, re-evaluation in MBBS course can only be ordered in exceptional cases, that too, with the prior approval of the Committee constituted in that behalf. From the pleadings of the writ petition, it is clearly evident that the petitioner has applied for re-checking of

the two papers of 2nd Professional MBBS, viz., (i) Micro-Biology and (ii) Forensic Medicines for which the respondent-University has awarded the marks. The process of re-checking is altogether different from the process of re-evaluation because re-checking involves afresh evaluation of the marks already awarded whereas re-evaluation involves the extensive re-assessment of the answer scripts. The respondents, accordingly, intimated the petitioner about the result of re-checking vide letter dated 29.11.2012, that too, being checked by the Expert Committee. The petitioner thereafter voluntarily appeared in the subsequent examination conducted by the respondent-University in Supplementary Session held in December, 2012. It is clearly evident that the petitioner is very well aware that there is no provision of re-evaluation in MBBS course in the University Statutes.

18. Thus, in light of the judgments passed by the Hon'ble Apex Court in the cases referred to hereinabove, there is no scope of interference in this matter by this Court.

19. Consequently, the writ petition is dismissed being without merit.

(Tashi Rabstan)
Judge

Jammu:
29.11.2014
Tilak, Secy.