

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA No. 340 of 2008.

Reserved on: 16th December, 2016.

Date of Decision : 30th December, 2016.

Himachal Pradesh University & another **..Appellants-
defendants.**

Versus

Vyjayanti Mehra **.....Respondent-Plaintiff.**

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Appellants: Mr. J.L. Bhardwaj, Advocate.

For the Respondent: Mr. Surender Saklani, Advocate.

Sureshwar Thakur, Judge

Under the impugned rendition recorded by the learned trial Court, the suit of the plaintiff whereby she had sought damages to the tune of Rs.10 lacs stood partly decreed vis-a-vis a sum of Rs. 4 lacs standing quantified as damages in favour of the plaintiff and against the defendants. The defendants/appellants herein stand aggrieved by the

¹ Whether reporters of the local papers may be allowed to see the judgment?

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impugned rendition recorded by the learned trial Court wherefrom it has instituted the instant appeal herebefore.

2. Briefly stated the facts of the case are that the plaintiff has filed the suit against the defendants a pauper (indigent person) for claiming damages to the tune of Rs.10 lacs on the allegations that she had appeared in B.Sc.-II, in April 1998 under Roll No. 400-596 assigned to her by the H.P.U. at Govt. Post Graduate College Dharamshala and was declared successful in the examination. She remained a brilliant student through out her studying carrier. She passed her matriculation and plus two examination in flying colours. When the detail marks sheet was supplied to her on 5.7.98 she was surprised to see her marks in Botany and Hindi in which she had secured 55 and 52 marks respectively which were too less in view of her good performance in the respective papers. She applied for revaluation of these papers on 20.7.1998 and when the result of the revaluation was conveyed to her by the defendants she was surprised and shocked to see that her marks in the zoology were reduced from 71 to 55 i.e., the

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subject for which she had never applied for revaluation and the defendants had also changed the practical and internal assessment marks to this subject from 28 and 4 to 30 and 6 and similarly Botany practical marks were changed from 30 & 6 to 28 and 4 and negligently without any reason. It is further averred by the plaintiff that against this illegal and glaring mistake of the defendants she made several requests to them through some messenger to rectify the said mistake committed by them and to issue certificate to her as per applied subjects but all her requests fell on deaf ears. She has averred further that on 15.10.1998, she made representation to the defendants in writing and brought the mistakes to their knowledge which was committed by their officials but her request was not honoured. When her requests were not accepted then she issued a legal notice to the defendants through her counsel on 29.1.99 which was replied by the defendants vide letter No. 3.2.98-99 HPU(Exam-I)B.Sc.-II dated 22.2.99 in which her request had been evasively rejected. Against this rejection of her claim by the defendants

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she had filed a petition before the Consumer Dispute Redressal Forum on 23.9.1999 which was rejected by the said forum on the ground of its maintainability. She has averred that the defendants were gross negligent and were deficient in providing service to her and they caused great inconvenience and unnecessary worries to her and she had to suffer great harassment and mental agony due to this negligent act of the defendants and her bright future got completely darkened and due to it she suffered mental shock and has become completely bed ridden and keeps herself isolated in her room and she has lost her health. She has averred further that her marks in zoology have been reduced without any reason whereas she had not opted for its revaluation and other paper i.e. Hindi for which she had applied for the revaluation has not been revalued by the defendants and due to this illegal act of the defendants she is liable to be compensated by awarding damages to her to the tune of Rs.10 lacs.

3. The suit of the plaintiff was contested by defendants by filing a written statement wherein they have

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taken preliminary objections inter alia maintainability, limitation etc. ON merits, they have averred that the father of the plaintiff was a senior teacher in the school holding the rank of Headmaster/Principal and he might have been influencing her result and that the plaintiff being a brilliant student in school has no relevancy in this particular case. They have averred further that the allegations of the plaintiff in para 4 of the plaint are false and imaginary. The revaluation form dated 20.07.1998 submitted by her would prove the falsity of her claim. They have specifically averred that the plaintiff although sought revaluation in Botany and Hindi papers in column NO.6, yet in column NO.10, of the form she has written for revaluation as her total marks in all subjects were less than she had expected. Due to this fact the revaluation branch of the University inadvertently got the entire record/papers of the plaintiff checked to which this inadvertent mistake had crept in. They have specifically averred that the plaintiff has improved her performance of the previous year and the mistake in the result at the time of revaluation had been

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committed due to over writing of the in column No.5. They have averred further that the plaint allegations are a cock and bull story having nothing to do with the facts of the case and the legal notice served upon them by the plaintiff had rightly been applied.

4. The plaintiff/respondent herein filed replication to the written statement of the defendants/appellants herein, wherein, she denied the contents of the written statement and re-affirmed and re-asserted the averments, made in the plaint.

5. On the pleadings of the parties, the learned trial Court struck the following issues inter-se the parties at contest:-

1. Whether the plaintiff is entitled for the damages to the tune of Rs.10,00,000/- with interest and interest of the sit as alleged?OPP.
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff is estopped to file the suit due to her own act, conduct and acquiescence?OPD.
4. Whether the suit is within time?OPD.
5. Whether the plaintiff has no cause of action and the suit has been filed on frivolous and fictitious grounds as alleged? If so, its effect?
6. Relief.

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6. On an appraisal of evidence, adduced before the learned trial Court, the learned trial Court decreed the suit of the plaintiff/respondent herein.

7. Now the defendants/appellants herein have instituted the instant Regular First Appeal before this Court assailing the findings recorded in its impugned judgement and decree by the learned trial Court.

8. The plaintiff standing dissatisfied with the under allotment of marks qua her Botany and Hindi Papers by the examiner concerned she hence applied to the defendants for their revaluation, revaluation whereof also did not beget any satisfactory response from the Revaluator concerned. The revaluation of the aforesaid papers by the Revaluator concerned falling exclusively within the domain of the subjective satisfaction of the Revaluator, an expert in the disciplines concerned, cannot warrant any interference by this Court nor hence this Court can render a decree for restoration vis-a-vis the plaintiff the marks initially awarded to her by the

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examiner, who initially examined the aforesaid papers. Furthermore, with no apposite provisions standing embodied in the relevant rules for revaluation(s) qua the examinee holding a right for a further revaluation standing held by the expert concerned qua the revaluation done earlier by the revaluator concerned also forbids this Court to facilitate the espousal herebefore of the learned counsel for the plaintiff qua this Court ordering for their further revaluation being carried out by the revaluator concerned, dehors the plaintiff not instituting herebefore any cross-appeal against the impugned rendition recorded by the learned trial Court also dehors hers not filing any cross-objections herebefore seeking therein a relief for sending her Botany and Hindi papers for their further revaluation.

9. The conclusion aforesaid formed by this Court qua the assessment on revaluation by the revaluator concerned of her Botany and Hindi papers holding prevalence vis-a-vis their initial evaluation by the evaluator concerned also the revaluation of the aforesaid papers by the revaluator

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concerned holding prevalence vis-a-vis her personal assessment qua her brilliance besides her relevant brilliant acumen in the aforesaid papers, concomitantly bars this Court to mete any deference to the factum of hers previous to hers taking the aforesaid papers her securing high marks therein whereupon she claims qua her hitherto meritorious performance in the aforesaid papers per se purveying leverage to her to claim qua their revaluation by the revaluator concerned lacking merit worthiness unless she imputed personal malafides to the revaluator concerned, whereas, with the plaintiff not imputing any malafides qua the revaluator concerned nor also hence hers proving them, cannot hence give any capitalization to her to undermine her assessment by the revaluator concerned on his reevaluating her Botany and Hindi papers.

10. The effect of the above conclusion would not erode the effect of the plaintiff/respondent herein despite not asking for her paper in Zoology standing reevaluated by the revaluator concerned, the defendants proceeding to order for

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the holding of its revaluation by the revaluator concerned, sequel whereof begot the ill-consequence of the revaluator concerned on reevaluating her Zoology paper his reducing her marks therein from 71 to 55, whereupon the plaintiff espouses qua the reevaluated marks allotted to her in "Zoology paper" by the Revaluator concerned, warranting theirs standing scored off, especially when the revaluation of the zoology paper of the plaintiff stood invalidly carried out arising from the factum of the plaintiff/respondent not asking for its revaluation. The learned counsel appearing for the appellants/defendants has with vigour contended before this Court qua the revaluation of the zoology paper of the plaintiff/respondent standing annulled upon her request comprised in column No.10 of Ex.P-3, wherein the plaintiff/respondent herein had asked for an apposite revaluation being carried qua the total marks assigned to her in all subjects on their initial evaluation by the examiner concerned. The annulling by the counsel for the appellants/defendants upon the aforesaid recitals occurring in column No.10 of Ex. P-3 for validating the apposite revaluation

of the Zoology paper of the plaintiff, would acquire a formidable vigour only when the aforesaid espousal rested upon the aforesaid column No.10 stood reared in the apposite written statement furnished to the plaint by the defendants/appellants herein. The learned trial Court had declined to reverse the recitals occurring in column No.10 of Ex.P-3 wherein a trite articulation stands embodied qua the plaintiff asking the defendants qua all her papers standing revaluated, on the solitary factum of no contention in consonance therewith standing reared by the defendants in their written statement also evidence inconsonance therewith as stood adduced therebefore by the defendants stood concluded by the learned trial Court to be discardable. Also the aforesaid ground as meted by the learned trial Court for discarding the efficacy of the recitals occurring in column No.10 stands not borne out by a circumspect studied perusal of the written statement furnished to the plaint by the defendants/appellants, wherein in paragraph No.4 their occur pleadings in consonance therewith, also paragraph No.4

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thereof embodies a pointed contention holding absolute tandem with column No.10 borne on Ex.P-3. Consequently, the aforesaid reason assigned by the learned trial Court for invalidating the ordering by the defendants qua the revaluation of her Zoology paper by the revaluator concerned significantly with its revaluation standing not asked for, is per se visibly off the record.

11. Now herebefore, it is to be adjudged qua with the plaintiff depositing revaluation fees comprised in a sum of Rs. 120/-, sum whereof uncontrovertedly is equivalent for facilitating revaluation of only two subjects as stood delineated in column No.6 of Ex. P-3, qua hence the specific recitals occurring in column No.6 of Ex. P-3 stood over ridden by column No.10 thereof, predominantly when revaluation fees apposite for holding the revaluation of only two subjects stood deposited by the examinee. The learned trial Court had undermined the effect of the apposite recitals occurring in column No.10 of Ex.P-3 by imputing deference to the testimony of DW-1 qua the examinee not asking for

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reevaluation of her zoology paper yet imputation of credence by it qua the aforesaid facet echoed by DW-1 in his cross-examination is visibly frail, frailty whereof stands aroused by the factum of DW-1 apparently not standing confronted with Ex. P-3. Also the mere factum of the examinee depositing the apposite reevaluation fees before the authorities concerned holding equivalence in monetary terms for reevaluation standing held by the revaluator concerned of only two subjects hence would not render the reevaluation of her zoology paper by the revaluator concerned under the orders of the defendants, to hold no validation, as the factum of non-deposit, if any, by the plaintiff before the authority concerned of the apposite reevaluation fees vis-a-vis her zoology paper is may be only a fiscal defect, detectable during audit, rendering only the derelicting staff concerned to stand encumbered with the apposite liability of recovery in the apposite sum standing fastened upon them. Column No.10 exists subsequent to column No.6 or column No.10 is the conclusion reared by the examinee, significantly, she while scribing the details of

column No.6 occurring preceding to column No.10, though thereat conceived hers aspiring for revaluation of her Botany and Hindi papers yet hers subsequently in column No.10 though, it elicited from her, her specimen handwriting thereon, nonetheless hers scribings therein echoings for revaluation of all her subjects, are construable to emanate from her well thought contemplation. Also reiteratedly the examinee though stood enjoined by the mandate of column No.10 to append her specimen signatures thereon yet she therein scribed her desire to seek revaluation of all her papers by the defendants whereupon it is to be firmly concluded qua the recitals scribed by her in column No.10 arising from hers holding a deep thought besides the recitals occurring in column No.10 of Ex. P-3 standing engendered by hers conceiving thereat qua her initial evaluation of all her subjects by the defendants holding incommensuration with her merit besides her performance whereupon she circumspectively scribed her aspiration qua the defendants holding all her subjects to revaluation. Occurrence of scribings in the subsequent column No.10

when evidently arise from a well thought contemplation of the examinee, conspicuously hence they override her preceding request comprised in column No.6 of Ex.P-3 whereon she with specificity beseeched the defendants to hold her only her Botany and Hindi papers to revaluation. The prevalence of subsequent recitals in Ex.P-3 vis-a-vis the earlier recitals in column No.6 did empower the defendants to order for the revaluation of her zoology paper also the revaluation carried by the revaluator concerned of the zoology paper of the examinee dehors the occurrence of any digression from its initial evaluation, cannot stand undermined unless pleadings voiced ascription of malafides vis-a-vis the revaluator concerned also evidence in proof thereto stood adduced. However, neither pleadings apposite to ascription of malafides vis-a-vis the revaluator of the Zoology paper of the plaintiff occurred in the plaint nor evidence in proof thereto stood adduced, hence, the valid act of the defendants to hold her zoology paper for revaluation, cannot stand pronounced to be suffering from any vice nor thereupon the plaintiff can espouse

qua the sequelling proven depression which befall upon her holding any nexus therewith.

11. The proven depression in sequel to the drastic reduction in the marks meted by the revaluator concerned vis-a-vis her Zoology paper visibly stands engendered by the plaintiff misanalysing her intellectual brilliance besides her hitherto brilliant academic acumen. Furthermore, the misconception of the plaintiff qua her merit besides her acumen in a particular subject cannot hold prevalence vis-a-vis the revaluation carried out by the revaluator concerned whereupon the apposite close connectivity inter se the depression which befall upon the plaintiff vis-a-vis the drastic reduction meted by the revaluator concerned qua the marks she initially fetched in her initial evaluation by the examiner concerned of her zoology paper, is grossly amiss hereat. Contrarily, thereupon the apt derivative is there forthrightly emanating stark remoteness vis-a-vis the proven depression which befall upon the plaintiff in sequel to the marks allotted to her by the revaluator concerned on his revaluating her

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Zoology paper vis-a-vis the initial marks, rendering this Court to conclude qua the principle of remoteness of damages standing with aplomb attracted hereat whereupon the plaintiff stands defaciliated to qua the relevant facet claim any compensation from the defendants.

12. The above discussion unfolds the fact that the conclusions as arrived by the learned trial Court stand not based upon a proper and mature appreciation of evidence on record. While rendering the findings, the learned trial Court has excluded germane and apposite material from consideration.

13. In view of above discussion, the present appeal is allowed. In sequel, the judgement and decree rendered by the learned trial Court below is set aside and the suit of the plaintiff is dismissed. . All pending applications also stand disposed of. No order as to costs. Records be sent back forthwith.

30th December, 2016.
(jai)

(Sureshwar Thakur)
Judge.