

THE CHIEF JUSTICE J.K. MAHESHWARI
AND
JUSTICE CHEEKATI MANAVENDRANATH ROY
WRIT APPEAL Nos.363 & 364 of 2019

Dt. 31.10.2019

COMMON JUDGMENT: (per J.K. Maheshwari, CJ)

Shri Guttapalem Vijaya Kumar, learned standing counsel for the appellant-Dr. N.T.R. University of Health Sciences. Shri Kiran Tirumalasetti, learned counsel for the non-official respondents in both the appeals, learned Government Pleader for Medical, Health & Family Welfare for respondent No.24 in W.A.No.363 of 2019 and Sri N. Naveen Kumar, appearing on behalf of respondent No.2 in W.A.No.364 of 2019.

2. Being aggrieved by the orders dated 19.09.2019 passed by the learned single Judge in W.P.Nos.10376 of 2019 and 9486 of 2019, these writ appeals, respectively, have been filed; however, this judgment shall govern the disposal of the aforesaid two cases. It is, *inter alia*, the contention of the learned standing counsel for the appellant, that the judgment of Hon'ble the Apex Court in **Sahiti & ors. v. Dr.NTR University of Health Sciences¹**, decided on 22.10.2018, has not been duly considered by the learned single Judge and also the judgment of the Telangana High Court dated 03.07.2018, passed in W.P.No.22614 of 2018.

3. It is also the contention of the learned standing counsel that there is no provision for revaluation; however, in the absence of having any such provision, the order passed by the learned single Judge is not in accordance with law. The said issue has been raised by the appellant/petitioner in the counter-affidavit (para 7 thereto), but it has not been duly considered, therefore, the order of learned single Judge, without considering the argument, as advanced, is illegal and without jurisdiction. In the context of

¹ [2009 (10) SCC 599]

the said argument, we have perused the order passed by the learned single Judge. On perusal thereto, it is apparent that the learned single Judge considered the issue whether the examiners in question and the University have violated the order passed by the learned single Judge of this Court, complying the directions so issued, while it was heard and decided in the previous round of litigation in October 2016, delivering common judgment in the case of **Dr.P.Kishore Kumar and ors. v. State of Andhra Pradesh**² and **Dr.J.Kiran Kumar and ors. v. State of Andhra Pradesh and ors.**³ The Court also observed that, in the previous round of litigation, the scanned answer scripts do not bear the evaluation marks, marks of the examiners or the marks allotted by the examiners to each question; however, in place of discharging the onus to evaluate it, the Court directed for such evaluation in the manner as prescribed in the said judgment. The learned single Judge has also referred the earlier batch of cases in which the digital method was not found correct on account of not evaluating each and every answer; however, recorded a finding that the examiners have not applied their minds, on the questions answered. Therefore, observed that the test as laid down in the previous round of litigation has not been observed by the University to evaluate the answer scripts, however, the Court allowed the writ petition with the following observations, which are reproduced as thus:

“Hence, the writ petition is allowed. The respondents are directed to get the petitioners’ answer scripts once again evaluated as per the prevalent MCI norms by identifying four fresh examiners. They are also directed to give clear and categorical instructions to the said new set of examiners to physically put the marks etc., on the uploaded answer script. The identified Globerana Technologies Pvt. Ltd., Hyderabad should be directed to teach the examiner, the manner of evaluating the digital/uploaded answer sheet (if necessary). The corrected sheet must be preserved for future review and in order to seek whether the examiner has applied his mind while evaluating the answer scripts or not. The

² 2016 (6) ALT 408

³ 2017 (6) ALT 213

entire exercise should be completed within a period of six weeks from today.

At this stage, the Registrar of the University submits that they were facing some practical difficulties in finding four examiners in the specialized subjects. The majority of petitioners who are present in the Court, have agreed that they have already applied for the supplementary examination. In the view of the matter, this Court is of the opinion that all the petitioners should be allowed to write the supplementary examination. The few who have not paid the supplementary exam fee must be allowed to pay the fee. The result, of the supplementary examination of only those candidates who had failed in this examination held in April/May, 2019 will be released. Otherwise the result, of the others who have successful in the examination held in April/May, 2019 need not be released. By appearing for the supplementary examination, the students/petitioners are not giving up any of their rights. This order is passed in the peculiar facts and circumstances of this case because University has expressed its difficulty in immediately finding four examiners who are qualified in this particular subject and who are also computer literate to correct the papers in a scanned mode at such short notice. At the same time the supplementary exams are around the corner. Hence, the above order is passed.”

4. On perusal of the aforesaid, it is apparent that the case at hand is a case in which the answers to the questions have not been evaluated by the examiners, and, the said fact was found correct in the previous round of litigation of the petitioners. The learned counsel representing the appellant is not in a position to dispute the fact that the same petitioners have come in the earlier round of litigation, in which, in between the parties, the deficiencies in evaluation of the answers were found and the record was perused by the Court, while making certain observations regarding not evaluating of the marks. It is also not in dispute that the said judgment of the learned single Judge has not been appealed against by the University. Therefore, the directions as issued in the previous round of litigation, have become final in between the parties. In such a situation, if the learned single Judge, while passing the order, referred the judgment of the previous round of litigation and recorded a finding that those directions have not

been observed, such finding cannot be found at fault. It is to be noted here that the arguments advanced, regarding not considering the issue raised in para 7 of the counter-affidavit is concerned, it is only related to the fact that, once there is no provision in the statute, the revaluation ought not to be directed in view of the judgment of Hon'ble the Apex Court in the case of **Sahithi & ors.**, supra. In this regard, it is suffice to observe that, before Hon'ble the Apex Court, the circumstances as prevalent in the case on hand, were not there, referring the fact that the questions which were answered by the students had not been evaluated by digital evaluation. On the contrary, when the Court perused the record, the said fact was found correct; however, manual evaluation was directed, issuing certain other directions. But, by non-observance of those directions, the evaluation has been done; therefore, at this stage, the argument advanced by the learned counsel for the appellant of second revaluation is fallacious. In fact, it is related to the revaluation as directed by this Court in the previous round of litigation between the parties and such direction is binding on them. In that view of the matter, the argument as advanced by the learned counsel for the appellant has no substance. Hence, the same is repelled.

5. Accordingly, we dismiss these appeals *in limini*. The period as directed by the learned single Judge be observed from today by the University.

As a sequel, all pending miscellaneous applications shall stand disposed of. No order as to costs.

J.K. MAHESHWARI, CJ
MRR

CHEEKATI MANAVENDRANATH ROY, J