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

% ***Date of Judgment: 26th June, 2019***

+ **W.P.(C) 6895/2019 & C.M. Appln. No. 28675/2019**

SHIVANGI LAL THROUGH HER
GUARDIAN/FATHER MR. APURB LAL Petitioner
Through: Mr. Ashish Lal, Advocate

versus

CENTRAL BOARD OF SECONDARY EDUCATION
..... Respondent
Through: Mr. Atul Kumar, Advocate

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J (ORAL)

1. The present petition has been filed with the following prayers: -
 - a. *Direct the Respondent to grant full marks of the question on the basis of the correct and appropriate answer given by the Petitioner.*
 - b. *Call for the official records.*
2. The petition raises the following questions of law: -
 - (i) *Whether the petitioner is entitled to full marks on the question which has been correctly answered in accordance with the instructions of the respondent?*
 - (ii) *Whether the respondent has an authority to grant less*

marks even then the answer given by the Examinee correctly?

3. The petitioner being a student of Class-XII appeared in the Class-XII Examination in the month of March, 2019 conducted by the respondent. She had appeared in five subjects being English Core, Political Science, Economics, Mathematics and Psychology.
4. In May, 2019, the respondent declared the result of Class-XII and the marks received by the petitioner in various subjects are as under: -

English Core	:	95/100
Political Science	:	95/100
Economics	:	96/100
Mathematics	:	71/100
Psychology	:	100/100
5. Not being satisfied with the marks given to her by the respondent in Political Science and English, the petitioner decided to seek accreditation of the marks and hence applied for re-verification on 4th May, 2019. The application was made online for re-verification in English Core, Political Science and Mathematics.
6. On 8th May, 2019, the respondent updated the re-verification status where in respect of the petitioner, it was mentioned “no mistakes found in all applied subjects”.
7. On 20th May, 2019, the petitioner applied for answer-books in the three subjects mentioned above and on 23rd May, 2019, the said answer-books of Political Science and English of the petitioner were uploaded by the respondent.

8. The petitioner avers in the petition that after receiving the answer-book, she had consulted expert teachers in the concerned subjects, in a well-known school and coaching Institutes and she was told that the answers given by her actually deserved full marks. Based on the advice, the petitioner applied for re-evaluation on 24th May, 2019 in Political Science and English. She claimed full marks in questions No.16, 22, 23, 25, 26 and 27 in Political Science and questions No.2, 4, 5, 9, 10 and 11 in English Core.
9. On 13th June, 2019, the status of re-evaluation with regard to Political Science was uploaded by the respondents and the marks were shown to have increased from 95 to 97. On 15th June, 2019, the status of re-evaluation of English paper of the petitioner was uploaded indicating that there was no change in marks.
10. The petitioner has placed on record the answer-sheet with initial marks as well as the re-evaluated marks. The petitioner has also made a chart in the body of the petition indicating the question numbers with the marks given and marks claimed, with the 'reason' to seek increase in the marks. The Marking Scheme has also been annexed.
11. Learned counsel for the petitioner contends that the action of the respondent in not upgrading the marks is arbitrary and unfair because the answers given to the questions, which are subject matter of this petition, by the petitioner are excellent and appropriate as per the Instructions and the Marking Scheme of the respondent. He submitted that while answering the questions, the petitioner had followed all criteria mentioned in the Marking Scheme and there are no

grammatical or word mistakes. He also submitted that the petitioner is a meritorious student since the beginning. She had 10 CGPA in Class-X and she deserved full marks in the three papers questioned in this petition. The action of the respondent in not-upgrading the marks of the petitioner will seriously prejudice her interest.

12. *Per contra*, learned counsel for the respondent has argued that the marking is done as per the Marking Scheme. The petitioner had applied for re-verification as well as re-evaluation. On re-evaluation, it was found that the petitioner had been given lesser marks in Political Science subject, than what she deserved and accordingly, her marks were increased. In the other subjects, no mistake or error was found and the marks given were correct as per the Marking Scheme formulated by the respondent. Learned counsel further contends that it is not the domain of this Court in a judicial review to direct increase of marks. The relief sought in the present petition for granting full marks is a relief which cannot be granted by any Court of Law. This is the domain and prerogative of the Examiners, who are experts in the field.
13. I have heard the learned counsels for the parties. There is no doubt on the legal proposition that assessment of answer sheets in any examination and re-evaluation is not the domain of the Courts and is best left to the Examiners, who are experts in the field. It is only in very rare and exceptional cases that a Court may enter into this exercise, if there is some grave and material error visible in the valuation or re-evaluation, but in that event also, after noticing the mistakes, the ultimate re-evaluation/scrutiny would have to be left to the Experts in the field.

14. The scope and extent of judicial review has been laid down by the Supreme Court in the case of *Tata Cellular v. Union of India*, (1994) 6 SCC 651. A co-ordinate Bench of this Court in the case of *Atul Kumar Verma v. Union of India and Ors.*, [W.P.(C) 5719/2015] decided on 13th July, 2015, was called upon to decide the issue of correctness of Answer-Key in an examination process. While deciding on the scope of judicial review, the co-ordinate Bench relied on the judgment of the Supreme Court in *Tata Cellular (supra)* and the principles laid down therein which should govern the exercise of judicial review by the Courts. These principles, as culled out in *Atul Kumar Verma (supra)*, are as under: -

“(i) judicial review is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficent power;

(ii) judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself;

(iii) that the concern of the Court while exercising the power of judicial review should be confined to, (a) whether a decision making authority exceeded its powers; (b) committed an error of law; (c) committed a breach of the rules of natural justice; (d) reached a decision which no reasonable tribunal would have reached or; (e) abused its powers;

(iv) no judicial review by the non-expert Judge is permitted of the discretion exercised by the expert; and,

(v) if a Court were to review fully the decision of a body such as a State Board of medical examiners, it

would find itself wandering amid the mazes of therapeutics of boggling at the mysteries of the pharmacopoeia - such a situation is not a case of the blind leading the blind but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question.”

15. It is thus clear that judicial review can only be of a decision making process and not of a decision, particularly when the Authority entrusted with that decision has expertise in that particular field. The Courts are certainly not experts to enter into the domain of checking papers or reevaluate the answer-sheets in the examination process. The Apex Court in the case of ***H.P. Public Service Commission v. Mukesh Thakur*, (2010) 6 SCC 759**, while setting aside the judgment of High Court wherein the High Court had directed that the answer-sheets of the petitioner be sent to another examiner for re-evaluation, held that it was not permissible for the High Court to examine the question paper and the answer-sheets itself, particularly when the examining body has assessed the same. A Division Bench of this Court in the case of ***Salil Maheshwari v. The High Court of Delhi*, 2014 SCC OnLine Del 4563** has held that in matters of judicial review which involve examination of academic content and award of marks, a circumspect approach, leaving evaluation to the experts of academicians, has to be effected.
16. At this stage, I may also refer to ***In Re: V. Askew*, [1768] 4 2168**, where Lord Mansfield considered the question of interference and held as under: -

“It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physician; and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious or biased; much less, warped by resentment, or personal dislike.”

17. Thus, in my view, following these principles, no case for interference in the marks awarded to the petitioner by CBSE arises. The perception of the petitioner that she being a good student is entitled to full marks cannot be the basis for exercise of judicial discretion. The experts in the field have re-verified and revaluated the answer-sheets of the petitioner and with the expertise, which they have, concluded that the petitioner is not entitled to any enhancement/upgradation in her marks. In my view, the examiners are not required to give any reason for not enhancing/upgrading the marks of the petitioner and even this contention of the petitioner that there was no reasoning for not enhancing the marks, has no merit. At best, the petitioner was entitled to have her answer-sheets re-verified and revaluated. The examiners have followed the due process and carried out both re-verification and revaluation. This Court does not have the expertise to go beyond the revaluation process and nor does it have the jurisdiction or the domain to direct the examiners, who are experts in their field, to enhance the marks of the petitioner and grant her full marks, which is the relief prayed in the present petition.

18. Having heard the learned counsel for the petitioner, I find no merit in his contentions. The writ petition is accordingly dismissed with the pending application.

(JYOTI SINGH)
VACATION JUDGE

JUNE 26, 2019

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