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BHUSHAN UTTAM KHARE

v.

DEAN, B.J. MEDICAL COLLEGE AND ORS.

JANUARY 28, 1992

B [S. RATNAVEL PANDIAN AND M. FATHIMA BEEVI, JJ.]

Poona University Act, 1974—Ordinance 134A and 146—Revaluation of answer books—Whether second revaluation permissible.

Consequent upon the announcement of his M.B.B.S. Examination result on 12.12.1990, the petitioner alongwith other 166 students, applied for revaluation of answer books under University of Poona Ordinance 134A. When the revaluation results were declared, certain students made representation to the University Authorities for their answer papers being revalued from the same set of examiners. The University on consideration of that representation appointed a Committee for scrutiny and to reassess theory papers of the students acquiring more than 20% marks after revaluation, from senior teachers of the Faculty. After scrutiny, it was found out that the marks are closer to the original marks in Medicine, Surgery and Preventive and Social Medicine. The Commitee therefore recommended that the entire revaluation of the papers should be cancelled. The Executive Council by a resolution cancelled the result of the revaluation and directed fresh revaluation and the second revaluation was done through the examiners outside the Sate and the result declared on the basis thereof. The petitioner and others challenged the aforesaid decision of the Executive Council cancelling the earlier revaluation and directing a second revaluation by means of writ petitions. It was contended before the High Court on behalf of the petitioners that the action of the Executive Council was arbitrary inasmuch as there was no malpractice, fraud or anything objectionable to the revaluation as the examiners were chosen by the Vice-Chancellor as enjoined under the Ordinance. Hence the cancellation of revaluation was not proper. The High Court repelled the two contentions advanced before it and dismissed the writ petitions. Hence this Petition for Special Leave to appeal.

Dismissing the Petition for special leave to appeal, this Court,

HELD: In deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be

very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. [390 B] A

Under Ordinance 134A, the Vice-Chancellor shall use his discretionary power to decide as to whether all the applications received from the candidates, considered for revaluation or not. If as a result of revaluation of answer-books, the marks obtained by the candidate increase over the original marks by 10% or more then only the result of revaluation will be accepted by the University. [388 C-D] B

Ordinance 146 is comprehensive enough to include revaluation also for further action. The fact that two examiners were also the members of the Committee which recommended for revaluation cannot result in any bias even if they had been directly concerned with the original evaluation. It is true that in the second revaluation also there had been some changes between the original valuation and the revaluation results. However, it is not so glaring or demonstrably unconscionable as seen in the first revaluation. [390 D] C D

CIVIL APPELLATE JURISDICTION: Special leave Petition (Civil) No. 10330 of 1991.

From the Judgment and Order dated 3.5.1991 of the Bombay High Court in Writ Petition No. 186 of 1991. E

Kapil Sibal, Makrand D. Adkar and Ejaz Maqbool for the Petitioner.

R.D. Tulpule, D.M.Nargolkar, Ms.Kiran Bhagalia, Ms.V.D.Khanna and A.M. Khanwilkar for the respondents.

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Caveator-in-person.

The following Order of the Court was delivered

The petitioner, Bhushan Uttam Khare, appeared for the Third Year M.B.B.S. Examination held by University of Poona in the months of October-November, 1990. The results of the said examination were declared on 12.12.1990. As per University of Poona Ordinance 134A, the petitioner applied for revaluation of his answer papers. 167 students including the petitioner had applied for revaluation. When the revaluation results were declared, certain students made representation to the University authorities for their answer papers being revaluate from the same set of examiners. G H

A On receipt of the representation, the Executive Council of University appointed a Committee to make an enquiry. On the report of the Committee, the University of Poona decided to cancel the revaluation results and to conduct further revaluation. This decision of the executive Council cancelling the earlier revaluation and directing a second revaluation was challenged by the petitioner and others in writ petitions filed B before the High Court at Bombay. By the impugned judgment dated May 3, 1991 the High Court dismissed the writ petitions. Aggrieved by the decision, the petitioners has moved this petition for special leave.

The Poona University Act, 1974 defines the powers and duties of the Executive Council. The Executive Council may make Ordinances to pro- C vide for the conduct of the examinations. Under Ordinance 134A, the Vice-Chancellor shall use his discretionery powers to decide as to whether all the applications received from the candidates, be considered for revaluation or not. If as a result of revaluation of answer-books, the marks obtained by the candidate increase over the original marks by 10% or more of the marks carried by the paper then only the result of revaluation D will be accepted by the University. Application for verification of answer-books will be entertained within a period of two weeks from the date of declaration of the results.

Ordinance 146 reads :

E "146. In any case where it is found that the result of an examination has been affected by error, malpractice, fraud, improper conduct or other course of whatsoever nature, the Executive Council shall have power to amend such result in such manner as shall be in accord with the true position and to make such declaration as the Executive Council shall consider F necessary in that behalf. Provided that ,.but subject to 0.147, no result shall be amended after the expiration of six months from the date of publication of the said result."

In the Third Year M.B.B.S. Examination, 402 students appeared for the examination and 167 students applied for revaluation of the answer G books. When the representation of students opting for revaluation was placed before the Executive Council as glaring difference was indicated, a Committee was appointed for scrutiny and to reassess theory papers of the students acquiring more than 20% marks after revaluation , from senior teachers of the Faculty. After scrutiny, it was found out that the marks are closer to the original marks in Medicine, Surgery and Preventive and H Social Medicine. Therefore, the Committee recommended that the entire revaluation of the papers should be cancelled. This report of the

Committee was placed before the Executive Council in its meeting held on March 27, 1991 and the Council by the resolution cancelled the result of the revaluation and directed fresh revaluation. The second revaluation was done through the examiners outside the State.

The results on revaluation intimated to the Medical College thus stood cancelled and the final results were declared in pursuance to the second revaluation. The action of the Executive Council was attacked on the grounds that it was an arbitrary action; that the choice of the examiners was that of the Vice-Chancellor as enjoined under the Ordinance and there was no glaring instance of any malpractice, fraud or other course of whatsoever nature to cancel the revaluation and in the absence of any provision in the statute or the Ordinance for a second revaluation, the decision taken by the Executive Council is unwarranted and, therefore, illegal.

In repelling these contentions, the High Court has taken the view that educational institutions set up Enquiry Committee to deal with the problem posed by the adoption of unfair means and it is normally within their domestic jurisdiction to decide all questions in the light of the material adduced. Unless there is an absolute and compelling justification, the Writ Court is slow to interfere with the autonomous activity of the Executive Councils. The High Court said that the material on record indicated that this is not a case for exercise of jurisdiction under Article 226 of the Constitution and since the Court has found that there is material to reach the decision as regards cancellation of the impugned result of revaluation, the contentions taken up by the petitioner are untenable.

The petitioners has reiterated the submissions that there had been no improper conduct come to light and the absence of any provision for a second revaluation vitiates the whole action. We have been taken through a comparative chart containing the marks awarded in the original examination, the first revaluation and the second revaluation. The attempt of the learned counsel for the petitioners had been to make out that the disparity was not such as to indicate any improper practice and that the Committee constituted consisted of four members of whom two were original examiners and the report submitted by that Committee should not have been made the basis for the decision which affected the prospects and career of a large number of medical students. The learned counsel for the University as also the standing counsel for the State drew our attention to the fact that Executive Council had only cautiously proceeded in the matter and before ordering cancellation a probe was made and the mem-

A bers of the Enquiry Committee were competent persons and that there is no illegality which warrants interference of the Court.

We have considered all the materials placed before us in the light of arguments advanced keeping in mind the well accepted principle that in deciding the matters relating to orders passed by authorities of educational B institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. We are satisfied that there had been sufficient material before the Executive Council to proceed in the manner in which it has done. It is not C correct to say that the University had acted on non-existing rule for ordering revaluation. Ordinance 146 is comprehensive enough to include revaluation also for further action. The fact that two examiners were also the members of the Committee which recommended for revaluation cannot result in any bias even if they had been directly concerned with the original evaluation. It is true that in the second revaluation also there had D been some changes between the original valuation and the revaluation results. However, it is not so glaring or demonstrably unconscionable as seen in the first revaluation. We cannot, therefore, accept the contention of the petitioner that the High Court had erred in not granting the relief sought for. We can only observe that the case of the petitioner, who alone has come before this Court and who had secured higher marks in the first E revaluation and is, therefore, aggrieved by the cancellation of the same, would be duly considered in the selection for Post-Graduate Course. The special leave petition is dismissed.

Y.L. SLP dismissed.