

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

Date of decision: 23rd July, 2010.

+ CM No.15488/2009 (u/S 151 CPC for directions) in W.P.(C) 10810/2009

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NIKHIL SHARMA

..... Petitioner

Through: Mr. Mukul Talwar, Advocate with
Mr. Sunil Kumar & Mr. Sradhananda
Mohapatra, Advocates

Versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Anurag Mathur, Advocate for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner, then a student of B.A. (Prog.) Course in the respondent no.2 Deshbandhu Gupta College, instituted this writ petition being aggrieved of the omission on the part of the respondent no.2 College and the respondent no.1 University of Delhi of which the College is an affiliate, to incorporate the marks obtained by the petitioner in the internal assessment in the subject of Hindi-A for the year 2006-07. The writ petition was disposed of vide order dated 6th October, 2009 with a direction to the College to produce all the relevant records relating to the internal assessment of the petitioner in the subject aforesaid before the Controller of Examinations of

the University and the Controller of the Examinations was directed to after examination of the record and verifying the internal assessment of the petitioner in the said subject, pass appropriate orders incorporating the marks obtained by the petitioner.

2. This application was necessitated by the petitioner because according to the petitioner, the respondent no.1 University while so correcting the mark sheet of the petitioner pursuant to the order aforesaid, has included only 7 marks instead of 17 marks awarded to him in the internal assessment. Notice of the application was issued to the respondent no.2 College and the respondent no.1 University. The respondent no.2 College has filed a reply stating *inter alia* that out of 25 internal assessment marks, 10 marks are allocated to House Examination, 10 marks for assessment of the assigned work and 5 for attendance; that the petitioner was awarded 4.5 marks in the House Examination, 5 for attendance and 7.2 for assignments making a total of 16.7 which was rounded off to 17. The respondent no.1 University however, while correcting the mark sheet of the petitioner applicant has not included the said 7.2 marks awarded by the College for assignments, for the reason of the respondent no.2 College having been unable to produce the assignment of the petitioner. The College in its reply to the application has further stated that as per the Internal Assessment Scheme framed by the respondent no.1 University, the assignment scripts are not to be retained and only the House Examination scripts are to be retained.

3. The respondent no.1 University in its reply has contended that since the respondent no.2 College failed to show the assignments of the petitioner, the 7.2 marks out of 10 in internal assignment awarded by the respondent no.2 College to the petitioner were not considered and hence not included.

4. The counsel for the petitioner has contended that owing to the respondent no.1 University not considering the aforesaid 7.2 marks, the

petitioner / applicant is missing his second division by one mark and which would seriously hamper the future prospects and career of the petitioner applicant.

5. The counsel for the respondent no.1 University has with reference to the Internal Assignment Scheme of the respondent no.1 University contended that while the College, pursuant to the order disposing of the writ petition has produced all the records including as to the attendance of the petitioner and the House Examination of the petitioner, has not produced assignments submitted by the petitioner and on the basis whereof the 7.2 marks aforesaid had been awarded to the petitioner. It is contended that it is very strange that while the attendance records and the House Examination records have been saved, assignments have not been saved. There is however no averment or argument whatsoever of any collusion between the respondent no.2 College and the petitioner applicant.

6. The counsel for the respondent no.1 University has however been unable to show from the internal Assignment Scheme any Rule requiring the College to preserve the record of the assignments submitted by the students. The counsel for the respondent no.1 University has during the course of the arguments contended that the respondent no.1 University has a right to scrutinize any of the records on the basis whereof the internal assessment marks have been awarded. However a perusal of the Internal Assignment Scheme shows that while in the Clause 'House Examination', it is provided that the University reserves the right to scrutinize some or all the scripts of House Examination, there is no such right of scrutiny reserved in the Clause qua the assignments. Upon the same being put to the counsel for the respondent no.1 University, the counsel contends that since the assignments are normally returned to the students, the provision of scrutiny has not been made with respect thereto. If the said contention of the counsel for the respondent no.1 University were to be accepted then in any case, the

demand of the respondent no.1 University from the respondent no.2 College of the assignments, to award the 7.2 marks as aforesaid to the petitioner is not understandable. When the respondent no.2 College is not expected to keep the assignments, the demand of the respondent no.1 University on the respondent no.2 College for the assignments and the action of the respondent no.1 University of not awarding 7.2 marks of assignments to the petitioner notwithstanding the record submitted by the College and notwithstanding the College having also stated so on affidavit filed before this Court is not understandable.

7. Even otherwise this Court is of the opinion that for the mistake, if any, of the respondent no.2 College, the student ought not to suffer. It has been repeatedly enquired from the counsel for the respondent no.1 University as to whether any step has been taken by the respondent no.1 University for the breach, if any, on the part of the respondent no.2 College in not retaining the assignment records as was earlier being contended. The counsel for the respondent no.1 University states that for the larger interest of the students, such action of de-affiliation or otherwise has not been taken. Attention is however invited to Clause 5(i) in the Internal Assessment Scheme which entitles the University to not declare the result of the students of the College which has not submitted the internal assessment marks in time. However, the said Clause is only with respect to the submission of the internal assessment marks and not with respect to the record forming the basis thereof. Even otherwise, it would be appropriate for the respondent no.1 University to reconsider the said Scheme so as to penalize the defaulting College and not students of that College. Withholding of the result would only affect the students of the College. The Vice Chancellor of the respondent no.1 University is directed to consider the said matter.

8. The application is therefore allowed. The Controller of examinations of the respondent no.1 University is directed to issue a fresh mark sheet to the petitioner in terms of the above within two weeks of today.

**RAJIV SAHAI ENDLAW
(JUDGE)**

23RD JULY, 2010
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