

+ LPA 653/2010 & CM No. 16272/2010

DR. RAJIVA KUMAR TIWARI Appellant
 Through: Mr. H.P. Sharma, Advocate with
 Mr. Sanjay Katyal and Mr.Saurabh,
 Advocates.

versus

UNION OF INDIA & ORS. Respondents
 Through: Dr. Rakesh Gosain, Advocate for
 respondents No.2 and 3.
 Mr. Rakesh Tiku and Mr. Aman
 Wlesha, Advocate for UOI.

% Reserved on: 10th September, 2010
Date of Decision : 27th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

MANMOHAN, J

1. The present Letters Patent Appeal has been filed challenging the judgment and order dated 02nd August, 2010 by virtue of which the Learned Single Judge has dismissed in limine the appellant's writ petition being W.P.(C) No.5135/2010.

2. Mr. H.P. Sharma, learned counsel for the appellant submitted that respondent No.3 had intentionally failed the appellant by manipulating his answer sheets by reducing his marks from 7 to 5 against Questions No.1 and 7 and further by changing the total marks on the opening page of the answer sheet. In this connection, Mr. H.P. Sharma, drew our attention to pages 78, 85 and 109 of the present appeal paper book. Mr. H.P. Sharma referred to Section 73 of the Indian Evidence Act to submit that this Court should compare the signatures and writing of the examiner and give a finding thereon. Mr. Sharma also placed reliance upon a judgment of the Supreme Court in ***Shivajirao Nilangekar Patil Vs. Dr. Mahesh Madhav Gosavi & Ors. (1987) 1 SCC 227*** wherein it has been held as under:

“36. The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary an essential for the administration of justice.”

3. It is pertinent to mention that similar arguments were advanced before the learned Single Judge who has dismissed the appellant's writ petition by observing as under:-

“4. The marks given against answer to question no.1 do

appear to have been changed from 7 to 5 marks, both against the answer as well as in the tabulation on the opening sheet of answer book. However, there is no such indication whatsoever with respect to the marks given against answer to question no.7 neither against the answer nor in the tabulation aforesaid..... Moreover, even if there were to be a difference, as long as it clearly reads as 5 and does not appear to be changed, it cannot be said that the marks against question no.7 have been changed.

5. The mainstay of the petitioner is that in the tabulation on the opening sheet of answer book, the totaling of the marks against each question, appears to have been done, initially as 57; subsequently changed to 55 and ultimately to 53.

6. The totaling to 57 appears to be a case of error.....

7. The petitioner even if said to be scoring 55 marks would still have a total score of 148 marks only and would not clear the examination.

8. I also do not find the change from 7 to 5 marks (qua answer to question no.1) also to be such, as to call for any inquiry. Often, while checking the answer books, the examiner may have second thought and may change the marks. Merely because there is overwriting, would not show any manipulation or fudging.

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10. Even otherwise the said investigation cannot be done in writ jurisdiction and the question whether the answer deserves 7 to 5 marks out of 10 marks cannot be the subject matter of judicial review.

11. The counsel for the petitioner has been sought to urge that there is an inconsistency in the guidelines given to the examinees and to the examiners. The counsel for the petitioner however fairly admits that such contradiction even if any, would affect all the examinees.....”

4. It is settled position of law that revaluation of an answer sheet is not permissible unless the rules of an organization which conducted the

examination permits so. (Refer to *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27, *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Others* (2004) 6 SCC 714, *Board of Secondary Education v. Pravas Ranjan Panda and Another*, (2004) 13 SCC 383 and *H.P. Public Service Commission v. Mukesh Thakur & Anr.*, 2010 (6) SCALE 79). The admitted position in the present case is that the rules of respondent No.3 do not permit revaluation. Consequently, the scope of interference by this Court is limited.

5. We are further of the opinion that Section 73 of the Indian Evidence Act has no applicability to the present proceedings. However, we have scrutinized the appellant's answer sheet to see if there was any manipulation by respondent No.3.

6. In fact, upon a perusal of pages 78, 85 and 109 of the paper book, we are in agreement with the findings of the learned Single Judge that it appears that the appellant's marks have been changed from 7 to 5 only with respect to Question No.1. Neither the marks with respect to Question No.7 have been changed against the said question nor on the tabulation sheet. Moreover, in our opinion, change of marks by an examiner with regard to a particular question is quite normal and on this score no malice or manipulation can be attributed to the respondent. As far as the totaling error on the front page or the tabulation sheet is

concerned, we are of the view that the same is only an arithmetical mistake and it can confer no right in favour of the appellant. Consequently, the aforesaid judgment in the case of *Shivajirao Nilangekar Patil* (supra) has no application to the facts of the present case.

7. It is also pertinent to mention that though the appellant has alleged manipulation of his answer sheet, yet he has not named even a single officer of the respondent No.3 who was inimical to him. Consequently, the appeal and the pending application, being devoid of merit, are dismissed, but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 27, 2010

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