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

+ LPA 880/2010

NIKITA GUPTA AND ORS. Appellants

Through: Mr. Yashpal Rangi, Advocate.

versus

DELHI SUBORDINATE SERVICES

SELECTION BOARD

.... Respondent

Through: Ms. Zubeda Begum, Advocate with
Ms. Sana Ansari, Advocate.

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Date of Decision: December 13, 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? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

J U D G M E N T

MANMOHAN, J.:

CM No.22226/2010

This is an application for condonation of delay of 124 days in preferring the appeal.

Having heard Mr. Yashpal Rangi, learned counsel for appellants and Ms. Zubeda Begum, learned counsel for respondent, we are of the considered opinion that sufficient cause exists for condonation of delay in preferring the appeal and, accordingly, it is so ordered.

LPA 880/2010

1. Present Letters Patent Appeal has been filed challenging the judgment and order dated 07th July, 2010 passed by the learned Single Judge in W.P.(C) 11522/2009 whereby the learned Single Judge has dismissed the said writ petition.
2. It is pertinent to mention that the learned Single Judge has concluded that there was no irregularity in the appointment of Examiners as the respondent Board had appointed them on the advice and direction of the Directorate of Education.
3. The learned Single Judge after referring to the case law has further concluded that no direction can be issued with regard to the revaluation of the appellants-petitioners answer sheets.
4. Mr. Yashpal Rangi, learned counsel for the appellants submitted that the appellants want revaluation of the answer sheets on the ground that the Examiners/Evaluators appointed by the respondent Board were not qualified. Mr. Rangi laid emphasis on the fact that there was wide disparity in the marks awarded to the candidates in Part-I and Part-II examination. Mr. Rangi, learned counsel for the appellants also referred to the answer sheets of some candidates to contend that the marks awarded to candidates were arbitrary.
5. Having heard the learned counsel for the parties, we are in agreement with the learned Single Judge that nothing has been placed on record to show that the Examiners/Evaluators were not qualified. In

fact, as pointed out by the learned Single Judge, the Examiners/Evaluators were appointed at the instance of the Directorate of Education. Moreover, the examination in question was conducted to fill up the posts of Assistant Teachers of Primary Schools and consequently, in our view the said examination was not highly technical requiring the appointment of top-notch experts as Examiners/Evaluators.

6. The disparity in marks obtained by the candidates in Part-I and Part-II of the examination has also been satisfactorily explained inasmuch it has been pointed out that Part-I examination comprised objective type questions and was a qualifying test, whereas the Part-II test comprised subjective type questions based on merit.

7. We are also of the opinion that in the absence of statutory provision or rule for revaluation, no revaluation of answer sheets should or can be ordered by this Court.

8. In this context, we may refer with profit to the decision in ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kurmarsheth***, AIR 1984 SC 1543, wherein the Apex Court, upholding the provisions contained in Maharashtra Secondary and Higher Secondary Education Board Regulation, 1977 which prohibited re-evaluation, especially Regulation 104 that only provided for verification of the answer scripts, expressed thus:

“The High Court has relied upon the fact that the University of Bombay and some other Universities have

recently made provisions permitting candidates to demand revaluation. In our opinion, this has little relevance for the purpose of deciding about the legal validity of the impugned regulations framed by the Board. We do not know under what circumstances, the University of Bombay has decided to recognise a right in the examinees to demand a revaluation. As far as the Board is concerned it has set out in the counter-affidavit the enormity of the task with which it is already faced, namely, of completing twice during each year the process of evaluation and release of results of some 3 lakhs of candidates appearing for the S.S.C. and H.S.C. examinations to be held in an interval of only a few months from one another. If the candidates are at all to be given inspection of their answer books or the revaluation of the answer papers is to be done in the presence of the candidates, the process is bound to be extremely time consuming and if such a request is made by even about ten per cent of the candidates who will be 30,000 in number, it would involve several thousands of man hours and is bound to throw the entire system out of gear. Further, it is in the public interest that the results of Public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process.”

9. In ***Pramod Kumar Srivastava v. Chairman, B.P.S.C., Patna***, AIR 2004 SC 4116, a three-Judge Bench of the Apex Court held as follows:

“...There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned single Judge had clearly erred in having the answer-book of the appellant re-evaluated.”

10. In this regard, it is fruitful to refer to the pronouncement in ***The***

Secretary, West Bengal Council of Higher Secondary Education v.

Ayan Das & Others, AIR 2007 SC 3098, wherein their Lordships held to the following effect:

“The courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the court that model answer is different from what has been adopted by the Board. Then only the court can ask the production of answer scripts to allow inspection of the answer scripts by the examinee...”.

11. We may also refer with profit to a three-Judge Bench decision in ***Sahiti v. Dr. N.T.R. University of Health Sciences***, (2009) 1 SCC 599.

It is worth noting that in the said case, the Apex Court was dealing with a situation where the Vice Chancellor of Dr. N.T.R. University of Health Sciences had directed re-evaluation of the answer scripts and in that context, their Lordships have opined thus:

“37. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statutes at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts, re-evaluation may be found necessary.

38. There may be several instances wherein re-evaluation of the answer scripts may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the Court would be slow to substitute its

own views for that of those who are expert in academic matters.”

12. In *H.P. Public Service Commission v. Mukesh Thakur & Another*, MANU/SC/0401/2010, their Lordships, after referring to earlier decisions, have expressed thus:

“27. Thus, the law on the subject emerges to the effect that in absence of any provisions under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation.”

13. Keeping in view the aforesaid enunciation of law, we are of the opinion that neither this Court can direct revaluation of the candidates answer sheets nor can the same be done by this Court on its own. Accordingly, the present appeal being bereft of merit is dismissed but without any order as to costs.

MANMOHAN, J

DECEMBER 13, 2010
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CHIEF JUSTICE