

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

Date of Reserving the Order	Date of Pronouncing the Order
24.03.2015	26.03.2015

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.Nos.23061 & 23062 of 2012

Anshu Tyagi

...Petitioner in both W.Ps.,

Vs

1. Directorate of Distance Education,
Annamalai University,
Chidambaram - 608 002.

2. Controller of Examination,
Distance Education Examination,
Annamalai University,
Chidambaram - 608 002.

...Respondents in both W.Ps.,

Prayer in W.P.No.23061 of 2012 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the second respondent herein in his Official Communication No.A/DE/B1-2/RTI/2011, dated 28.03.2011, and quash the same and consequently direct the respondents herein to issue revised mark statement to the petitioner herein for the subjects Complex Analysis and Mathematical Statistics based on the valuation done by independent professors appointed by this Court.

Prayer in W.P.No.23062 of 2012:-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the second respondent herein in his Official Communication No.A/DE/B1-2/RTI/2011, dated 28.07.2011,

and quash the same and consequently direct the respondents herein to issue revised mark statement to the petitioner herein for the subject Graph Theory based on the valuation done by independent professor appointed by this Court.

For petitioner : Mr.V.R.Rajasekaran

For Respondents : Mr.R.Suresh Kumar

C O M M O N O R D E R

The petitioner in these Writ Petitions has prayed for issuance of a Writ of Certiorarified Mandamus to quash the communication sent by the second respondent, the Controller of Examination, Distance Education, Annamalai University and to direct the respondents to issue revised mark statements to the petitioner in the subjects Complex Analysis and Mathematical statistics based on valuation done by independent Professors appointed by this Court.

2. In the other Writ Petition, the prayer is identical to quash another order, dated 28.07.2011 and to direct the respondents to issue revised mark statements in the subject Graph Theory based on independent valuation.

3. The petitioner joined the M.Sc., (Mathematics) course during 2007 under Distance Education programme conducted by the respondent University and appeared for the examination held in May 2010 in three subjects namely Complex Analysis, Graph Theory and Mathematical statistics. The petitioner was declared 'pass' in all the three subjects and he was awarded 50 marks in each of the three subjects. The petitioner would state that he is entitled to higher marks and therefore, he made a request to the first respondent on 22.10.2010 to furnish the question wise marks obtained by him in those subjects. His request was rejected by letter dated 13.12.2010. Thereafter, the petitioner filed an application on 19.01.2011 under the Right to Information Act, requesting photostat copies of his answer papers in all three subjects. Pursuant to the direction issued by the Tamil Nadu Information Commission, the copies of the answer papers in all the three subjects were furnished to the petitioner on 23.12.2011. Insofar as the subject Complex Analysis (Subject Code 210) and Mathematical Statistics (Subject Code 240), the petitioner found that there was no indication in the answer paper of any evaluation done by the Examiner and marks were entered only in the first page of the answer books, which provided a tabular column indicating the question

numbers and marks awarded. Further, it is submitted that the marks awarded for Question No.11(a) and (b) and Question No.12(a)&(b) in the subject Complex Analysis is very less and he is entitled to 15 marks and 20 marks respectively for the answers given by him for those questions. The petitioner further submits that he should have been awarded full 5 marks for question Nos.1 to 3 and 5 instead of 4, 2, 2 respectively and should have been awarded the total marks of 84 instead of 50 in the subject Complex Analysis. Insofar as the subject Mathematical Statistics, the petitioner would state that the marks awarded for Question No.11, 12(a) & (b) and 13(b) are very less and he should have been awarded 20, 20 & 10 marks respectively for those answers and entitled to a total marks of 70.5 instead of 50 marks. With these facts, the petitioner submitted a representation to the Vice Chancellor on 23.01.2012, stating that the valuation was improper. The petitioner would further state that if the marks as sought for by him was awarded, he will be eligible to appear for the National Eligibility Test, failing which he cannot appear for the Test having secured less than 55% marks in M.Sc., (Mathematics). The petitioner submits that out of 8 subjects, the respondent awarded 50 marks out of 100 for 7 subjects and 57 marks out of 100 in one subject namely Real Analysis which shows that no proper valuation was done and mechanically the minimum pass mark of 50 was awarded. The petitioner claims to have performed well in all the 8 subjects and expected more than 75% marks and on account of the improper valuation and irregularity in the pattern of examination, it has ruined his career. Therefore, the petitioner has filed the Writ Petition challenging the order dated 28.03.2011, intimating the petitioner that the marks obtained by her were verified and found correct.

4. Insofar as the challenge to the order dated 28.07.2011 in W.P.No.23062 of 2012, for the subject Graph Theory, similar contention has been raised by stating that the marks awarded for question Nos.4, 5, 6 & 12(a) are very less and she should have been awarded full 5 marks or more marks and should have been awarded total of 91 marks instead of 40 marks awarded in the answer paper and 50 marks entered in the mark sheet for the subject Graph Theory.

5. The learned counsel for the petitioner submitted that the contention of the respondent University that the marks were verified and found to be correct, is contrary to facts, as the photostat copies of the answer sheet does not contain any indication of valuation of the answer sheets and there is no application of mind. In this regard, Guidelines issued by the respondent University to the Examiner was referred to in particular Guideline No.9, which states that the Examiner should enter the marks for each and every answer

pertaining to the questions inside the answer paper and also in the first page of the answer book. This guidelines having not been followed by the Valuer, this Court should direct an independent Professor to re-evaluate the answer papers and award proper marks. The learned counsel made elaborate reference to the copies of the answer papers furnished to the petitioner to demonstrate as to how there has been irregularity in the matter of valuation and sought to demonstrate that the petitioner has made out a case for issuing the Writ of Mandamus as sought for.

6. The learned counsel appearing for the respondent University raised a preliminary objection contending that there is no provision for re-evaluation as per the University Regulations and the prayer sought for is not maintainable. It is further submitted that in spite of the fact that there is no provision for re-evaluation, since the petitioner raised the issue, the University referred the answer sheets in the subjects Complex Analysis and Mathematical Statistics to the Board of Examination, headed by Dr.N.Thillai Govindan and the Board conducted another valuation of the petitioner's answer books and unanimously opined that the marks already awarded were correct in both the subjects. It is submitted that the Assistant Professor who valued the answer papers for both the subjects have 12 years experience, possessing M.Sc., M.Phil., and Ph.D., degrees. It is submitted that based on the decision of the Board of Examiners constituted to value the petitioner's answer sheets after the petitioner raised the query, the impugned communication was sent. In the counter affidavit filed by the respondents, it is submitted that non-marking of any indication in the answer sheets for each and every answer does not mean, the marks were awarded without doing proper valuation of each and every answer. It is further submitted that in order to ensure that the answer papers were properly valued, the Board re-examined the matter and found the marks awarded were proper.

7. With regard to the subject Graph Theory, it is submitted that the answer paper was valued by an Assistant Professor with 16 years experience, possessing M.Sc., M.Phil, M.Ed., and Ph.D., degrees and the said answer paper was referred to the Board of Examination and once again valuation being done by the Senior Faculty, the marks awarded was found to be correct based on which the impugned communication was sent. Further, it is submitted that during the pendency of the Writ Petition, taking note of the fact that the petitioner has expressed dissatisfaction over the marks awarded to him in the subjects Complex Analysis and Mathematical Statistics, once again the University directed the Professors and Head of Department of the Mathematics and Assistant Professor of the

Department of Mathematics to reassess and scrutinize the answer sheets and submit report. Both the Professors have submitted reports, which show that there is no change in the marks already awarded to the petitioner. Therefore, it is submitted that valuation of the answer papers were done in a proper manner and the question of re-evaluation does not arise. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of Jagadiswaran vs Vice Chancellor, TN Dr.M.G.R. University reported in 2014 (3) CTC 209.

8. Heard the learned counsels appearing on either side and perused the materials placed on record.

9. The petitioner in these Writ Petitions seeks for re-evaluation of her answer sheets in three subjects mentioned above. In respect of the subjects Complex Analysis and Mathematical Statistics, the complaint made by the petitioner is that there is no indication in the answer papers to show that the Examiner valued the answers and the marks have been entered only in the first sheet of the answer book in the tabular column provided. Therefore, it is the case of the petitioner that there is no valuation and mechanically 50 marks have been awarded to the petitioner. By referring to the pattern of award of marks in other subjects, it is submitted that invariably in all subjects the minimum pass mark is awarded, which goes to show that no valuation was done.

10. In order to ascertain the full facts, a direction was issued by this Court on 18.03.2015, directing the respondent University to produce the instruction given to the Examiners/Evaluators at the relevant time. Further direction was issued to produce the report or valuation done by the two Board of Examiners appointed by the respondent University. Pursuant thereto, the original answer papers along with the report of the valuation done by the Board of Examiners and instruction to Examiners have been produced before this Court and the Controller of Examination of the Respondent University is also present in Court.

11. On a perusal of the answer papers for the subject Complex Analysis and Mathematical Statistics, it is seen that there is no indication in the answer papers that the Examiner has awarded marks for each question. Nevertheless in the first sheet of both the answer papers, marks have been awarded in the tabulated statement. The guidelines to the Examiner issued by the respondent University requires the Examiner to enter marks for each and every answer papers pertaining to the questions inside the answer papers and also in the

first page of the answer paper. Admittedly, in both these papers, the Examiner has not awarded marks for each and every answer pertaining to the questions inside the answer paper, however, marks have been entered in the first page of answer paper. Therefore, it is clear that the first limb of the guideline issued to the Examiner has not been followed with regard to these two papers.

12. In such factual situation, the question that would fall for consideration is whether this Court can conclude that there was no valuation or there was irregularity in the examination process. The question as to whether re-evaluation of answer papers could be ordered to be done by exercising jurisdiction under Article 226 of the Constitution, when such provision for re-evaluation was not in vogue fell for consideration before the Hon'ble Division Bench in the case of Jagadishwaran vs Vice Chancellor, TN Dr.M.G.R. University (supra). The said Writ petition was posted before the Hon'ble Division Bench pursuant to a reference made by a learned Single Judge to decide the question as to whether the student has a right to seek re-evaluation in the absence of a rule to that effect. The Hon'ble Division Bench after taking note of the facts of the said case, considered the various decisions of the Hon'ble Supreme Court and this Court on the said issue. The operative portion of the decision is as follows:-

14. At the outset, the parties are ad idem on one thing, namely, that there was a provision for revaluation earlier and that the same was scrapped. The decision to scrap the provision was upheld by the Division Bench of this Court. Therefore, it is clear that the petitioner cannot stake his claim upon any statutory provision. Keeping in mind the above, let us now have a critical analysis of the decisions relied upon by the petitioner.

15. In President, Board of Secondary Education, the Supreme Court was concerned with a judgment of the Division Bench of the Orissa High Court, which held that there was no provision for revaluation. However, the Division Bench had awarded costs of Rs.20,000/- for providing a wrong mark to the candidate. It is in such a context that the Division Bench awarded costs. The Supreme Court merely modified the said order. But, on the principle that there can be no revaluation in the absence of a statutory provision, the Supreme Court did not take a different view.

16.The decision of the Division Bench of the Madhya Pradesh High Court in Pranshu Indurkha also did not say that the High Court could direct revaluation of answer sheet even in the absence of a rule. All that the Division Bench of the Madhya Pradesh High Court said was that in rare and exceptional cases where malafides or where injustice has been caused on account of gross negligence, the Court may order revaluation. Even on the question as to what constitutes gross negligence resulting injustice, the Division Bench clarified that a student, who complains of the same, should have had consistently high academic record. Both are absent in the case on hand.

17.In Sivaranjani, a person pursuing the 4th Year of M.B.B.S. Course sought a direction for revaluation. But, the said prayer was rejected by the Supreme Court following the decision in H.P.Public Service Commission vs. Mukesh Thakur - (2010) 5 MLJ 746 (SC).

18.The decision in H.P.Public Service Commission itself followed the law laid down in Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumarsheth and the decision in Pramod Kumar Srivastava. Therefore, we are of the view that the law is clinched in paragraph 19 of the decision of the Supreme Court in H.P.Public Service Commission. It will be useful to extract the said paragraph as follows: "19.In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court."

19.In Sanjay Singh relied upon by the learned counsel for the petitioner, the Supreme Court merely highlighted the necessity to have uniformity and consistency in the matter of valuation. Disparity in

the matter of valuation by examiners who are liberal and examiners who are strict, was termed as "Hawk-Dove Effect". But, even in this case, the Supreme Court did not lay down a law that there can be revaluation, even in the absence of a provision. The very dispute that arose in Sanjay Singh was with respect to a statistical scaling system adopted by the Allahabad High Court, while evaluating the answer sheets of candidates who appeared for the post of Civil Judges - Junior Division. Therefore, the said decision is of no assistance to the petitioner insofar as the point in issue is concerned.

20. In Sahiti, what was in issue before the Supreme Court was whether the action of the Vice-Chancellor of Dr.N.T.R.University of Health Sciences in ordering re-verification/ revaluation/re-examination of answer scripts of 436 students, was proper or not. It is, in that context, the Supreme Court in Paragraph 32 held that revaluation even in the absence of specific provision is perfectly legal and permissible. But, there is a world of difference between an educational authority ordering revaluation on account of certain large scale irregularities and the right of a person to approach the court and seek a mandamus for directing revaluation. The Court's power to order revaluation especially in matters relating to examinations, is extremely circumscribed. Where the educational authorities, who are experts in the field, themselves are of the opinion that there must be revaluation, this Court would not interfere with such a decision. But, it does not mean that this Court could issue a direction to the University to order revaluation.

21. In the light of the above, we are of the view that that the decision of the Supreme Court in H.P.Public Service Commission, clinches the issue, finally. Hence, we hold that in the absence of any provision for revaluation, a mandamus cannot be issued by this Court, directing the authorities to undertake revaluation. Hence this writ petition is dismissed. No costs.

13. The legal principle deducible from the above decision is that in the absence of any provision for re-evaluation a Writ of Mandamus cannot be issued by this Court, directing the Authorities to

undertake re-evaluation. Therefore, both the Writ Petitions are liable to be dismissed taking note of the decision referred supra.

14. Having come to such a conclusion, it would be unnecessary to go into other facts, which were placed for consideration before this Court. Nevertheless, this Court proposes to go into the manner in which the respondent University considered the petitioner's complaint before approaching this Court and after the Writ Petition was filed and pending. After the petitioner received the copies of the answer papers, pursuant to the directions issued by the Tamil Nadu Information Commission under Right to Information Act, the respondent University on their own volition constituted a Board of Examiners headed by a Professor and they have conducted another valuation of the petitioner's answer papers and unanimously opined that the marks already awarded were found to be correct. This is sufficient to show that the exercise done by the respondent University was to ensure that the petitioner gets a fair deal, especially when she raised a complaint of irregularity in the matter of valuation. This would yet another ground to dismiss the Writ Petition.

15. However, one factor which needs to be noted that the Valuers who valued the petitioner's answer papers in the subjects Complex Analysis and Mathematical Statistics did not award marks against each question, though marks have been awarded in the first sheet of the answer book in the tabulated statement provided for such purpose. The question would be whether that by itself would lead to the inference that there was no valuation. However that by itself will not render the valuation as improper, since the respondent University had undertaken an exercise to once again value those two papers by constituting a Board of Examiners and the Board of Examiners on such examination of the paper, which ineffect was a re-evaluation, submitted a report on 14.03.2012, stating that the relevant answer papers have been reviewed and it was found that the marks awarded to the candidate is correct and just and the claim and demand of the student is unjust and cannot be accepted and hence, the marks awarded may be retained without any change. This opinion of the experts cannot be ignored nor this Court has the expertise to sit in judgment over the decision taken by the academicians. Therefore, this Court is of the view that though there has not been full compliance of the guidelines to the Examiners, the University has adopted a fair procedure by constituting the Board of Examiners and reviewing the relevant answer papers. Therefore, this would be the sufficient compliance to rule out the allegations of improper valuation/no valuation.

16. Further, during the pendency of the Writ Petition, since the petitioner insisted that he has not been awarded proper marks, one more exercise was done and two Senior Professors one of whom was the Head of Department of the Mathematics, was directed to reassess and scrutinize the answer scripts in the subjects Complex Analysis and Mathematical Statistics. Both these Professors have submitted a report on 23.02.2015, which finds place in the original file, from which it is seen that the Professors reassessed the answer scripts and awarded marks for each questions answered by the petitioner and it is found that there is no change. Therefore, sofar as the subjects Complex Analysis and Mathematical Statistics, the petitioner has not made out any case for interference.

17. During the course of argument, the learned counsel appearing for the petitioner submitted that in the paper Mathematical Statistics certain markings are found in the original answer scripts, but the same is not found in the photostat copy furnished to the petitioner, pursuant to his application under the Right to Information Act. The Examiner who valued the answer scripts has used a peculiar ink which is neither red nor pink and there is ink marking against the answers and marks has also been entered in the same ink in the first sheet of the first answer script. The photostat copy furnished to the petitioner is dull and fine markings are clearly visible. Infact, the markings in the first sheet of the answer script, though it is very clear in the original, it is not so clear in the photostat copy furnished to the petitioner. Therefore, merely because the photostat copies are not clear that by itself cannot lead to a conclusion that the answer scripts were tampered. The submission of the petitioner in this regard is rejected.

18. With regard to the third subject namely Graph Theory, the petitioner would contend that he has been awarded less marks for question Nos.4,5, 6 & 12(a) and he is entitled to full 5 marks and for question Nos.1,2,3 11(a) 11(b) & 12(b), he should have been awarded full marks namely 5/10 marks and question No.13(b), he should have been awarded 8 marks instead of 5 marks. The original answer script was perused, from which it is found that the Valuer has gone through the entire answer scripts effected markings and awarded marks. The total marks, which the petitioner has secured the said subject is only 40 and the respondent University is said to have awarded grace marks of 10 and declared him 'pass'.

19. While on this issue, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of H.P.Public

Service Commission vs. Mukesh Thakur, reported in 2010-5-MLJ-746 (SC) (which was relied upon by the Hon'ble Division Bench of this Court in the case of Jagadiswaran), the Hon'ble Supreme Court held that it was not permissible for the High Court to examine the question paper and the answer sheets.

20. Further as already pointed out that in the absence of any provision for re-evaluation of the answer papers in the relevant rule, no candidate has a right whatsoever to claim or ask for re-evaluation of his answer paper. In the light of the above, the question of re-evaluating the answer paper in the subject Graph Theory also does not arise.

21. For all the above reasons, the petitioner has not made out any case for grant of the relief sought for and accordingly, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pbn

To

1. Directorate of Distance Education,
Annamalai University,
Chidambaram - 608 002.

2. Controller of Examination,
Distance Education Examination,
Annamalai University,
Chidambaram - 608 002.

1 CC to Mr.R.Suresh Kumar, Advocate SR.No. 17368

1 CC to Mr.V.R.Rajasekaran, Advocate SR.No. 17356

W.P. Nos.23061 & 23062 of 2012

NM (CO)

PSI (15.04.2015)