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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5651/2015**

Date of Judgment : 12.08.2015

BHARAT SANCHAR NIGAM LIMITED & ANR. Petitioners
Through : Mr. Ankur Mittal, Advocate.

versus

SUSHIL KUMAR Respondent
Through : Mr. Sunil Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. (ORAL)

1. The respondent herein had approached the Central Administrative Tribunal (CAT) seeking a direction to the respondents (petitioners herein) to reevaluate his answer scripts. Prior to approaching the learned Tribunal, the respondent had also made a representation on 26.09.2009 and 10.03.2010. Since the representations were pending, the OA filed by the respondent was disposed of with a direction to the petitioner herein to dispose of the representations. The representations were also rejected. The respondent had appeared for the Limited Departmental Competitive Examination (LDCE) held in the year 2007 for promotion to the cadre of Sub-divisional Engineer (Telecom). The examination was conducted on 15.07.2007 and the result was published in the year 2009. In the Part-I Examination, the respondent secured more than the minimum marks required for promotion but in Part-II he secured 49 marks while the

minimum marks prescribed were 50. The grievance of the respondent was that his answer script of Paper-II Examination was not evaluated properly. The respondent obtained his answer script under the Right to Information Act. It was the case of the respondent before the learned Tribunal that Question No. 1 (a) and 1 (c) were not assessed properly and in fact not assessed at all. The learned Tribunal while placing reliance on the instructions issued by the Government of India, Ministry of Communications and Information Technology, Department of Posts, letter no. A-34018/10/2010-DE dated 02.08.2010 directed the respondents to reevaluate the answers 1 (a) and 1 (c) of Part-II by an independent examiner and in case the respondent receives 50 marks or more he would be considered as qualified in the examination with all consequential benefits. The Tribunal in its order has extracted the answers provided by the candidate, the key answers and the answers provided in the BSNL Manual. It was claimed by the respondent that the key answers and the answers provided by the BSNL Manual would support his submission that either his answers were not assessed or not properly evaluated. Thus, in either of the two situations the matter would require reassessment and reconsideration. Thus, order passed by the Central Administrative Tribunal dated 05.12.2014 has been assailed by the petitioner herein on the ground that the learned Tribunal exceeded its jurisdiction and failed to take into consideration that on account of a specific bar as per Para 15 of Appendix 37 of rules relating to departmental examination. Revaluation of answer books and revaluation of answer scripts was not permissible in any case or in any circumstance.

2. It is also been submitted before us that the reliance on letter no. A-34018/10/2010-DE dated 02.08.2010 by the learned Tribunal was misplaced firstly that the aforesaid communication pertained to the Department of Posts as is evident upon reading the same and assuming without admitting that the aforesaid communication is applicable, the case of the respondent would not fall in any of the three exceptions as per the letter dated 02.08.2010. It is also the contention of the counsel for the petitioner herein that the learned Tribunal could not have substituted itself as an examiner and made a comparison of the answer scripts and the answer key as provided. Additionally, it has been contended that answer 1 (a) and 1 (c) were not objective type questions but required a narration and thus the role of the examiner cannot be predicted as how he would have apportioned marks of the candidates. Counsel also contends that simply because tick marks were not found on the answer sheets that by itself cannot be taken as the answers remained unmarked. The answer scripts have been relied upon in support of this submission.
3. The learned counsel for the respondent submits that a bare perusal of the answer sheets would leave no room for doubt that the examiner has skipped giving any marks to the respondent while examining the answers 1 (a) and 1 (c).
4. Counsel also contends that during the pendency of the OA in order of 11.10.2013, the petitioner was granted an opportunity to file an additional affidavit and state whether the answers 1 (a) and 1 (c) were right or wrong, given by the respondent herein and admittedly no such affidavit was filed.

5. It is also contended that Para 15 of the Appendix 37 is not an absolute bar and in case as that of the petitioner where the answers having been marked are right on the face of the record. No prejudice would be caused to the petitioner.
6. We have heard the counsel for the parties and carefully examined the order passed by the learned Tribunal.
7. The bone of contention between the parties revolves around Question No. 1 (a) and 1 (c) of the answers provided by the respondent herein. While deciding the case of the respondent that on examination of the answer sheet, it is clear that the examiner overlooked granting marks to the respondent which can be seen from the fact that no tick mark has been made with respect to answer 1 (c) and in answer 1 (a) only one tick mark has been made whereas at other pages there are number of right tick marks or wrong tick marks and wherever the right tick mark has been made or a wrong tick mark has been made, some marks have been provided.
8. We have examined the question paper. Question 1 (a) and 1 (c) read as under :

“ Ques. 1 (a) – Explain the role of each Physical block of IN network.

Ques. 1 (c) – Mention five IN services provided by BSNL with access code and explain the services in brief.”

9. The above two questions leave no room for doubt that for answering these two questions 5 marks have been awarded per question. Thus, the questions are not objective type. In effect it does not mean that for attempting the question full marks are being awarded but the discretion

would vest in the examiner to make an assessment with regard to the answer provided and thereafter award marks. As far as the question with regard to tick marks is concerned, a photocopy of the answer sheet has been filed on record. In the entire first page only one tick mark has been made and 2 ½ marks have been awarded. Similarly, with respect to Question No. 1 (b) one tick mark has been made and 2 ½ marks have been awarded. In Question No. 1 (c) there are five sub numbers in roman (i) to (v). Three tick marks have been made and 2 ½ marks have been awarded on the very next page which is a continuation of Question No. 1 (c) there is no tick mark. On the following page 2 there is only one tick mark in the entire page. In the next page, there are number of tick marks. At page 114 there are 4 tick marks with respect to one answer and only one tick mark with respect to another answer. The following page also shows that there are tick marks and cross marks but it cannot be stated that only where a tick mark has been made, a corresponding mark has been given to the respondent for there are pages where there are tick marks and marks awarded and places where there are tick marks and no marks have been awarded as at page 115. At page 111, the grievance of the respondent that the portion of the answer has been encircled but no tick mark has been made.

10. We find that there does not appear to be set pattern of a tick mark and marks but encircling if at all done by the examiner would only show that he had applied his mind and in case he wanted to award any marks he would have done so because there was no requirement to give individual marks and it was a question of 5 marks. As far as the submission of the counsel for the petitioner that there is a specific bar regarding

reevaluation, we find force in this submission. Para 15 of Appendix 37 reads as under :

“Revaluation of answer books-Revaluation of answer scripts is not permissible in any case or under any circumstance.”

11. In the case of ***Himachal Pradesh Public Service Commission Vs. Mukesh Thakur and Anr. reported in (2010) 6 SCC 759***, it was held as under:-

“20. 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.

24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kurmarsheth etc. etc. AIR 1984 SC 1543, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under: (SCC pp. 39-40 & 42, paras 14 & 16)

“14....It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how

the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act... ..

16. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act.”

25. This view has been approved and relied upon and reiterated by this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission observing as under (SCC pp 717-18, para 7)

“7. ...Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or to ask for revaluation of his marks.

A similar view has been reiterated in Munceb-Ul-Rehman Haroon (Dr.) v. Govt. Of J&K State, Board of Secondary Education v., Pravas Ranjan Panda, Board of Secondary Education v. D. Suvankar, W.B. Council of Higher Secondary Education v. Aryan Das and Sahiti v. Dr.N.T.R. University of Health Sciences”

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

12. In the case of ***The Secretary, All India Pre-Medical/Pre-Dental Examination, CBSE & Ors. Vs. Khushboo Shrivastava & Ors. reported in (2011) 9 Scale 63***, it was held as under:-

“5. Learned counsel for the appellants submitted that it is now well-settled in a series of decisions of this Court that in the absence of any provision in the relevant rules providing for re-examination or re-evaluation of answer sheets of a candidate in an examination, the Court cannot direct such re-examination or re-evaluation. He relied on the decisions of this Court in Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors. [(1984) 4 SCC 27], Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors. [(2004) 6 SCC 714] and Secretary, W.B. Council of Higher Secondary Education v. Ayan & Ors. [(2007) 8 SCC 242]. He further submitted that the High Court in exercise of its power under Article 226 of the Constitution could not substitute its own evaluation of the answers of a candidate for that of the examiner and in the present case the High Court has exceeded its power of judicial review under Article 226 of the Constitution.

7. We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava v. Chairman, Bihar Public

Service Commission, Patna & Ors(supra) has clearly held relying on Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors. (supra) that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors. (supra) was followed by another three-Judge Bench of this Court in Board of Secondary Education v. Pravas Ranjan Panda & Anr. [(2004) 13 SCC 383] in which the direction of the High Court for re-evaluation of answers books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answers books in the rules.

8. In the present case, the bye-laws of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re-evaluation of answers sheets. Hence, the Appellants could not have allowed such re-examination or re-evaluation on the representation of the Respondent No. 1 and accordingly rejected the representation of the Respondent No. 1 for re-examination/re-evaluation of her answers sheets. The Respondent No. 1, however, approached the High Court and the learned Single Judge of the High Court directed production of answer sheets on the Respondent No. 1 depositing a sum of Rs. 25,000/- and when the answer sheets were produced, the learned Single Judge himself compared the answers of the Respondent No. 1 with the model answers produced by the CBSE and awarded two marks for answers given by the Respondent No. 1 in the Chemistry and Botany, but declined to grant any relief to the Respondent No. 1. When Respondent No. 1 filed the

*LPA before the Division Bench of the High Court, the Division Bench also examined the two answers of the Respondent No. 1 in Chemistry and Botany and agreed with the findings of the learned Single Judge that the Respondent No. 1 deserved two additional marks for the two answers. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the Respondent No. 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters. This Court in **Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Ors. (supra)** has observed:*

... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded..."

13. Having regard to the settled position of law and the facts of the present case, more particularly Appendix 3 (reproduced above) we are unable to accept the view of the Tribunal.
14. At this stage we are also informed that the respondent has already

succeeded in the following year and has been granted the necessary promotion and it is contended that the only question which would remain would be with regard to his consequential benefits.

15. We are inclined to accept the arguments of the petitioner. Thus, the order of the Central Administrative Tribunal is set aside. No costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 12, 2015/sc