

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 146 of 2016

Subhash Kumar Miri S/o Shri Anand Ram Miri, Aged About 37 Years R/o Village Kamta Post Officer Borda Via Kharod, Tahsil Navagarh, Police Station Shivrinarayan, District Janjgir Champa (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh)
2. Pandit Sunderlal Sharma (Open) University, Koni, Bilaspur (Chhattisgarh), Through The Registrar, Pandit Sunderlal Sharma (Open) University, Koni, Bilaspur (Chhattisgarh)

---- Respondents

Shri Prateek Sharma, counsel for the petitioner/s.

Ms. K. Tripti Rao, Panel Lawyer for the State.

Shri H.B.Agrawal, senior counsel along with Ms. Itu Rani Mukherjee, counsel for respondent No.2

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order

12/05/2016

The petitioner was admitted in the PG Course of M.A. Final, English Literature through the Distance Education Scheme of respondent / Pt. Sunderlal Sharma (Open) University, Koni, Bilaspur. The petitioner appeared in the annual examination of MA English Literature, Paper – II, Literary Theory in the month of August, 2014. When the result was declared on 25/11/2014, petitioner did not get expected marks in the subject, which led to dispute and filing of this petition.

2. Learned counsel for the petitioner submits that there is serious irrationality and illegality in valuation in as much as even though the petitioner had written the correct answers to number of questions, he has been awarded zero mark. Further grievance is that the petitioner has been awarded lower marks on his answers given to some other questions. It is submitted that if the

answer given by the petitioner is compared with the model text book contents, the answer of the petitioner is exactly similar as that of the answer given in the model text book. Therefore, award of zero marks is complete denial of petitioner's right to just and fair assessment, which is essential concomitant of Article 14 of the Constitution of India.

3. On the other hand, learned counsel for the respondent / University submits that in the subject of Literary Theory, Paper – II, the experts having found that answers to some of the questions are almost verbatim reproduction of the model answers, marks were not awarded. He submits that as far as other questions are concerned, valuers have made their own subjective assessment, which cannot be called in question and this Court may not assume role of super valuer.

4. As far as awarding zero mark on the ground that the answers are almost verbatim reproduction of the model answers given in the text book, it is found that there are no allegations of use of unfair means against the petitioner. Though no specific opinion of the examiner has been placed on record by the respondents, the text and tenor of reply is that the answers given by the petitioner is verbatim reproduction of the answers contained in the text book. Therefore, for that reason, zero marks have been awarded to the petitioner.

5. This Court is unable to comprehend the submission of learned counsel for the respondents in that regard. All that can be inferred from the answer given by the petitioner is that the petitioner, using his discreet memory has answered the question exactly in the same manner as has been contained in the model text book, authenticity of which is not in dispute. Therefore, merely because the answer of the petitioner appears to be exactly the same as stated in the model answer text book, could not, by any stretch of imagination, be made a basis to award him zero marks. Whether answer given by the petitioner entitles him to award of full marks allotted to the question or for some reasons, lesser marks should be awarded to him, is essentially a matter for consideration of the examiner. However, the reason which has been assigned by the respondent in their return for awarding zero marks is clearly extraneous and if I may say so, arbitrary and completely irrational. It appears as if the student has been penalized for giving an answer exactly as stated in the model text book.

6. True it is that there is no provision for revaluation of marks, that does not take away or abridge the power of the writ Court to examine, in a given case, whether the examinee has been subjected to fair assessment. Fairness in assessment and revaluation are different concepts. It may or not be part of examination scheme to provide for revaluation of answer submitted by the examinee, however, in the realm of judicial review, if it could be demonstrated before the Court that in the matter of assessment, the assessing authority has acted completely arbitrarily or irrationally so much so that it is unable to stand on the touchstone of Article 14 of the Constitution, such an assessment will have to be treated as arbitrary exercise of power of assessment and valuation. In those limited cases, the hands of the writ Courts are long enough to interfere and provide appropriate relief by issuing appropriate direction for proper and fair assessment, distinct from revaluation.

7. In view of above consideration, in so far as assessment where zero mark has been awarded on the ground that the answer given by the petitioner is almost verbatim reproduction of the model answer given in the text book, the petitioner has been denied fair assessment and revaluation, which is essential concomitant of Article 14 of the Constitution of India. Therefore, this Court has to step in to grant appropriate remedy and redress the grievance of the petitioner – examinee.

8. Accordingly, only in those cases where zero marks have been awarded on the allegation of it being exactly similar to the model answer, the respondent shall carry out re-assessment of marks. As far as plea that in respect of some question, for answer given by the petitioner, marks, as expected by the petitioner, have not been awarded, suffice to quote to what has been held by the Division Bench of this Court in the case of *Rahul Chandrakar v. State of Chhattisgarh and anr.* passed in WP(C) No.2352/2015 on 04/01/2016 wherein it was held -

“6. In academic matters, the academicians are the best judge with regard to what are the appropriate marks to be given for answers. The fairness on part of the Respondents is evident from their conduct in having enhanced the marks after re-evaluation, the benefit of which could not unfortunately flow to the Petitioner because of the conditions stipulated in the notification dated 1/4/2013. The caution to be exercised by the Court in unnecessarily interfering with

academic matters relating to award of marks was considered in (2014) 14 SCC 523 (Central Board of Secondary Education through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination v. Khushboo Shrivastava) observing as follows:-

“11. 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 Respondent 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 v. Paritosh Bhupeshkumar Sheth* [(1984) 4 SCC 27] has observed:

29. 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 grassroots 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.”

9. Therefore, on all other disputes, no relief can be granted and to that extent this petition is liable to be dismissed.

Accordingly, this petition is partly allowed only in the manner and to the extent indicated as above.

Sd/-

(Manindra Mohan Shrivastava)
Judge