

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2209 of 2015**

Sumit Kumar Rout S/o Nimai Rout, Aged About 20 Years R/o
Kali Nagar, Bajaj Nagar, Jharsuguda, District Jharsuguda
(Odisha)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Health & Family, Welfare, Mantralaya, Mahandi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. The Director, Medical Education, Raipur, District Raipur Chhattisgarh
3. Ayush And Health Science University Of Chhattisgarh, Through The Registrar, G.E. Road, Raipur, District Raipur Chhattisgarh
4. The Triveni Institute Of Dental Sciences Hospital & Research Centre, Through The Principal, Raipur, Road, Bodri, District Bilaspur Chhattisgarh

---- Respondent

For Petitioner	:	Mr. Mateen Siddiqui, Advocate.
For State/Respondents No.1 & 2	:	Mr. Ramakant Mishra, Dy. A.G.
For Respondent No.3	:	Mr. N.K. Vyas, Advocate with Mr. Shiv Sahu, Advocate
For Respondent No.4	:	Mr. Sourabh Dangi, Advocate with Mr. Vikash Bhasker, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****07/04/2016**

With the consent of the parties, the matter is heard finally.

2. The petitioner, unsuccessful candidate in the second semester of BDS course conducted by respondent No.4, has filed this petition challenging the action of the respondents in awarding him zero marks

in the subject “General Human Physiology Biochemistry Nutrition & Dietetics”.

3. The petitioner is a student of BDS course in the medical college of respondent No.4. He appeared in the second semester examination of the first year BDS course, in the month of May conducted by respondent No.3 /University. The result of the petitioner was declared and mark-sheet was also provided as per the tabulation chart (Annexure P/1). The petitioner was shocked to find that though he has been awarded 117 marks out of 200 in General Human Anatomy, 111 in General Human Physiology and 115 in the subject Dental Anatomy, zero marks have been awarded to the petitioner in the theory paper of physiology. As the total marks obtained by the petitioner were less than 25 out of 70 marks allotted in theory papers, the petitioner was not eligible to seek revaluation. He further applied for retotalling which remain unchanged. This led to filing of this petition.

4. Learned counsel for the petitioner argued that the award of zero marks, out of 25 marks allotted for the subject physiology (theory) is highly arbitrary, irrational and shocking. Learned counsel for the petitioner submits that the answers which have been submitted by the petitioner to the questions, are not of such nature which can be said to be completely irrelevant or unconnected with the subjects on which the petitioner has written in the examination. He submits that even though, the petitioner may not claim that he was entitled to very high marks in the concerned paper on the basis of answers written by him, at the same time, he was entitled to atleast some marks on various answers given by him to the questions stated in the question paper. According to him, the answers given by the petitioner to the questions requiring him to write notes on blood pressure and erythropoietin are relevant when compared with the standard text book dealing with the concerned subject. But the valuers have arbitrarily valued the answer-sheet and have given no marks at all. He submits that even in the return filed by the respondents, extract of standard text book dealing with the subject on which the petitioner had written short notes, cannot be said to be totally irrelevant to such an extent that he should have been awarded

no marks.

5. Learned counsel for the petitioner argues that even though the petitioner has no right of revaluation under the scheme of revaluation, present is a case of completely arbitrary valuation of answer-sheet of the petitioner and therefore, in this case, the respondents may be directed to constitute a committee of expert and answer-sheet of the petitioner be reexamined/ revalued by the body of expert.

6. Learned counsel for the petitioner has relied upon order dated 17.10.2011 passed in **WP(S) No. 2457 of 2009 (Sanjay Tiwari and others vs. Chhattisgarh Public Service Commission and another)** and batch of petitions as also order dated 04.02.2013 passed in **WP(S) No.2663 of 2012 (Prem Prakash Sinha and others vs. State of Chhattisgarh and another)**.

7. On the other hand, learned counsel for respondent No.3 submits that the petitioner's answers were examined by duly appointed examiner. The examiner, who is an expert of the subject, evaluated the answers of the petitioner and he awarded zero marks to the petitioner. It is submitted that the University has also called for the report from head of the department physiology Pt. Jawahar Lal Memorial College, Raipur and the concerned expert also submitted the extract of standard text book of Human Physiology. As per the study material, the description and prescription of the subjects on which notes were written by the petitioner, when compared with the material text were found to be incorrect and therefore, the petitioner is not entitled to any indulgence in this petition as it would amount to revaluation of the answers of the petitioner which is not permissible under the law in the garb of petition under Article 226 of the Constitution of India.

8. The answer-sheets of the petitioner has been placed on record as Annexure P/4 along with the rejoinder filed by the petitioner. The answer-sheet shows that the answers given by the petitioner were duly evaluated by the examiner and after evaluation, the examiner did not give any marks to the petitioner. The answer-sheet of the petitioner shows descriptive answers given by the petitioner on subject blood pressure, pain, erythropoietin and conditional reflex.

9. Learned counsel for the petitioner placed before this Court a text (annexure P/5) dealing with the topics blood pressure, pain, erythropoietin and conditional reflex to submit that the answers given by the petitioner were quite relevant and cannot be said to be completely dehors the topics on which, he was required to write notes.

10. Learned counsel for the respondent University has also placed on record the text of the subjects referred to above.

11. The answers submitted by the petitioner were evaluated by expert. A reading of the answers given by the petitioner, standard text attached by the petitioner and the respondents reveal that the subject dealt with by the petitioner in answer-sheet relate to medical terms like blood pressure etc. The content of the answers given by the petitioner cannot be said to be identical to texts placed in the Court. It has to be noted that it is not a case of multiple choice objective questions. It is a case where the petitioner was required to write answers in descriptive form. Whether the quality of descriptive writing by the petitioner on the given subject entitled the petitioner to any marks is entirely a matter of subjective satisfaction of the expert valuer and it cannot be a matter of reconsideration by this Court by assuming to itself, the role of the subject expert much less revaluation authority.

12. Even according to the petitioner, as per the existing rules of revaluation, if the petitioner has not secured prescribed minimum marks, even the right of revaluation does not come to his aid. If that be so, it is clear that the standards of revaluation in a professional course like the present one are very high. Thus, where revaluation is not permissible under the Rules, it cannot be indirectly allowed through a judicial process unless this Court finds that there is malafide or complete arbitrariness or absolute irrationality apparent on the face of the record warranting reassessment of petitioner's answer-sheet by constitution of a body of experts. Such course can be adopted in rare cases and not as a matter of course on mere asking of the candidate, who has failed in the examination. Awarding of zero marks is not unusual. It is not a case where the valuer has not

valued the answer-sheet. This Court has gone through the answer-sheet of the petitioner. To ill luck of the petitioner, none of the answers given by the petitioner was found worthy of awarding any marks. There is no allegation of personal malice leveled by the petitioner against the examination agency or examiner.

13. In view of the above, in the considered opinion of this Court, no interference is called for by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

14. The petition is therefore dismissed.

Sd/-

(Manindra Mohan Shrivastava)
J U D G E