

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1591 of 2016**

Order Reserved On : 01/09/2016

Order Passed On : 11/01/2017

- Sweety Kumari D/o Shri Arun Kumar, Aged About 22 Years R/o Girls Hostel, Maitri College Of Dentistry And Research Centre Anjora, Durg, P.S. Anjora Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, New Mantralaya, Raipur, Chhattisgarh
2. The Director, Department Of Medical Education Raipur, Indrawati Bhawan, Raipur, Chhattisgarh
3. Ayush And Health Science University Of Chhattisgarh, Through Its Registrar, Raipur Chhattisgarh
4. Maitri College Of Dentistry And Research Centre, Through Principal, Maitri College Of Dentistry And Research Centre, Anjora, P.S. Anjora, District Durg Chhattisgarh

---- Respondent**And****WPC No. 1409 Of 2016**

1. Prasanna Kumar Singh Banafar S/o Shri Shyam Bihari Singh Banafar Aged About 22 Years R/o M/864, Adarsh Nagar, Kusmunda, Korba, Chhattisgarh P.S. City Kotwali Korba
2. Rahul Arpit Sendur, S/o Shri Aditya Sendur, Aged About 23 Years R/o Q. No. 10/ A, Street 37, Sector 4, Bhilai, Distt Durg Chhattisgarh. P S Sector 4 Bhilai
3. Betty Jacob, D/o Shri K.I Jacob, Aged About 23 Years Gilgel

House, Kuthirachira, Punalur, Distt Collum, Kerala. P S Kuthirachira.

4. Betsy Jacob, D/o Shri K.I Jacob, Aged About 23 Years Gilgel House, Kuthirachira, Punalur, Distt Collum, Kerala. P S Kuthirachira
5. Jyoti Tiwari, D/o Shri Onkar Nath Tiwari, Aged About 21 Years R/o Q.No. 2/ C, Street 13, Sector 11, Khuripar, Bhilai, Distt. Durg (Chhattisgarh) P S Khursipar

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, New Mantralaya, Raipur (Chhattisgarh)
2. The Director, Department Of Medical Education, Raipur Chhattisgarh
3. Ayush And Health Science University Of Chhattisgarh Through- Its Registrar, Raipur (Chhattisgarh)
4. Rungta College Of Dental Science And Research, Bhilai, Through Principal, Rungta College Of Dental Science And Research, Kohka Road, Bhilai Police Station Kohka

---- Respondent

And

WPC No. 1408 Of 2016

1. Shamima Sultana D/o Sahajuddin, Aged About 22 Years Address Chhattisgarh Dental College And Research Institute, Sundra, Rajnandgaon (Chhattisgarh) P. S. Sundra
2. Priyatha M.S., D/o Sunil M.V., Aged About 21 Years Address Chhattisgarh Dental College And Research Institute, Sundra, Rajnandgaon (Chhattisgarh) P.S. Sundra
3. Poonam Ashatkar, D/o Ranjan Ashatkar, Aged About 22 Years R/o Daganiya, In Front Of Chandel House, Shanti Vihar Colony, Raipur (Chhattisgarh) P.S. Daganiya

4. Praveen Kumar Netam, S/o. Darbar Singh Netam, Aged About 22 Years R/o H. No. 13/196, Kankalinpara, Tikrapara, Village Kanker. Distt Uttar Bastar Kanker. P S Kanker (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, New Mantralaya, Raipur (Chhattisgarh)
2. The Director, Department Of Medical Education, Raipur (Chhattisgarh)
3. Ayush And Health Sciences University Of Chhattisgarh, Through Its Registrar, Raipur (Chhattisgarh)
4. Chhattisgarh Dental College And Research Institute, Through Principal, Chhattisgarh Dental College And Research Institute, Sundra, Rajnandgaon (Chhattisgarh) P.S. Sundra

---- Respondent

And

WPC No. 1407 Of 2016

1. Renuka Sarkar D/o Shri G. M. Sarkar, Aged About 22 Years R/o C/o Mukesh Sahu, Behind Police Chowki, Near Kanji House, Anjora, P. S. Anjora, District Durg (Chhattisgarh).
2. Niraj Kumar Rajak, S/o Shri Chhabbi Nath Ram, Aged About 23 Years R/o C/o. Mukesh Sahu, Behind Police Chowki, Near Kanji House, Anjora, P. S. Anjora, District Durg (Chhattisgarh).
3. S. K. Tarikuj Zaman, S/o. Shri S. K. Safuil Ali, Aged About 23 Years R/o C/o. Mukesh Sahu, Behind Police Chowki, Near Kanji House, Anjora, P. S. Anjora, District Durg (Chhattisgarh).
4. Kohinoor Chandrakar, S/o Shri Lalit Chandrakar, Aged About 23 Years R/o C/o. Mukesh Sahu, Behind Police Chowki, Near Kanji House, Anjora, P. S. Anjora, District Durg (Chhattisgarh).
5. Pankaj Kumar S/o Chandrama Manjhi, Aged About 23 Years R/o C/o. Mukesh Sahu, Behind Police Chowki, Near Kanji House,

Anjora, P. S. Anjora, District Durg (Chhattisgarh).

6. Ashok Kumar, S/o Shri Lallu Prasad Sharma, Aged About 23 Years
R/o C/o. Mukesh Sahu, Behind Police Chowki, Near Kanji House,
Anjora, P. S. Anjora, District Durg (Chhattisgarh).

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of
Health And Family Welfare, Mahanadi Bhawan, New Mantralaya,
Raipur (Chhattisgarh).
2. The Director, Department Of Medical Education, Raipur
(Chhattisgarh).
3. Ayush And Health Sciences University Of Chhattisgarh, Through
Its Registrar, Raipur (Chhattisgarh).
4. Maitri College Of Dentistry And Research Centre, Through
Principal, Maitri College Of Dentistry And Research Centre,
Anjora P. S. Anjora, District Durg (Chhattisgarh).

---- **Respondent**

For Petitioners	: Shri Rahul Tamaskar, Advocate.
For Respondent/State	: Shri Shashank Thakur, Govt. Advocate.
For Respondent/University	: Shri N.K. Vyas, Advocate.
For Respondent No. 4	: Shri Utkal Pradhan, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. Since all the four writ petitions involve similar issues of fact and
ground, they are being disposed of by this common order.
2. Originally the petitioners had challenged the vires of the Rules of

reevaluation framed by the Dental Council of India in the BDS Course Regulations, 2007 with further relief to direct the University to conduct reevaluation of answer sheets of the petitioners in the subject they have failed by the two examiners and to place the question papers before the body of experts to ascertain if the questions were out of syllabus. The petitioners have also prayed for a direction to the University to conduct re-examination for the petitioners and to allow the benefit of amendment dated 27.4.2015 in the BDS Course Regulations, 2007 to the petitioners.

3. Shorn off unnecessary details, brief facts projected in the writ petitions are that the petitioners are students of BDS Course. They have been declared fail in their 5th attempt of first year BDS examination conducted by respondent No.3/University. In the re-examination or supplementary examination conducted in December, 2015, out of 33 students, only one could pass the examination. The petitioners are amongst the failed students in the said examination. The petitioners would state that in the subject of General Human Anatomy, Histology, Embryology, each carries maximum marks of 70 for 5 questions but the distribution of marks for each question was not mentioned. It is further averred that some questions were out of syllabus. The Dental Council of India (DCI) has framed BDS Course Regulations, 2007 specifically

mentioning the format of question papers for written examination, however, the question papers of the subject examination did not carry proper distribution of marks as required under the Regulations. The DCI has permitted revaluation with exception that revaluation will not be permissible in such Universities where there is system of double valuation. It is further submitted by the petitioners that the marks after revaluation to be effective for the benefit of the candidates, increase in marks should be at-least 10% of the earlier secured marks, otherwise there will be no change in the marks initially obtained. In the BDS Course Regulations, 2007, a student was required to clear all subjects of BDS first year within a period of 3 years whereas by amendment dated 27.4.2015, any student of BDS Course is required to clear the Course in all subjects within a period of 9 years including one year compulsory rotatory from the date of admission, failing which the student would be discharged from the Course. However, the University has not applied amendment on the petitioners.

4. It is the stand of the respondent/University that the petitioners have failed to clear the BDS examination despite 5 attempts within 3 years of their admission. It is also put forth that Ordinance No.III of the University provides for revaluation of the main examination and not of supplementary examination. Therefore, the petitioners

are not correct in assuming that since double valuation has not been conducted, they are entitled to the benefits of the Regulations permitting revaluation. The University would also contend that the marks of each questions were intimated to the examiner who has examined the answer sheets and awarded marks to the students. The same set of examiner has valued the answer sheets of all the students without any discrimination and has allotted marks in accordance with the quality of answers written by the candidate. It is also canvassed that the Dental Council of India has clarified vide its communication dated 27.1.2016 that the provisions of Revised BDS Course, (7th Amendment) Regulations, 2015 are applicable only to those students who have been admitted in the BDS Course in any Dental Institution after the date of commencement of the Regulations i.e. 27.4.2015.

5. Having heard learned counsel for the parties and on perusal of the papers annexed with the respective pleadings, this Court is of the considered view that the Writ Petitions lack merit and they deserve to be dismissed. At the time of admission of the Writ Petition, the Division Bench passed the following order on 23.6.2016:-

“We are not inclined to accept the challenge to the vires of rules regarding revaluation of answer-sheets.

The Petitioner by means of this writ petition has challenged the vires of two rules. The first challenge on vires is to the rule that in case after revaluation marks are not increased by more than 10%, the benefit will not be given to the student. We find no infirmity in such rule. It is for the educational institution to decide in what manner revaluation is to be done and what should be the limitation of the revaluation. Moreover, each examiner has a different mind-set. There are some tough examiners and some lenient examiners. The marks awarded may vary from examiner to examiner. Therefore, the condition that benefit of revaluation shall not be given if the increased marks is less than 10% is a very reasonable condition because 10% play in the joints has to be allowed from person to person.

The second challenge on vires is to the provision in the rules which prohibits revaluation in supplementary examination. It is urged that revaluation is conducted by the Dental Council of India and, therefore, the Universities cannot prohibit revaluation in supplementary examinations. A perusal of the Dental Council of India Regulations, 2007 clearly shows that these are enabling provisions permitting the Universities to include a provision for revaluation where the papers are not being checked by more than one examiner. If the papers are checked by more than one examiner then there is no revaluation. As far as supplementary examinations are concerned, it is for the University to decide to allow revaluation or not. Therefore, we find no merit in the petition insofar as challenge to the vires of the rules is concerned.”

6. In another Writ Petition being WPC No.2249/2014 (Shidharth Chandrakar and Ors. Vs. State of Chhattisgarh & Ors.), a challenge was thrown to the DCI, Revised BDS Course Regulations, 2007. Dismissing the writ petition, vide order dated 26.11.2014, the

Division Bench observed thus in para-5:-

“5. The present is a case relating to the medical profession leading to the grant of specialized degree. The petitioners have failed up to five times in the 1st year of course itself. We shudder to think with regard to their proficiency and quality of the medical service that they would render to citizens if we allow the petition on the grounds as sought to be urged and reinstate them in the course, if it can be done. Education is a process of learning requiring hard work and labour. The petitioners are at the threshold of their career. Article 226 cannot be a passport to freedom from hard work requiring labour of meticulous studies by students.”

7. In the matter at hand, Ordinance No.III does not provide for revaluation of supplementary examination or re-examination. Therefore, it is quite vivid that there is no statutory prescription permitting revaluation in re-examination. Hence prayer for direction to the University to appoint expert or to conduct revaluation is not permissible in view of the law laid down by the Supreme Court in the matter of **Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others** {(1984) 4 SCC 27}

wherein the following has been held in para-12:-

“12. Though the main plank of the arguments advanced on behalf of the petitioners before the High Court appears to have been the plea of violation of principles of natural justice, the said contention did not find favour with the learned Judges of the Division Bench. The High Court

rejected the contention advanced on behalf of the petitioners that non-disclosure or disallowance of the right of inspection of the answer books as well as denial of the right to ask for a revaluation to examinees who are dissatisfied with the results visits them with adverse civil consequences. The further argument that every adverse “verification” involves a condemnation of the examinees behind their back and hence constitutes a clear violation of principles of natural justice was also not accepted by the High Court. In our opinion, the High Court was perfectly right in taking this view and in holding that the “process of evaluation of answer papers or of subsequent verification of marks” under clause (3) of Regulation 104 does not attract the principles of natural justice since no decision-making process which brings about adverse civil consequences to the examinees is involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. As succinctly put by Mathew, J. in his judgment in the *Union of India v. Mohan Lal Kapoor*¹ it is not expedient to extend the horizon of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be. [SCC para 56, p. 863: SCC (L&S) p. 31]. The challenge levelled against the validity of clause (3) of Regulation 104 based on the plea of violation of natural justice, was therefore, rightly rejected by the High Court.”

8. Yet again, the Supreme Court in the matter of **Himachal Pradesh**

Public Service Commission Vs. Mukesh Thakur and Another

{(2010) 6 SCC 759}held thus in paras- 24, 25 & 26:-

“24. The issue of revaluation 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 v. Paritosh Bhupeshkumar Sheth*¹⁷, wherein this Court rejected the contention that in the absence of the provision for revaluation, 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/revaluation 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 767 the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks 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*¹⁸ 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 ask for revaluation of his marks.*”

(emphasis added)

A similar view has been reiterated in *Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State*¹⁹, *Board of Secondary Education v. Pravas Ranjan Panda*²⁰, *Board of Secondary Education v. D. Suvankar*²¹, *W.B. Council of Higher Secondary Education v. Ayan Das*²² and *Sahiti v. Dr. N.T.R. University of Health Sciences*²³.

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation.”

9. In view of the above settled legal position, prayer for direction to the University to conduct revaluation of the petitioners' answer sheets is not legally maintainable. The other prayer for

appointment of expert to verify as to whether any question was out of syllabus or to hold entire examination invalid is referred only to be rejected because no such writ could be issued for appointment of expert to examine the question paper. As a matter of fact, in course of arguments, the petitioners have failed to pin point any such question which glaringly appears to be out of syllabus. This argument also fails to impress this Court on consideration of the respondents' plea that the examiners are professors of medical colleges who have examined the papers of medical subjects and that the said professors have been valuing the answer sheets for the last many years.

10. For all the above stated reasons, this Court does not find any substance in these writ petitions, which deserve to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve