

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2920 of 2016

1. Dr. Suyog Jain S/o Dr. Sunil Jain, Aged About 28 Years R/o House No. 108, Plot 212/ A, Arya Nagar, Durg, (Chhattisgarh)
2. Dr. Amit Reche, S/o Dr. Manohar Reche, Aged About 30 Years R/o Vithaee, Kejaji Chowk, Gond Plot, Wardha, Maharashtra
3. Dr. Nitesh Sharma, S/o Mr. Vijay Kumar Sharma, Aged About 28 Years R/o D 232, Shailendra Nagar, Near Vasu Coaching Raipur, (Chhattisgarh)
4. Dr. Chandankumar Matsyapal, S/o Shri D. K. Matsyapal, Aged About 32 Years R/o 43/44, New R D A Colony, Behind Nutan School, Tikrapara, Raipur, (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Health & Family Welfare, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. Ayush And Health Science University Of Chhattisgarh, G. E. Road, Aamanaka, Raipur, Chhattisgarh, Through Its Controller Examinations.
3. Rungta College Of Dental Science & Research, Kohka- Kurud Road, Bhilai, Chhattisgarh, Through Its Director.

---- Respondents

Ms. Sudha Bhardwaj, counsel for the petitioner/s.
Shri Ramakant Mishra, Dy.A.G. for the State / respondent No.1.
Shri N.K.Vyas, counsel for respondent No.2.
Shri Avinash Chand Sahu, counsel for respondent No.3.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/05/2017

A short issue arises for consideration in this petition as to whether evaluation of answer sheets of the petitioners is in accordance with the applicable rules and regulations.

2. The petitioners before this Court were admitted to MDS course in various

branches of discipline in respondent No.3 / institution in the year 2013. Admittedly, the duration of course was three years. After completion of course, the petitioners were subjected to examination conducted by respondent No.2/ affiliated University. The petitioners were, however, declared failed. This led to filing of this petition.

3. Learned counsel for the petitioner submits that evaluation of mark sheets is required to be done in accordance with the statutory scheme contained in Dental Council of India Revised MDS Course Regulations, 2007 (for short 'the Regulations of 2007') and Ordinance No.12 framed by the University. According to learned counsel for the petitioner, the provisions mandate that evaluation shall be done by four examiners, two being internal and the other two being external. Further submission is that the marks to be finally awarded to the students would be an average of the marks awarded by four examiners.

It is the case of the petitioners that while evaluation of the answer sheets of the petitioner, in respective examinations attended by the petitioners, the aforesaid mandatory rule was not followed and it has been disclosed that their answer sheets were evaluated by only one single examiner, without those being evaluated by three other examiners. Therefore, the evaluation of petitioners' answer sheets is in violation of the statutory mandate and Ordinance.

4. Learned counsel for respondent No.2 / University while not disputing the submission of learned counsel for the petitioner that the answer sheets of the petitioners were examined by only one examiner, sought to justify the action by submitting that because of various practical and unsurmountable difficulties in making arrangement, the procedure could not be followed, but the University had adopted fair and uniform mode of central evaluation in which, one examiner was engaged who not only evaluated the answer sheets of the petitioners but many other students and it cannot be said that the petitioners who have failed and those students who have passed, were subjected to different scheme of evaluation. According to him, under circumstances beyond control, the University had resorted to pattern of evaluation according to its best applicable method by following the procedure uniformly to all the students who appeared in the examination.

5. Learned counsel for other respondents submit that the examinations were held by the University. Therefore, they have no other stand to take.

6. In the matter of valuation of answer sheets of MDS courses, specific provisions have been made under the Regulations of 2007. In particular, scheme under the heading “Examiners” provides that there shall be atleast four examiners in each subject and out of them, two shall be external examiner. It further provides the qualification and teaching experience for appointment of an examiner by the Dental Council of India and the respective University.

Further under the heading “Valuation of Answer Books”, it has been emphatically stated that all the answer books shall be valued by four examiners, two internal and two external and further that average marks will be computed.

7. The statutory scheme under the regulations framed in exercise of powers under Section 20 of the Dentists Act, 1948, referred to hereinabove has been reflected from the scheme of examination and evaluation of answer books in Ordinance No.12 framed by respondent / University, which also has statutory force.

In Ordinance No.12 under the heading “Valuation of Answer Books”, it has been categorically stated that all the answer books shall be valued by four examiners, two internal and two external and average marks will be computed.

8. A conjoint reading of Regulations and Ordinance, both having statutory force indicating statutory scheme of valuation of answer books, the statutory mandate is clear and unequivocal that it will have to be carried out by as many as four examiners, two of them being internal and other two being external. Moreover, the marks to be awarded to the students would be average of the marks awarded by four examiners.

9. Apparently, valuation of answer books of the petitioners has not been done according to the statutory rules. Learned counsel for respondent No.2 could not bring to the notice of this Court any relaxation provided by the Rule Making Authority, in particular or in general, that for certain reason or in certain circumstances, requirement for valuation by four examiners would be relaxed, that too in the manner as has been done by the four examiners.

10. Conclusion is irresistible that in violation of statutory provision, the impugned order is illegal and liable to be declared so.

11. In the result, this petition is allowed. Exercise of valuation and award of

marks under the process of evaluation done by respondent No.2 is declared illegal and in-operative in law and respondent No.2 is directed to forthwith arrange valuation of answer books of the petitioners by four examiners, two internal and two external as provided under the Regulations and the Ordinance evaluated answer books and thereafter, declare results of the petitioners. The exercise should be completed within an outer limit of three months and not beyond that in any case.

12. Before parting with the matter, it shall also deal with the apprehension of the petitioners that the petitioners may not be subjected to fair valuation, they having approached the Court of law.

13. Learned counsel for respondent No.2 assures the Court that the petitioners should not have any apprehension and the authority shall act in a just and fair manner, in accordance with law.

That statement is sufficient to dispel any apprehension.

The petition is accordingly allowed. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge