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Before the Madurai Bench of Madras High Court

Reserved on : 30.01.2017

Delivered on : 24.02.2017

Coram

The Honourable Mr. Justice R. SUBBIAH

and

The Honourable Mrs. Justice J. NISHABANU

W.A(MD).No.579 of 2016

and

C.M.P.No.3974 of 2016

The Vice-Chancellor,
The T.N.Dr.M.G.R.Medical University
rep. by its Registrar,
69, Anna Salai,
Guindy, Chennai-600 032.

.... Appellant

..VS..

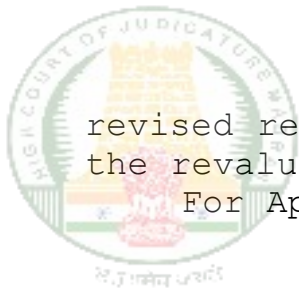
1. G.Fibi
2. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
3. The Interim Administrator,
ATSVS Siddha Medical College,
Mugappair West, Chennai-600 037.
4. The Principal,
A.T.S.V.S. Siddha Medical College,
Munichirai,
Kanyakumari District-629 171.
5. Dr.R.Iyankannu
6. The Principal,
Government Siddha Medical College,
Trivandram Road,
Palayamkottai,
Tirunelveli-627 002.

..Respondents

Writ Appeal has been filed under Clause 15 of Letter Patent, against the order passed by the learned Single Judge in W.P(MD). No.8731 of 2015, dated 05.01.2016.

Prayer in WP(MD). 8731/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents 1 to 4 to revalue petitioner's answer sheets in the clinical examination (i.e), Paper IV Special Medicine Namely Sirappu Maruthuvam including Yoga and Varma in 3rd professional examination held on 10.03.2015 at A.T.S.V.S. Siddha Medical College, Munichirai, Kanyakumari District with the support of petitioner's case sheets submitted at the time of clinical examination and patients ward case sheets and to declare the



revised result in accordance with the remarks petitioner get after the revaluation.

For Appellant : Mr.M.Ajmalkhan, Senior Counsel
for Mr.C.Karthik

For Respondents : Mr.A.Thirumurthy for
M/s.Victory Associates for (R1)
Mr.S.Gokulraj (For RR3 & 4)
Mr.K.P.Narayanakumar for R5
Mr.N.S.Karthikeyan, AGP for R2

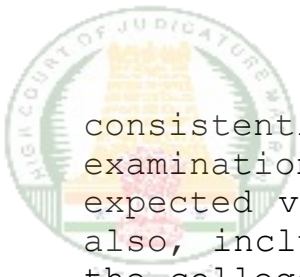
JUDGMENT

The appellant the Vice-Chancellor of T.N.Dr.M.G.R.Medical University is the 3rd respondent in W.P.(MD).No.8731/2015 filed by the 3rd respondent herein/writ petitioner. This writ appeal has been filed as against the order dated 05.01.2016 in W.P.(MD). No.8731/2015, whereby and wherein, the learned Single Judge of this Court has allowed the writ petition filed by the 1st respondent herein, directing the appellant and the official respondents to revalue the 1st respondent's answer sheet in clinical examination ie., Paper-IV (Special Medicine namely Sirappu Maruthuvam including Yoga and Verma) of the third professional examination held on 10.03.2015 at A.T.S.V.S.Siddha Medical College, Munchirai, Kanyakumari District.

2.The case of the 1st respondent herein/writ petitioner before the learned Single Judge is as follows_

2-1.She had joined the Bachelor of Siddha Medicine and Surgery Course in T.S.V.S.Sidda Medical College Munchirail, Kanayakumari District and the said college is affiliated to the appellant-University. The 1st respondent herein joined the said course commencing from the year 2009 and the duration of the said course is 5 ½ years, including one year of compulsory Rotatory Resident Internship (House Surgeon). The said Course is conducted in three professionals and the duration of each professional is 18 months. Thus, the total period for all three Professionals is 4 ½ years, with one year Compulsory Rotatory Resident Internship; thus, the said course is completed by a student in 5 ½ years. There are six papers and one language paper for the first professional. In second professional, there are seven papers. The third/final Professional has six papers, including one paper for special medicine. The said Special Medicine is 'Sirappu Maruthuvam including Yoga and Varma".

2-2.The 1st respondent/writ petitioner appeared for the 1st professional examination in February 2012 and obtained 81.7% of marks in aggregate. In the second professional examination held during August 2013, she secured 75% of marks in aggregate. Thus, right from the beginning of the course, her performance was



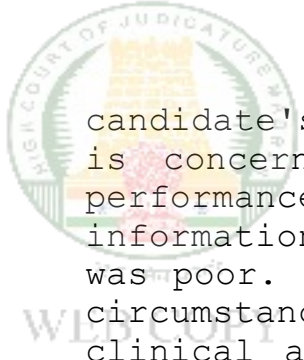
consistently excellent and in the above two professional examinations, she got the first mark in the college. She expected very good marks in all the papers in the 3rd professional also, including practical and clinical and she hoped to come 1st in the college.

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2-3.It is the further case of the 1st respondent herein/writ petitioner that the 5th respondent viz.,Dr.R.Iyankannu, Reader, A.T.S.V.S. Siddha Medical College, Munichirai, Kanayakumari Dist, who took classes for the 1st respondent for the special medicine paper viz.' Sirappu Maruthuvam including Yoga and Varma', frequently asked the 1st respondent to prepare notes for a book which he proposed to publish; likewise, he made his request to some other students also. The 1st respondent wrote about 15 pages for him first and handed over to him. But, not being satisfied with that, he continued to press the 1st respondent to write more and more notes for his book; but, the 1st respondent refused to do the said work as it greatly affected her studies. Due to her refusal to write notes for him, he had a grudge against the writ petitioner.

2-4.While so, the writ petitioner appeared for the 3rd professional examinations in Feb-2015 and she wrote all the six papers including the practical and clinical examinations very well as usual and she expected to get the first marks in the 3rd professional also. When the results were declared for the 3rd Professional on 31.03.2015, to her shock and surprise, she found that she has failed in clinical examination in special medicine paper namely "Sirappu Maruthuvam including Yoga and Varma" and thereby, failed in the 3rd professional examination, as a result of which, again she has to appear for theory, practical and clinical examinations once again to clear as arrear to obtain the degree. According to the 1st respondent, she secured 78.6%, 71% & 78.6% in clinical examinations in other three papers and only in the Paper IV - Sirappu Maruthuvam including Yoga and Verma, in clinical examination, she has been awarded 26 marks out of 70, to make her fail for want of 9 marks as the minimum marks for pass is 35.

2-5.It is further stated by the 1st respondent that in the clinical examination, a candidate investigates the patients for signs of disease, identifies the disease and prescribes medicine with correct dosage for the disease. The clinical examination contains 2 parts, one long case and one short case. Out of total 70 marks allotted for clinical examination, the 50 marks are assigned for long case and 20 marks for short case. A candidate must obtain 35 marks out of 70 to pass clinical examination. The clinical examination is followed by an oral test. The oral test is mostly on the basis of the performance of the candidates in clinical examination. Generally, if a candidate does not fare well or fails in the clinical examination, the Examiners inform the candidate at the time of oral about the



candidate's poor performance. So far as the 1st respondent's case is concerned, the oral test was conducted normally as if her performance in clinical had been normal and she was not given any information so as to convey that her performance in the clinical was poor. She also performed well in the oral test. Under such circumstance, she expected to secure more than 70% of marks in the clinical and was waiting for her results. But, the petitioner was declared as failed in the clinical examination. It is the case of the petitioner that by developing grudge against the petitioner, the 5th respondent has awarded lesser marks to the 1st respondent so as to fail her in the clinical examination. Further, the internal marks were independently awarded by the 5th respondent. Hence, she has filed the writ petition for a mandamus, directing the concerned authorities to revalue her answer sheets in the clinical examination i.e, Paper-IV, Special Medicine namely 'Sirappu Maruthuvam including Yoga and Varma' in the 3rd professional examination held on 10.03.2015 at A.T.S.V.S.Siddha Medical College, Munchirai, Kanyakumari District, with the support of her case sheets submitted at the time of clinical examination and patient's ward case sheets, and to declare the revised result.

3.The writ petition was opposed by the appellant herein/R3 viz., The Vice-Chancellor, Dr.M.G.R.Medical University, by filing a detailed counter. The crux of the contentions of the appellant is that there is no provision for revaluation in the Regulation of Central Council of Indian Medicine as well as in the Regulations of the T.N.Dr.M.G.R. Medical University; hence, the request of the writ petitioner/R1 cannot be entertained.

4.The 4th respondent therein viz., The Principal A.T.S.V.S. Siddha Medical College, has also filed a detailed counter, denying the allegations made by the 1st respondent/writ petitioner as against the 5th respondent, Reader of the said College, stating that the marks awarded for the long and short cases have been jointly awarded by the Internal and External Examiners and the same has been forwarded to the 3rd respondent-University; hence, it is not correct to state that the short case was independently examined by the 5th respondent and the long case was independently examined by the External Examiner. Further, the allegations made by the 1st respondent/writ petitioner against the 5th respondent was also denied by the 4th respondent-University.

5.That apart, the 5th respondent himself has filed a detailed counter denying the allegations made by the 1st respondent/writ petitioner against him, stating that he never asked the 1st respondent/writ petitioner to prepare notes for the book that he is alleged to have proposed to publish and he never demanded the 1st respondent/writ petitioner to write more and more notes for the said book and he had no grudge towards the 1st respondent/writ petitioner. It is further stated by the 5th respondent in his counter that he had never shown any hostile attitude towards the



1st respondent/writ petitioner, instead he gave the bonafide certificate on par with other students; that the allegations made against him has caused uncompensatable agony to him. Thus, he sought for dismissal of the writ petition.

6. The writ petition was allowed by the learned single Judge by observing that a mere perusal of the counter affidavit filed by the respondents 3 to 5 would show that the 5th respondent/internal examiner has categorically admitted that in respect of the 1st respondent/writ petitioner, the 5th respondent corrected the short case and gave marks by considering her performance; whereas the 4th respondent-College has given a conflicting statement stating that both the examiners jointly awarded marks. According to the Regulations of the Indian Medicine Central Council Amendment Regulations, 2006, the practical examination should be conducted jointly by both the examiners, whereas, in the present case, the 5th respondent has alone conducted the clinical examination for short case without the presence of the external examiner, which is a gross violation of regulation. On the above observations, the learned Single Judge has allowed the writ petition and gave direction to the authorities to revalue the 1st respondent's answer sheet. Aggrieved over the same, the appellant/University has filed the present writ appeal.

7. The learned Senior Counsel appearing for the appellant/University submitted that absolutely there is no conflicting statement in the counters filed by the respondents 4 & 5. In this regard, the learned Senior Counsel appearing for the appellant/University has also invited the attention of this Court to the counters filed by the respondents 4 & 5 and submitted that a reading of the counters would show that the marks were awarded for clinical examination, in short case and long case, jointly by the Internal and External examiners. Both the internal and external examiners have jointly awarded marks to all the students and jointly signed and sent the same to the University, after uploading the same in the University Website on the same day. In support of his contention, the learned senior counsel for the appellant/University has also produced a copy of the Mark Galley sent by the College to the University showing the Clinical Marks awarded by both internal and external examiners jointly.

8. Apart from the above submission, the learned senior counsel for the appellant/University has also submitted that the 1st respondent/writ petitioner has approached this Court by making an allegation against the 5th respondent/Reader, stating that by developing grudge against her, he has purposely failed her in the clinical examination. But, in the representation given by the 1st respondent/writ petitioner for revaluation of the clinical paper, ~~absolutely she~~ ~~she has not made any allegation against the 5th respondent/Reader.~~ In this regard, the learned senior counsel appearing for the appellant/University has also invited the



attention of this Court to the representation given by the 1st respondent/writ petitioner on 07.04.2015, in support of his contention that the 1st respondent/writ petitioner has not made any allegation against the 5th respondent in her representation. Thus, the learned senior counsel appearing for the appellant/University submitted that the 1st respondent has not made out any case of mala fide against the 5th respondent. In the absence of any finding that the 5th respondent acted with a mala fide intention and awarded lesser marks to the 1st respondent, the impugned order passed by the learned Single Judge on the strength of alleged conflicting statement in the counters filed by the respondents 4 & 5, cannot be sustained. Assuming for a moment, without admitting that there was a mala fide intention on the part of the 5th respondent, the learned Single Judge should have given reliefs for the 1st respondent/writ petitioner for damages against the 5th respondent alone.

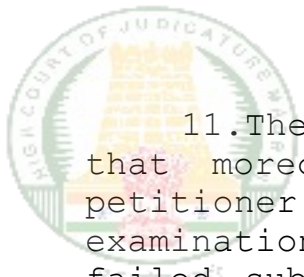
9.It is further submitted by the learned Senior Counsel for the appellant/University that the impugned order passed by the learned Single Judge for revaluation of the answer sheet of the 1st respondent in clinical examination cannot be implemented, as there cannot be any revaluation in clinical examination. Further, the revaluation is not possible in clinical examination, as it involves diagnosing, prescribing correct medicine with correct dosage etc and it is not like reading questions and answering to them.

10.Apart from the above submissions made on the factual aspects, the learned Senior Counsel for the appellant would also submit that absolutely there is no provision for revaluation in the Regulation of Central Council of Indian Medicine as well as in the Regulations of the T.N.Dr.M.G.R.Medical University. In this regard, the learned Senior Counsel for the appellant has also invited the attention of this Court to Regulation 24 of the T.N.Dr.M.G.R.Medical University and submitted that there is no provision for revaluation of the answer papers in the clinical examination'; however, only retotalling is allowed in failed subjects; thus, the learned Senior Counsel submitted that in the absence of any provision for revaluation, prayer of the 1st respondent/writ petitioner is not maintainable and not legally sustainable. In support of his contentions, the learned senior counsel for the appellant has relied upon the following decisions_

(1) 2010 (5) MLJ 746 (SC) [H.P.Public Service Commission and Mukesh Thakur and another]

(2) 2004 (6) SCC 714 [Pramod Kumar Srivastave Vs. Chairman, Bihar Public Service Commission, Patna and others].

(3) 2014(2) T.N.C.J. 580 (Mad) (MB) [C.Jagadiswaran Vs. Vice-Chancellor, T.N.Dr.M.G.R.Medical University]



11.The learned Senior Counsel for the appellant would submit that moreover, in the instant case, the 1st respondent/writ petitioner has subsequently appeared in the supplementary examination in the failed subject and she has also passed in the failed subject; further, PPC-I (provisional Pass Certificate) was issued to her and she has subsequently completed CRI and PPC-II also and now, she has applied for degree certificate. Thus, the learned Senior counsel for the appellant/University sought for quashing of the impugned order passed by the learned Single Judge.

12.The learned Counsel appearing for the 5th respondent has also made a detailed submission, denying the allegations made against him. He would submit that out of 26 students, only 6 students failed in the clinical examination including the 1st respondent herein/writ petitioner. Further, except the 1st respondent, no other student made any allegation against the 5th respondent. The learned counsel appearing for the 5th respondent would also submit that in fact, in the representation given by the 1st respondent to the appellant, she has not made any allegation against the 5th respondent. The learned counsel for the 5th respondent has also made a submission that Mark Galley sent by the College to the University would show that the 5th respondent along with the external examiner, jointly awarded the marks; therefore, it is incorrect to state that the 5th respondent has awarded marks with mala fide intention, by developing grudge against the 1st respondent/writ petitioner.

13.Countering the submissions made by the learned Senior Counsel appearing for the appellant as well as the learned counsel appearing for the 5th respondent, the learned counsel appearing for the 1st respondent/writ petitioner submitted that it is incorrect to state that both the internal and external marks were awarded jointly by both the External and Internal examiners. In fact, in para 11 of the counter filed by the 5th respondent, the 5th respondent had stated that he had evaluated the short case and awarded the correct marks as per his conscience, which would go to show that marks were awarded independently by the 5th respondent, who is having grudge over the 1st respondent/writ petitioner.

14.Further, the learned counsel for the 1st respondent/writ petitioner has submitted that the course is conducted in three Professionals and the duration of each Professional is 18 months. In the 1st professional the petitioner secured 81.7% of marks in aggregate and in the second professional examination, the petitioner secured 75% in aggregate. In the 3rd Professional examination, she has obtained the following marks_

Paper I	: 68.7% (No clinical)
Paper II	: 81.6% (No clinical)
Paper III	: Written : 52.0%
	Clinical: 78.6%
Total	: 68.0%



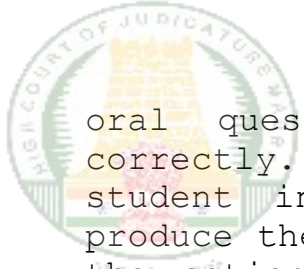
Paper IV - Special Medicine : Written 62.0%
: Clinical 26/70
(Passing Minimum 35) Failed for want of 9 marks.

Total : 136/250 (Minimum for pass 125)
Paper -V : Written 54.0%
: Clinical 71.0%
Total 54.4%

Paper -VI : Written 70.0%
: Clinical 78.6%
Total : 74.8%

It is seen from the above marks that only in Paper-IV - Special Medicine - Clinical test, lesser marks were awarded to the 1st respondent so as to fail her in the said subject for want of 9 marks. Thus, the learned counsel appearing for the 1st respondent/writ petitioner would submit that the performance of the 1st respondent in the other subjects would go to show that there is no chance for her to get lesser marks in the Clinical examination in Special Medicine, Paper-IV. Moreover, in the clinical examination, a student investigates the patients for signs of disease, identifies the disease and prescribes medicine with dosage for the disease. The clinical examination contains two parts, one long case and one short case. Out of total 70 marks allotted for clinical examination, 50 marks are assigned for long case and 20 marks for short case. A student must obtain 35 marks out of 70 to pass clinical examination. The clinical examination is followed by an oral test, in which the marks are awarded mostly on the basis of the performance of the candidates in clinical examination. In the clinical examination for the Special Medicine, the performance of a student in the long case was assessed by the External examiner and the assessment of the student for the short case was entrusted to the internal examiner by the External examiner. Now, the prayer of the 1st respondent/writ petitioner is only to correct the answer sheets. Even in the answer sheets in the clinical examination, the 1st respondent has noted down the signs of disease of the patient and identifies the disease and prescribed medicine with dosage for the disease. Therefore, it is incorrect to state that it is not possible to implement the order passed by the learned Single Judge for revaluation of the answer sheets of the petitioner.

15. By way of reply, the learned Senior Counsel for the appellant/University would submit that clinical examination consists oral questions also. A student has to diagnose the disease of the patient and identify the disease and to prescribe the medicine with correct dosage for the disease. Then, the External examiner will ask oral questions to the student i.e., How did he/she come to the conclusion that the patient produced before him/her is suffering from so and so disease etc. and for all the



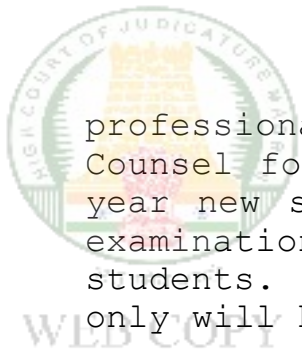
oral questions asked to the student, he/she should answer correctly. Based on that only, the marks will be awarded to the student in clinical examination. Now, it is not possible to produce the same patient and even if the same patient is produced, the patient's health condition will not be the same as before. Further, the oral questions asked and answers given by the 1st respondent are not available. Therefore, the revaluation of the answer sheets of the 1st respondent is not possible. Even if the order is passed for revaluation, it is totally incapable of implementation.

16. With regard to the other submission made by the learned counsel for the 1st respondent that the 1st respondent has secured good marks in first and second professionals and there is no chance for her to get lesser marks in the Clinical Examination in the third professional, the learned Senior Counsel for the appellant/University replied that medical field is not a school education and the 1st respondent could not expect full marks or centum marks in Clinical and Viva Voce examinations. The marks shall be awarded based on the performance of a candidate/student in the examinations. The Examiners are expected to award marks based on the performance of the candidate. In medical field, each year new subjects will be introduced to the students. In clinical examination memorizing without understanding will not help the students. The student who understands the basics and studies only will be able to pass clinical examination. Thus, it is submitted by the learned Senior Counsel appearing for the appellant that the contention of the learned counsel for the 1st respondent that she had performed well in the 1st and 2nd professionals and there is no chance for her to get lesser mark in the clinical examination in 3rd professional, cannot be accepted.

17. I have carefully heard the submissions made on either side and perused the materials available on record.

18. Though it is contended by the learned counsel appearing for the 1st respondent that in the clinical examination, the 1st respondent was purposely failed by the 5th respondent by taking grudge against her, since she refused to write notes for him, it is countered by the learned senior counsel appearing for the appellant as well as the learned counsel appearing for the 5th respondent stating that the said allegation is false and for the first time it was introduced in the affidavit filed in support of the writ petition. Had it been true, the 1st respondent would have stated the said allegation in the representation made by her to the appellant/University on 07.04.2015.

19. Similarly, it is the contention of the learned counsel for the 1st respondent that she secured good marks in the first and second professional and there is no chance for her to get lesser mark in the clinical examination (in Paper-IV) in 3rd



professional. But, it is also countered by the learned Senior Counsel for the appellant stating that in the medical field, each year new subjects are introduced to the students and in clinical examination memorizing without understanding will not help the students. The student, who understands the basics and studies, only will be able to pass clinical examination.

20. In our considered opinion, though several contentions and counter contentions were raised on either side on factual aspects, the issue involved in the present appeal has to be decided only on legal ground, as to whether the 1st respondent is entitled for revaluation in the clinical examination - Paper-IV, Special Medicine; if such a direction is given to the University, whether it is possible to implement the same.

21. The question as to whether the 1st respondent is entitled for revaluation of the answer sheet in clinical examination - Paper-IV, Special Medicine, has to be decided only based on the judgments delivered by the Hon'ble Supreme Court as well as other Courts. Therefore, it would be appropriate to extract some of the relevant judgments.

22. In **2004 (6) SCC 714 [Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna and others]**, it has been held by the Hon'ble Supreme Court as follows_

"7. We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation 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 totaling 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 re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in *Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others*



AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.

In **2014(2) T.N.C.J. 580 (Mad) (MB) [C.Jagadiswaran Vs. Vice-Chancellor, the Tamil Nadu Dr.M.G.R.Medical University, Chennai]**, wherein a Division Bench of this Court has held as follows_

"14.At the outset, the parties are ad idem on one thing, namely, that there was a provision for re-evaluation earlier and that the same was scrapped. The decision to scrap the provision was upheld by the Division Bench of this Court. Therefore, it is



clear that the petitioner cannot stake his claim upon any statutory provision. Keeping in mind the above, let us now have a critical analysis of the decisions relied upon by the petitioner.

15. In *President, Board of Secondary Education*, the Supreme Court was concerned with a judgment of the Division Bench of the Orissa High Court, which held that there was no provision for revaluation. However, the Division Bench had awarded costs of Rs.20,000/- for providing a wrong mark to the candidate. It is in such a context that the Division Bench awarded costs. The Supreme Court merely modified the said order. But, on the principle that there can be no revaluation in the absence of a statutory provision, the Supreme Court did not take a different view.

16. The decision of the Division Bench of the Madhya Pradesh High Court in *Pranshu Indurkha* also did not say that the High Court could direct revaluation of answer sheet even in the absence of a rule. All that the Division Bench of the Madhya Pradesh High Court said was that in rare and exceptional cases where malafides or where injustice has been caused on account of gross negligence, the Court may order revaluation. Even on the question as to what constitutes gross negligence resulting injustice, the Division Bench clarified that a student, who complains of the same, should have had consistently high academic record. Both are absent in the case on hand.

17. In *Sivaranjani*, a person pursuing the 4th Year of M.B.B.S. Course sought a direction for revaluation. But, the said prayer was rejected by the Supreme Court following the decision in *H.P. Public Service Commission vs. Mukesh Thakur* - (2010) 5 MLJ 746 (SC).

18. The decision in *H.P. Public Service Commission* itself followed the law laid down in *Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumarsheth* and the decision in *Pramod Kumar Srivastava*. Therefore, we are of the view that the law is clinched in paragraph 19 of the decision of the Supreme Court in *H.P. Public Service Commission*. It will be useful to extract the said paragraph as follows:

"19. 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



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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."

19. In Sanjay Singh relied upon by the learned counsel for the petitioner, the Supreme Court merely highlighted the necessity to have uniformity and consistency in the matter of valuation. Disparity in the matter of valuation by examiners who are liberal and examiners who are strict, was termed as "Hawk-Dove Effect". But, even in this case, the Supreme Court did not lay down a law that there can be revaluation, even in the absence of a provision. The very dispute that arose in Sanjay Singh was with respect to a statistical scaling system adopted by the Allahabad High Court, while evaluating the answer sheets of candidates who appeared for the post of Civil Judges - Junior Division. Therefore, the said decision is of no assistance to the petitioner insofar as the point in issue is concerned.

20. In Sahiti, what was in issue before the Supreme Court was whether the action of the Vice-Chancellor of Dr.N.T.R.University of Health Sciences in ordering re-verification/revaluation/re-examination of answer scripts of 436 students, was proper or not. It is, in that context, the Supreme Court in Paragraph 32 held that revaluation even in the absence of specific provision is perfectly legal and permissible. But, there is a world of difference between an educational authority ordering revaluation on account of certain large scale irregularities and the right of a person to approach the court and seek a mandamus for directing revaluation. The Court's power to order revaluation especially in matters relating to examinations, is extremely circumscribed. Where the educational authorities, who are experts in the field, themselves are of the opinion that there is no need for revaluation, this Court would not interfere with such a decision. But, it does not mean that this Court could issue a direction to the



University to order revaluation.

21. In the light of the above, we are of the view that the decision of the Supreme Court in H.P. Public Service Commission, clinches the issue, finally. Hence, we hold that in the absence of any provision for revaluation, a mandamus cannot be issued by this Court, directing the authorities to undertake revaluation."

In (2010) 5 MLJ 746 (SC) [H.P. Public Service Commission Vs. Mukesh Thakur and another], the Hon'ble Supreme Court has held as follows_

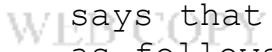
"24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmarsheth etc. etc. AIR 1984 SC 1543, wherein this Court rejected the contention 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:

".....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...

.....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

poses of the Act....."

From the above decisions, it could be seen that in the absence of any provision for revaluation, a mandamus cannot be issued by the



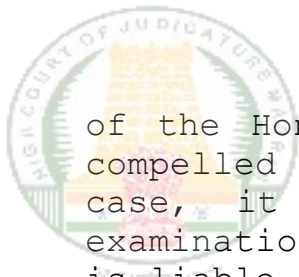
- "There is no provision for revaluation of answer papers. However, retotalling is only allowed in the failed subjects."

24. The 1st respondent herein/writ petitioner has sought for a direction to the authorities to revalue her answer sheets in the Clinical Examination (practical examination). In our considered opinion, as contended by the learned Senior Counsel for the appellant/University, revaluation is not possible in clinical examination as it is not possible to produce the same patient and even if the same patient is produced, the patient's health condition will not be the same as before. Further, in the clinical examination, the student has to diagnose the patient and identify the disease by doing the correct test and the student has to prescribe correct medicine with correct dosage. Thereafter, the student would be orally questioned by the Examiners and they should answer correctly. On the basis of the answers given by the student, the marks will be awarded for clinical examination. Hence, there cannot be any revaluation of the answer sheet of a student in the clinical examination. In this regard, a reference could be placed in the judgment reported in **(2000) 4 SCC 342 [Mohammed Gazi Vs. State of M.P. and others]**, wherein it has been held by the Hon'ble Supreme Court as follows

<https://hcservices.ecourts.gov.in/hcservices/>

[1987 (4) SCC 398] and Gursharan Singh & Ors vs. NDMC & Ors. [1996 (2) SCC 459].

From a reading of the dictum laid down in the above cited decision



of the Hon'ble Supreme Court, it is clear that a man cannot be compelled to do what he cannot possibly perform. In the instant case, it is practically impossible to revalue the clinical examination. Therefore, on that ground alone, the impugned order is liable to be set aside.

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25. Moreover, in the instant case, the 1st respondent/writ petitioner has subsequently appeared in the supplementary examination in the failed subject and she passed in the failed subject; further, PPC-I (provisional Pass Certificate) was issued to her and she has subsequently completed CRI and PPC-II also and now, she has applied for degree certificate. Under such circumstances, this Court cannot give any direction to the authorities to do revaluation of the answer sheet, as prayed for by the 1st respondent. Hence, the impugned order passed by the learned Single Judge is liable to be set aside.

In fine, the writ appeal is allowed and the impugned order is set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

sd/-

Assistant Registrar(P&A)

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Sub-Assistant Registrar

To

1. The Secretary to Government,
Health and Family Welfare Department,
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2. The Principal,
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+1cc to Mr.A.Thiru Murthy , Advocate, SR.No.10395

+1cc to Mr.K.P.Narayanakumar , Advocate, SR.No.10847

**Pre-delivery Judgment in
W.A(MD) .No.579 of 2016
and
C.M.P.No.3974 of 2016
24.02.2017**