

\$~33

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 2062/2017

VIPUL JHINGTA

..... Petitioner

Through Mr.Avneesh Arputham and
Mr.Anuradha Arputham, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through Ms.Ginny J.Rautray, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

25.09.2017

1. Petitioner had appeared in the written entrance examination for the M.Phil./Ph.D. programme in West Asian Studies at the Jawahar Lal Nehru University (JNU)/respondent. The examination was divided into two parts; 70% was for the written examination and 30% was for the viva voce with a stipulation that for eligibility a candidate should obtain minimum of 35 marks i.e. 50% in the written examination. The written examination was held on 16.05.2016. Petitioner was not called for the viva voce. He had done well in the written examination; he was surprised.

2. On 06.10.2016 petitioner applied for his answer script under the Right to Information Act; this was given to him on 20.11.2016. His answer script reflected that he had obtained 55 marks in the written examination but there were cuttings and over-writings; his initial 55

marks were reduced to 48 marks and then further reduced to 41 marks. Submission of the petitioner is that this was a deliberate and mala fide on the part of the university to deny admission to the petitioner; the cuttings and over-writings in the answer script of the petitioner reflects this arbitrariness on the part of the respondent. Petitioner is entitled for admission; if his initial marks of 55 are taken into account he would have qualified for his admission to the M.Phil./Ph.D Course.

3. Counter affidavit/reply has been filed by the respondent University. At the outset, it is pointed out that as per the policy of the University a moderation is permitted at the M.A./M.Phil levels. This is done by the individual faculty members only under the supervision of the Chairperson of the Centre. The mark sheets of those candidates who had scored 60% and above are alone moderated and in most cases marks are then reduced. It is admitted that there have been over-writings in some scripts. It is pointed out that entrance scripts of 2016 were evaluated by three faculty members who were fresh appointees. Moderation as a policy is permitted in terms of the dicta of the Apex Court. In the present case also the answer scripts of the petitioner along with others who had scored more than 60% were subject to moderation. It is pointed out that a time line is fixed for inspection of the answer script and as per the Resolution of the Academic Council (dated 21.10.2011) the same cannot be availed of beyond a period of three months i.e. upto 15.11.2016 in the instant case. Copy of the aforementioned resolution of the Academic Council has been placed on record. It is pointed out that the respondent

University has no animosity against the petitioner and his case was considered alongside several other students who had secured more than 60% marks. Writ petition is not maintainable.

4. Arguments have been heard. In the course of the arguments, learned counsel for petitioner has relied upon a judgment of the Apex Court reported as (2015) 11 SCC 395 Sujasha Mukherji Vs. High Court of Calcutta through Registrar and Ors.; it is pointed out that moderation by its very definition cannot remove widespread mistakes and where such mistakes are noted the whole purpose of moderation would be lost; if in the evaluation of answer book such rampant mistakes are noted a fresh evaluation should be undertaken. Reliance has also been placed upon the judgment of a Coordinate Bench of this Court in Govind Kr Verma and Anr. Vs. Joint Registrar (Medical Faculty of Ayurvedic and Unani Medicines and Anr. WP(C) 10166/2016 delivered on 15.12.2016 to support a submission that the case of the petitioner should be considered and even if he cannot be granted admission in this year, he should be considered for the next year. Reliance has also been placed upon a judgment of the Apex Court in S.Krishna Sradha Vs. State of Andhra Pradesh and Ors. reported as (2017) 4 SCC 516; submission being that where the court comes to the conclusion that it is because of the fault of the University that the petitioner has been denied admission he can be granted compensatory compensation.

5. Learned counsel for the respondent has countered these arguments. On the last date i.e. on 21.9.2017 the petitioner had countenanced that he is entitled to a benefit of the Zero Year. On this

count respondent had been asked to take instructions. Today learned counsel for respondent points out that the benefit of Zero Year is awarded only to those persons who are students and admittedly the petitioner is not a student. The fact that the petitioner is not a student with the respondent university being an admitted fact the circular of the respondent placed on record clearly shows that the question of the benefit of Zero Year cannot be considered qua the petitioner.

6. Arguments have been heard. Record has been perused.

7. Record reflects that the entrance exam of M.Phil./Ph.D course was held on 16.5.2016; result had been declared on 30.9.2016. The petitioner for the first time in October, 2016 applied through the RTI mode for his answer sheet as he was shocked to learn that he had failed in his written examination when according to him he had done well. His answer sheet was obtained by him on 20.11.2016 wherein the over-writings/cuttings had been noted by him. This Court notes that this petition has been filed on 03.3.2017 i.e. after a gap of four months. There appears to be little justification on this count although in this intervening period learned counsel for petitioner has sought to justify his stand by submitting that he had repeatedly filed RTI applications to which he was awaiting a response. This Court may not be in agreement with this submission of the petitioner on this count.

8. That apart, even on merits, the petitioner does not make a good case. The petitioner's answer sheet which had been received by the petitioner reflected that he had initially been granted 55 marks. This was over and above the aggregate of 60%. The policy of the

respondent University permitted them to moderate the answer script of those students who had secured 60% and above marks. Although the policy of the University on this score has not been placed before this Court yet it is not that this policy which is under challenge. The prayers in the writ petition seek admission of the petitioner to the M.Phil/Ph.D course with the details of the rules and regulations of the Moderation Committee be placed on record. These rules and regulations of Moderation Committee are not subject matter of challenge before this Court.

9. This Court notes that the exercise of moderation has been permitted by the Apex Court. The Apex Court in Umesh Chandra Vs. Union of India reported as 1985 AIR 1351 as way back as in 80s had noted that the object of the policy of moderation and the rigours upon the court to interfere with such a moderation. The relevant extract of the aforementioned order reads herein as under:

“the device of moderation is adopted in some educational institutions if the examining body finds any difficulty in the examination conducted by it such as inclusion of questions in the question papers which are outside the syllabus, extremely stiff valuation of the answer books by an examiner or any other reason relevant to the question papers or the valuation of the answer books. It is no doubt true that in academic matters the jurisdiction of the Court under Article 226 of the Constitution is peripheral inasmuch as the Court does not sit in the matter as a Court of Appeal nor does it interfere unless the system of examination including that of moderation is unreasonable and arbitrary or where mala fides are alleged. It cannot be gainsaid that

if in the selection of the method of examination including that of moderation two alternative courses are reasonably possible, the Court would not insist that a particular method be adopted since it would be in the ultimate analysis the agency conducting the examination which would be the best judge as to which method should be preferred and adopted having regard to the peculiar situation before us. By and large, it would not be proper for the Courts to venture into such 'inclusive thickets' like selection procedure, method of examination including that of moderation etc, when such matters are left to the expertise of the agency to which the assignment of selection is made since it is assumed that the members of such agency are men of experience and more knowledge in that behalf except where the method and/or the procedure so adopted becomes unreasonable or arbitrary or amounts to denial of equal opportunity."

10. Moderation as a policy, was thus permissible.

11. The case of the petitioner that he has been discriminated upon and the respondent has animosity against him is answered in the counter affidavit of respondent wherein it has been pointed out that it is not the petitioner alone but all those persons who had secured more than 60% marks whose answer scripts had been subject to moderation. It is not the answer sheet of the petitioner alone which was subject to moderation. Further more in view of the minutes of the meeting of the Academic Council Resolution dated 21.10.2011 the time limit to obtain the answer script would be upto 15th November i.e. three months after the date of admission process. Learned counsel

for respondent has pointed out that these answer scripts now stand destroyed in view of the aforementioned circular. Admissions to M.Phil course also stood closed between 14.8.2016 to 16.8.2016.

12. Reliance by the learned counsel for the petitioner on the judgment of Sujasha Mukerji (supra) is misplaced. In this case the question which had arisen before the Court was whether a Head Examiner had been appointed for the purposes of moderation; this was in the light of the ratio of the judgment of the Apex Court delivered in Sanjay Singh Vs. U.P.Public Services Commission (2007) 3 SCC 720. This is not an issue in the instant case. This has not been raised. Relying upon the ratio of Sanjay Singh the Apex Court in Sujasha Mukerji (supra) had held that where the moderator had given marks which were identical to that of the first examiner but drastically different from the second examiner; where large scale changes in the entire paper had been noted and had led the Court to conclude that such widespread mistakes cannot be removed by moderation alone. Facts of the said case are distinct. The judgment of Govind Kr.Verma (supra) is inapplicable; this was a case of a physically challenged OBC candidate. The ratio is wholly inapplicable. The third judgment of S.krishna Sradha (supra) would apply only if this Court draws a conclusion that the petitioner had illegally been denied admission; this is not so in the instant case.

13. Besides the fact that the petitioner has approached this Court belatedly, this Court is also of the view that the moderation was not qua the case of the petitioner alone; there was no discrimination. The answer sheets as on date cannot be scrutinized because the petitioner

had approached the Court in March 2017 and as per the minutes of the meeting of the Academic Council Resolution of the respondent (dated 21.10.2011) the respondent has to keep the answer scripts only up to a period of three months i.e. upto Nov 2016; which period has long expired; the admission to the said course also having been closed between 14.8.2016 to 16.8.2016.

14. Petition is without any merit. It is dismissed.

INDERMEET KAUR, J

SEPTEMBER 25, 2017

ndn