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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 97/2018

MILIND AGGARWAL & ORS.

Through

..... Appellants
Mr. V. V. Nagwan and Mrs. Manvi
Rajvanshy, Advs.

versus

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

Through

..... Respondent
Mr. A. S. Chandhiok, Sr. Adv. with
Ms. Pooja Saigel and Ms. Ramya Kutty
Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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31.07.2018

Present intra court appeal under Clause X of Letters Patent read with Section 10 of Delhi High Court Act, 1966 impugns the judgment dated 12th February, 2018 whereby the W.P. (C) No. 1107/2018 has been dismissed.

2. The aforesaid writ petition was filed by Milind Aggarwal and twenty two others. The present appeal has been preferred by nine petitioners and thirteen writ petitioners have not preferred intra court appeal against the decision.

3. This appeal, as was the writ petition, is contested by the Institute of Chartered Accountants of India, the Respondent-institute for short, a body created under the Chartered Accountants Act, 1949.

4. The respondent-institute had conducted Group I and II final examination in November, 2017 in which the appellants like many others

had appeared.

5. The dispute relates to the result declared by the respondent-institute. The appellants claim that they had cleared Group I/II as per the result circulated through Whatsapp messages and uploaded on Facebook. They rely on the screenshots.

6. The appellants however accept that as per result uploaded on the official website of the respondent-institute and the mark-sheets downloaded by them they had not cleared the respective Groups.

7. During the course of hearing today, a copy of the extracts of the minutes of the Examination Committee Meeting held on 16th and 17th January, 2018, was furnished to the Counsel for the appellant. Matter was passed over to enable him to examine the minutes. Last portion of the minutes of the meeting reads as under:-

“After the deliberations, taking into consideration the report of the HE/AHEs, observations of the concerned Faculty of Board of Studies and the representations from students, public and other stakeholders, the Committee was of the view that the total paper wise moderation factor in respect of all the papers be restricted to 13 marks.

The Chair, however suggested that looking at the complexity of the various issues involved, paper wise moderation factor in respect of all the papers be considered at 25.

After further deliberations, the Committee, in exercise of the powers vested with the Council u/r 39 (2) read with Regulation 176, unanimously decided to restrict the total moderation factor in respect of all the papers at 13. Paper wise factors are as follows:

1 (a) Add marks as follows, to all the candidates who appeared in the papers of Final examination held in November, 2017, given below:

<i>Paper No.</i>	<i>Group</i>	<i>Subject</i>	<i>Marks added</i>
<i>5</i>	<i>II</i>	<i>Advanced Management Accounting</i>	<i>2</i>

6	II	Information Systems Control and Audit	2
7	II	Direct Tax Laws	7
8	II	Indirect Tax Laws	2

1(b) Add marks as follows, to all the candidates who appeared in the paper-2 (Strategic Financial Management) of Final Special examination held in November, 2017 held at Chennai only:

Paper No	Group	Subject	Marks added
2	1	Strategic Financial Management	6

2. Further, the Committee noted that the HE/AHEs have also recommended revision of marks in the answer books evaluated by certain examiners who had either undervalued or overvalued them marginally. After discussions, Committee accepted the recommendations of the HE/AHEs and decided that in such cases where they had recommended revision of marks, following course of actions be adopted.

Add the marks recommended by the HE/AHEs to those candidates whose answer books were evaluated by the said examiners upto a maximum of 3 marks. In other words, the following course of action be followed:

Details	Marks to be added to those answer books evaluated by the examiners reported by HE/AHEs to have resorted to either under or over valuation
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<i>Where increase of 1 mark is recommended, on account of under valuation</i>	<i>1</i>
<i>Where increase of 2 mark is recommended, on account of under valuation</i>	<i>2</i>
<i>Where increase of 3 mark is recommended, on account of under valuation</i>	<i>3</i>
<i>Where increase of more than 3 marks is recommended, on account of under valuation</i>	<i>3</i>

*However, the Committee did not accept the recommendation of the HE/AHEs regarding reduction of marks in those answer books evaluated by some examiners, on account of over valuation. **Committee directed that such recommendation be ignored and no reduction of marks be effected.***

As per the said minutes appellants and other candidates were to be granted upto 13 grace or additional marks in different papers. Suggestion mooted by the Chair for grant of moderation factor of 25 marks was not accepted.

8. The appellants have also been furnished a copy of their answer-sheets. The appellants have not cleared/passed Group I/II inspite of evaluation and grant of grace marks in terms of the said minutes.

9. The appellants state that result circulated through Whatsapp messages and uploaded on Facebook was based on the internal e-mail sent by the respondent-institute to their Aurangabad branch and others associated or affiliated with the said branch at 06:57 p.m. on 17th January, 2018. It was submitted that as per list enclosed, the appellants had cleared Group I or II or both, as the case may be. However, subsequently the result was changed and

the appellants were declared unsuccessful.

10. The stand of respondent-institute, which has been accepted in the impugned judgment, is that the list sent to the Aurangabad branch at 06:57 p.m. was an incorrect list sent by mistake. In the said list, marks were calculated on paperwise moderation of upto 25 marks as was suggested by the Chair, which suggestion was not accepted by the Examination Committee. Moderation factor of 13 was agreed and was to be applied. Minutes of the meeting quoted above affirm the said position. What is important and clinches the controversy, is the fact that the respondent-Institute had uploaded the correct list on their website at 05:38 p.m. on 17th January, 2018. This uploading on the website of the respondent-Institute was earlier and prior to the point of time viz. the e-mail was sent to the Aurangabad branch.

11. In these circumstances, we do not think any right accrues or any benefit can be extended to the appellants as an incorrect list was mailed to the Aurangabad branch. The list e-mailed to the Aurangabad branch was never uploaded on the website of the said branch nor communicated to the appellants or others officially. On learning about the lapse and error, immediate steps were taken and the correct list within a few hours was mailed to the Aurangabad branch at 09:57 p.m. on 17th January, 2018. Aurangabad branch had only thereafter uploaded the result at 12:05 a.m. on 18th January, 2018. At the risk of repetition we would record that the incorrect list mailed earlier to the Aurangabad branch was not uploaded on any official website.

12. In the meanwhile, the faux pas had its consequences, for the incorrect list calculating/moderating the score by upto 25 grace marks had got circulated in the social media. The appellants who were obviously shocked

and disappointed by the actual marks and relying upon said discrepancy had filed W.P. (C) No. 1107/2018 which has been dismissed by the impugned judgement dated 12th February, 2018.

13. We would accept that the respondent- Institute should have been careful and exercised care and caution and do recognise the triumph and pain suffered by the appellants and others, albeit this cannot be a ground to allow the appeal. A mistake and error cannot confer a legal right.

14. We do not find any merit in the present appeal, which is accordingly dismissed with no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JULY 31, 2018

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