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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 740/2017, CM Nos. 42433-42435/2017 & 661/2018
VIPUL JHINGTA

..... Appellant
Through: Mr. Avneesh Arputham, Adv. with
Ms. Anuradha Arputham &
Ms. Geetanjali, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY & ANR

..... Respondent
Through: Ms. Ginny J. Routray, Adv. with
Ms. Anushka Ashok, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **28.08.2018**

CM Nos. 42434-42435/2017

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

LPA 740/2017

1. The present appeal has been filed by the appellant Vipul Jhingta challenging the order dated September 25, 2017 passed by the learned Single Judge in W.P.(C) No. 2062/2017, whereby the learned Single Judge has dismissed the petition filed by the appellant seeking a direction against the Jawaharlal Nehru University (for short 'JNU') to call him for viva-voce

for M.Phil course in Western Asian Studies and grant admission to the same.

2. In the counter affidavit, it was the case of the University that as per the policy of the University, a moderation is permitted at the M.A. / M.Phil levels. The moderation was carried out by the individual faculty members under the supervision of the Chairperson of the centre. The mark sheets of those candidates, who had scored 60% and above were alone moderated and in most cases, marks were reduced. It was also stated that a timeline is fixed for inspection of the answer script and as per the resolution of the Academic Council, the same cannot be availed beyond a period of three months upto November 15, 2016 in the instant case.

3. The learned Single Judge by referring to the judgments as relied upon was of the view that the internal exam of M.Phil / Ph.D. course were held on May 16, 2016 and results were declared on September 30, 2016. The appellant for the first time in October, 2016 applied through RTI mode for his answer sheet, which he obtained on November 20, 2016. The petition was filed on March 03, 2017. According to the learned Single Judge, there was a little justification for the delay, although in the intervening period, learned counsel for the appellant has sought to justify his stand by submitting that, he repeatedly filed RTI applications, to which he was

awaiting response. The learned Single Judge did not accept the said plea.

4. The learned Single Judge referred to the policy of the University permitting moderation of the answer script of those students, who had scored 60% and above marks. The learned Single Judge proceeded on the premise that moderation was permissible.

5. On the plea of the appellant that he has been discriminated, it is the conclusion of the learned Single Judge that it is not the answer sheet of the appellant alone, which was subject to moderation but also of other candidates. It was also stated, the admission to M.Phil also stood closed between August 14, 2016 and August 16, 2016.

6. The learned counsel for the appellant submits that the appellant being on the top of the merit, having scored 55 marks, could not have been subjected to moderation, which resulted on him being denied the admission to the M.Phil course. According to him, under the garb of moderation, the respondents have re-assessed the answer script of the appellant. A perusal of the same would reveal the cutting / overwriting on the marks. It is his submission that the University has no rules in place for effecting moderation. He also stated that the process of moderation has been assigned to three junior most faculty members, which is impermissible in view of the

position of law in *Sujasha Mukherji v. High Court of Calcutta (2005) 11 SCC 395*.

7. On the other hand, learned counsel for JNU has drawn our attention to the short affidavit filed by the JNU in this appeal to contend that the moderation was required as large number of students applied for admission to few number of seats. Even in the case of admission for the session 2016-2017, 113 candidates had applied for admission in M.Phil / Ph.D course against 15 seats including both reserved and unreserved categories. Further, the total intake for 2017-2018 session was further reduced to 13 students. The appellant could not make it to the admission list for M.Phil course for the reason that he, on moderation had scored 41 marks, which are less than the marks secured by the last selectee. She stated that the process of moderation was followed in respect of all the candidates for admission to M.Phil course. In other words, it is her submission that the appellant has not been singled out, which impression sought to be given by the learned counsel for the appellant. During the course of the hearing, it was pointed out that the answer scripts have been destroyed in terms of the policy of the JNU.

8. We note, in his rejoinder submissions, the learned counsel for the

appellant by conceding that now the appellant may not get the admission in M.Phil stated it is necessary for this Court to direct the JNU to frame moderation rules, so that the action of the JNU in this regard becomes more transparent.

9. Having heard the learned counsel for the parties and noting the conclusion arrived at by the learned Single Judge and the stand of the parties in their respective pleadings and through the submissions made by their counsels, this Court is of the view that the moderation process, was followed by the University with regard to all the candidates. It so happened that the appellant's marks got reduced to 41. No doubt, such reduction of marks would surely be a grievance to the appellant but the same were given to the appellant through the process of moderation, followed by the University with respect to all the candidates. As we have been informed that the answer sheets have been destroyed, the scope for calling for the same and examining them would not arise. In the facts of the case, insofar as the plea of the learned counsel for the appellant that University must frame rules as far as moderation is concerned, it is for the University to take a call on the same. Further, there are no allegations of bias against any officer of the University. In the absence of a case of bias having been set up by the

appellant, no relief can be granted to the appellant. The learned Single Judge was justified in dismissing the writ petition. The appeal is dismissed.

CM No. 42433/2017 (for stay) & 661/2018 (for early hearing)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 28, 2018/ak