



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.07.2019	Pronounced on: 31.07.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.34154 of 2018
& W.M.P.No.39685 of 2018

Ms.Priyanka Venkatesh,
D/o.Venkatesh,
Plot No.70, 71, Annamalai Nagar,
Sugarmill Road Mandapam,
Villupuram - 6. ... Petitioner

/versus/

1. The Tamil Nadu Dr.M.G.R Medical University,
Rep. by its Registrar,
No.69, Mount Road, Anna Salai,
Guindy, Chennai - 600 032.
2. The Controller of Examinations,
The Tamil Nadu Dr.M.G.R Medical University,
No.69, Mount Road, Anna Salai,
Guindy, Chennai - 600 032.
3. The Dean,
Government Villupuram Medical College,
Villupuram. ... Respondents

R3 impleaded vide Court Order dated 29.01.2019 made in
W.M.P.No.673/2018 in W.P.No.34154 of 2018 by TRJ.

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, to issue Writ of Mandamus, directing the
respondents herein to consider the representation dated
05.12.2018 and re-value the petitioners answer marks as
submitted therein and declare the petitioner as pass in Anatomy
and Bio-Chemistry in the 1st year M.B.B.S course in the
Examination conducted in November - 2018 and pass orders.

For Petitioner : Mr.AR.Karthick Lakshmanan,
for AL.Ganthimathi

For R1 & R2 : Mr.D.Ravichander, Standing Counsel

For R3 : Mr.V.Kathirvelu,
Special Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the respondents.

2. The petitioner herein joined M.B.B.S course in Government Medical College, Villupuram for the academic year 2017-2018. In the 1st year examination, she was declared fail in Anatomy papers I & II and Bio-Chemistry papers I and II. The petitioner herein applied for xerox copies of the answer script on 29.11.2018 and same was furnished to her on 30.11.2018. Since, she found error in the valuation, she made representation to the 2nd respondent on 05.12.2018, pointing out the error in valuation and in awarding marks. Since, no steps was taken by the 2nd respondent, the present Writ Petition has been filed, to issue Writ of Mandamus directing the respondents to consider the representation dated 05.12.2018 and to re-value the petitioners answer papers in Anatomy I & II and Bio-Chemistry papers-I & II and award appropriate marks and declare the petitioner as pass in Anatomy and Bio-Chemistry in the 1st year M.B.B.S course examination conducted in November-2018.

3. The petitioner herein, in the affidavit has also extracted the Questions and Answers, which were improperly valued. This Court, on 29.11.2018 directed the 3rd respondent/Dean of Government Medical College and Hospital, Villupuram to appoint an expert faculty members in the concern subject for valuation and to find out whether the answers given by the petitioner relating to 11 Questions in Bio-Chemistry and 6 Questions in Anatomy are correct, as per textbook issued by the University. Pursuant to this direction, the Dean, Government Medical College and Hospital, Villupuram, submitted a report of the expert committee consisting of 4 members, wherein, the committee members have unanimously opined that the answers given by the candidate relating to 11 Questions in Bio-Chemistry and 6 Questions in Anatomy are partly correct. Since, the expert committee has opined that the answers given by the petitioner for these Questions were partly correct, further direction was issued to the Dean, Villupuram Government Medical College and Hospital, to appoint a subject expert to value the answer script and submit report. Accordingly, the 3rd respondent has appointed an expert and submitted the report.

4. In the valuation, the petitioner herein scored 26 marks more in the Anatomy paper-I and 24 marks more in Anatomy paper-II and 24 marks more in Bio-Chemistry.

5. The learned counsel appearing for the respondents/the Tamil Nadu Dr.M.G.R Medical University, Chennai, would submit that the Division Bench of this Court in W.A(MD). No.579 of 2016, in the matter of The Vice Chancellor, Tamil Nadu Dr.M.G.R University Vs.G.Fibi and others, has held that; when there is no provision for revaluation of answer script in the University regulations, the Court cannot give a mandamus to the authority to do revaluation of the answer sheet and also relied upon the judgment of Hon'ble Supreme Court in High Court of Tripura through the Registrar General Vs.Tirtha Sarathi Mukherjee and others where the Apex Court has held that there is no legal right to claim or ask for revaluation in the absence of any provision for revaluation.

6. According to the learned counsel for the respondents, as per University Regulation, any candidate who fail to secure the minimum pass marks, their papers will be valued for the second time by a different valuer and the average of two valuation will be taken into consideration. There is no provision under the University regulation for further evaluation. Even though the answer script of the petitioner was subjected to valuation as per the High Court direction, the same should not be taken into consideration in view of the judgment passed by the Division Bench and the judgment passed by the Hon'ble Supreme Court, cited supra. Further the learned counsel for the respondents would submit that, if revaluation is ordered without provision, then it will open the floodgate and all failed candidates will seek for revaluation and there will be no end.

7. Peculiar facts of this case is that, considering the prima facie case made out by the petitioner, this Court has directed the 3rd respondent to constitute a team and value the petitioner answer papers. The averments made by the petitioner proved to be true by the expert opinion and valuation. At this juncture, the Court cannot turn a nelson eye to this fact and disallow the prayer of the petitioner. As far as the judgment of the Division Bench of this Court relied by the petitioner, which is in respect of the respondents/the Tamil Nadu Dr.M.G.R.University, the prayer sought in that petition was to re-value the clinical examination, which is impossible. Therefore, the plea for revaluation of the clinical exam was rejected. Relying upon the judgment of the Hon'ble Supreme Court rendered in Mohammed Gazi Vs. State of Madhya Pradesh and others reported in (2000) 4 SCC 342 which reads as below:

"In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit - an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good

sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia* - the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases."

8. The Division Bench of this Court referring the dictum laid down in the above cited decision of the Hon'ble Supreme Court has held that one cannot be compelled to do what he cannot possibly perform. Whereas, in this case, the revaluation has been done and found in favour of the petitioner and therefore, the judgment cited by the respondent counsel on facts not applicable to the case in hand.

9. As far as, the Hon'ble Supreme Court judgment rendered in High Court of Tripura through the Registrar General, it is a case in respect of selection to the post of Grade-I in Tripura Judicial Service. When one of the candidate filed Writ Petition for revaluation on the ground, correct answers were marked as incorrect. The Hon'ble High Court, initially dismissed the case that there is no provision for revaluation but later on review application, the Writ Petition was allowed holding that though there is no provision for revaluation, there is no prohibition to order revaluation, if Court finds patent error. Challenging this order, the Hon'ble High Court of Tirupura went on appeal to the Hon'ble Supreme Court, wherein, the submission when there is no provision which entitles the candidate to seek revaluation, the Court has no justification to allow the Writ Petition seeking mandamus to direct revaluation of papers was upheld and reiterated. In this context, the Hon'ble Supreme Court has further observed that the right to seek Writ of Mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either Writ Petition or the review petition demanding holding of revaluation.

10. In the above said judgment the Hon'ble Supreme Court has also contemplated the other possible view and has discussed at length, "Whether despite the absence of any provision, are the Courts completely denuded of power in exercise of the jurisdiction under Article 226 of the constitution to direct revaluation. In the said context, the Hon'ble Supreme Court has observed as below:

"19. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

20. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.

21. We would understand therefore the conclusion in paragraph 30.2 which we have extracted from the judgment in Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors. 2018 (2) SCC 357 only in the aforesaid light. We have already noticed that in V.S.Achuthan vs Mukesh Thakur's case reported in 2010 (6) SCC 759, a two Judge Bench in paragraph 26 after survey of the entire case law has also understood the law to be that in the absence

of any provision the Court should not generally direct revaluation."

11. In the light of the above observation of the Supreme Court and the facts of the case, no doubt the University regulations does not provide for revaluation but the expert committee appointed by the Dean, Villupuram Medical College as per the direction of this Court, has evaluated the papers of the petitioner and had concluded that the petitioner has been deprived of marks for certain answers and awarded marks for those 11 Questions in Anatomy and 6 Questions in Bio-Chemistry. If those marks are added, the petitioners will be declared as a pass candidate. If the marks is not added, she will be declared fail and she has to take up the examination again.

12. No revaluation without provision may be General-Rule but if grave injustice is done and the error is apparent as exception the revaluation can be ordered to redress the grievance. This is one such case, nearly 1/3th of the mark has been denied to the petitioner, which has made her a unsuccessful candidate. To redress the injustice meted by the petitioner, the only remedy is to direct the respondents to issue fresh mark sheet, as per the valuation made by the expert committee.

13. Accordingly, the Writ Petition is allowed. The respondents herein is directed to issue revised mark sheet to the petitioner herein taking note of the marks awarded by the expert committee in its reported dated 11.07.2019. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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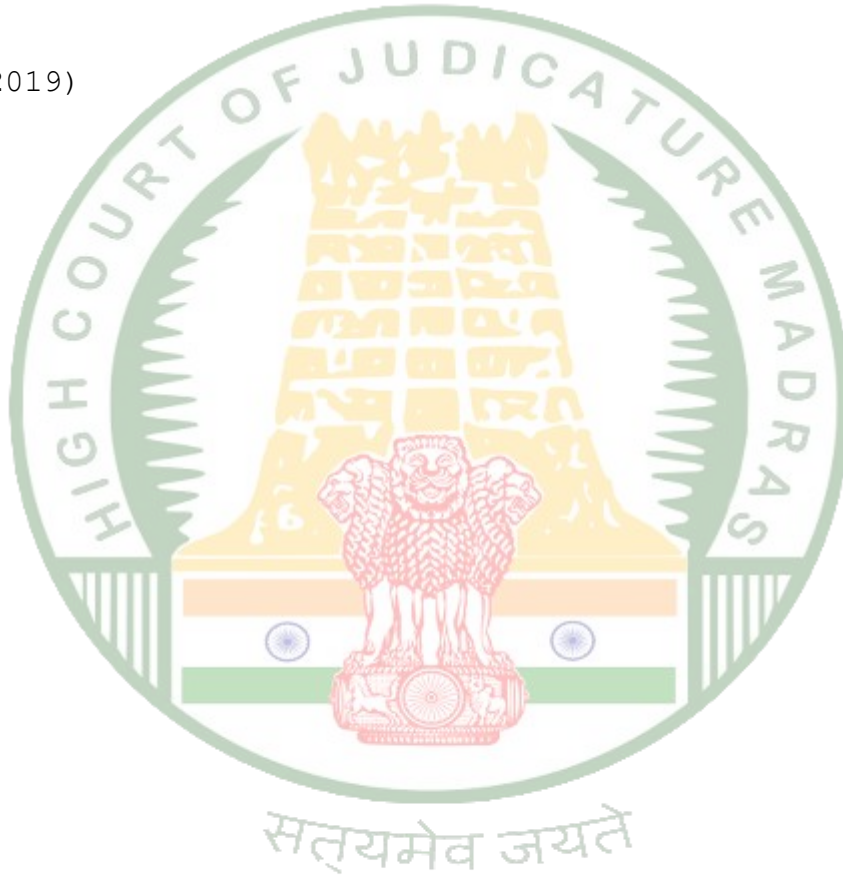
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+1 CC to M/s.A.L. Gandhimathi, Advocate sr 65551.

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MG (CO)
SP(14/08/2019)



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