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

+ LPA 120/2019

ANIMESH

..... Appellant

Through: Mr. Ranjit Sharma, Advocate with
appellant in person.

versus

THE CENTRAL BOARD OF SECONDARY EDUCATION

..... Respondent

Through: Mr. Amit Bansal, Ms. Seema Dolo and
Mr. Vipasha Mishra, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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02.12.2019

1. The appellant/petitioner is aggrieved by an order dated 07.12.2018, passed by the learned Single Judge dismissing a writ petition filed by him for issuing directions to the respondent/Central Board of Secondary Education (in short 'CBSE') to reevaluate his answer sheet of the Economics paper, for which he had sat in his Grade XII examination, in the academic year 2017-18.

2. The facts of the case lie in a narrow compass. The appellant/petitioner had appeared in Grade XII examinations, 2018 at Delhi, in the academic year 2017-18. Besides Physics, Chemistry and Maths, the appellant had also appeared in the Economics paper that carried 100 marks, divided into two parts: the written examination carried 80 marks and the practicals carried 20 marks. The appellant/petitioner scored 86 marks in Economics. Dissatisfied

with the marks he had scored in reply to Questions No. 8,10,12,17,19,20,23 and 24, the appellant/petitioner applied for a revaluation. Upon revaluation, he was informed that there was no mistake found in the marks assigned. Upon the appellant/petitioner applying for and obtaining a copy of his answer sheet, he found that improper marks had been allotted to his answers to the questions referred to herein above. The appellant/petitioner submitted a representation dated 04.7.2018 to the respondent/CBSE, but did not receive any reply.

3. Aggrieved by the fact that on account of relatively poor marks scored by him in Economics, though he had scored 95 marks each in Physics, Chemistry and Maths, he could not get admission in B.A. Economics (Hons.) in any college affiliated to the North or South Campus, Delhi University, the appellant/petitioner approached the court for relief.

4. By the impugned order, the learned Single Judge declined any relief to the appellant/petitioner by turning down the submission made on his behalf that Clause 4 of General Instructions governing valuation of the answer sheets was not mandatory in nature and held that it was the nature of guidelines required to be kept in mind by an examiner, while apportioning marks to various answers given by the candidates and to avoid any subjectivity. It was further observed that recording of total marks awarded to each answer, instead of giving a break-up of the marks by assigning separate marks to each part of the answer, could not be treated as a violation of the General Instructions. The learned Single Judge also opined that even otherwise, it was not for the court to embark into a comparison of the suggested answers provided with those given by the candidates and second-

guess the marks awarded against the answers by the examiner as this was beyond the scope of judicial review.

5. Aggrieved by the said order, the present appeal has been filed.

6. Mr. Ranjit Sharma, learned counsel for the appellant/petitioner assails the impugned order on the ground that the learned Single Judge failed to appreciate that the Instructions provided to the examiners were mandatory in nature and a mechanical evaluation of the answers has resulted in the appellant/petitioner being deprived of admission to his preferred college in the Delhi University. He submits that answers to the questions furnished by the appellant/petitioner were dot on and therefore, he deserved to be marked in terms of the marking Scheme.

7. *Per contra*, Mr. Amit Bansal, learned counsel for the respondent/CBSE supports the findings returned in the impugned order and submits that no student has a vested right to challenge revaluation of the answer sheet, once done by the subject expert of the CBSE; that the Scheme dated 31.5.2018 issued by the CBSE on the “Modality and Schedule in respect of Evaluating and Re-evaluating the Answer books” has been followed in the instant case and the answer sheets of the appellant/petitioner in respect of the subject, Economics in Grade XII examinations, 2018 had already been re-evaluated by the examiners and on revaluation, no marks were increased. It is further submitted by learned counsel for the respondent/CBSE that *qua* question No. 12, a Committee of three experts was constituted to have a relook at the appellant’s answer book and the said Committee had opined that the answer given by him is appropriate. Therefore, the Committee has recommended that full marks should be awarded to the appellant/petitioner.

8. Learned counsel for the respondent/CBSE clarifies that at the time of re-evaluating question No. 12, there was a difference of opinion between the two experts. As a result, it was decided not to change the marks of the appellant in respect of the answer given to the said question. However, in view of the subsequent report of a three member Committee constituted by the respondent/CBSE after the present appeal came to be filed, 06 marks have been awarded to the appellant as against 03 marks awarded earlier in respect of question No. 12, resulting in an increase of 3 marks in the Economics paper and taking the total tally from 86 to 89 marks.

9. Learned counsel for the respondent/CBSE further states that there is no provision for seeking further re-evaluation of an already re-evaluated answer sheet, as would be apparent on a perusal of Clause 3 (ix) of the Scheme dated 31.5.2018, for the simple reason that finality must be attached to the evaluation process and it cannot be left open ended.

10. Lastly, learned counsel for the respondent/CBSE cites a recent decision dated 17.7.2019 of this Bench in **LPA 453/2019, Paavani Gupta vs. Central Board of Secondary Education** to contend that once a student has exhausted all the remedies as per the modalities prescribed by the CBSE for re-valuation, the matter should rest there and the Court ought to refrain from stepping into the shoes of evaluator on the ground that the marks assigned to a particular answer, is not as per the marking scheme.

11. Having carefully considered the arguments advanced by learned counsel for the parties, on perusing the pleadings and examining the observations made in the impugned judgment, we are inclined to affirm the view taken by the learned Single Judge that the General Instructions issued by the respondent/CBSE for marking in respect of the Economics paper in

the academic year in question, is not mandatory, but directory in nature. No doubt, para 4 of the General Instructions states that the examiners are required to examine each part of a question carefully and allocate the marks allotted for the parts as given in the marking scheme, but in our view non-adherence to the said Guidelines/Instructions would not entitle the appellant/petitioner to claim that there has been an error on the part of the examiner in evaluating his answer sheet to the point that even after conducting a re-evaluation as has been done in his case, the court should call upon the respondent/CBSE to refer the matter to an expert body to re-examine all the answers to the question paper set for Economics. We are of the opinion that the answer sheet must reflect in clear terms that the evaluation of the answers has been done as per the value points of each answer and after concluding the evaluation, the examiner has awarded total marks for an answer, duly encircled on the left side where the answer ends, so as to avoid any confusion. But that is not to say that each part of the answer must necessarily be allocated marks separately and only then should the total marks for every answer to a question, be recorded.

12. As for the aspect raised by learned counsel for the appellant that the process of re-evaluation of the answer sheets conducted by the respondent/CBSE being incorrect in terms of the marking Scheme, the same should be re-evaluated on directions issued by the Court, we have already expressed our view in the case of Paavani Gupta (supra) wherein a similar plea was taken by the learned counsel for the appellant/petitioner therein who had prayed that the court may appoint an independent evaluator for fresh re-evaluation of the marks obtained by the student in a couple of subjects in Grade XII CBSE examinations that was turned down by citing

the decisions of the Supreme Court in the cases of Maharashtra State Board of Secondary and Higher Secondary Education versus Paritosh Bhupeshkumar Sheth, reported as (1984) 4 SCC 27, H.P. Public Service Commission versus Mukesh Thakur and Ors., reported as AIR 2010 SC 2620 and Ran Vijay Singh versus State of U.P. reported as (2018) 2 SCC 357. To buttress our view, we may extract below, para 15 of the judgment in Paavani Gupta (supra):-

“15. Thus, it is apparent that in the absence of any specific provision conferring such a right upon an examinee to have her answer books revaluated, no such direction can be issued by the Court. Admittedly, there is no provision in the Rules of the respondent/CBSE that provides for revaluation by an independent examiner and therefore, such a prayer cannot be acceded to. Taking a pragmatic view too, if independent examiners are permitted to be introduced into the system at the instance of a dissatisfied candidate, it would be unsettling the established system of examination. It is not as if an examinee is left remediless if she is dissatisfied with the declared results. She has the option of approaching the respondent/CBSE as per the modalities prescribed. In the present case, the appellant had in fact exhausted her remedies as per the modalities prescribed by the respondent/CBSE for re-valuation” (emphasis added)

13. Mr. Amit Bansal, learned counsel for the respondent/CBSE informs us that aggrieved by the judgment dated 17.7.2019 rendered in the captioned case, the appellant therein had preferred an appeal, registered as SLP (Civil) No.19436/2019 but the Supreme Court had expressed its disinclination to interfere and consequently, the SLP was dismissed. However, liberty was granted to the appellant therein to file a review petition, if so advised.

14. In view of the aforesaid discussion, we are not persuaded to interfere with the impugned order. Before parting with the case, we have requested from learned counsel for the respondent/CBSE to explain the circumstances in which a three member Expert Committee was constituted to re-evaluate the answers to question No.12 of the Economics paper in the instant case. We are told by learned counsel that though it has not been so recorded in the order dated 20.2.2019, the predecessor Bench had orally indicated in the course of submissions made by counsel for the parties that it had some doubts about the evaluation of the answer to question No.12 and in the said background, the respondent/CBSE had on its own appointed an Expert Committee to look into the matter.

15. Having regard to the averments made in the counter affidavit filed by the respondent/CBSE wherein it has been stated that at the time of the re-evaluation of the appellant's answers sheet, there was a difference of opinion between two subject experts, due to which, no additional marks were initially granted to the appellant, but now that the Expert Committee has found the answer given by the appellant to question No.12, as appropriate and has recommended that full marks should be awarded to him, he has been awarded an additional 3 marks for question No.12 thus, taking up the tally of his marks from 86 to 89 in the Economics paper.

16. We have next enquired from learned counsel for the respondent/CBSE as to whether any procedure has been prescribed by the CBSE to deal with similar circumstances, in the future. The aforesaid query has been posed in the light of the fact that in these days and times every mark or even a fraction of a mark is critical to a student who proposes to

apply for admission in different courses offered by colleges. The competition is so intense and the struggle of every student to better their score, being tremendous, it can have a serious impact on the prospects of the student in the event there is an error in the process of re-evaluation. It is a different matter that in the instant case, even after the appellant's marks in the Economics paper have increased from 86 to 89 marks, he does not meet the required norm of 95 marks in the subject of Economics for admission to the Delhi University Campus colleges.

17. In ordinary course, in circumstances where there is a cleavage of opinion between subject experts then, one would expect a system to be in place to deal with such a situation by constituting a Committee of experts to take a view in the matter or for the matter be referred to a third expert for an opinion so that the majority view can prevail. In our opinion, this would go a long way in streamlining the system.

18. In the light of the view expressed above, while dismissing the present appeal on merits, the respondent/CBSE is directed to file a brief affidavit on the above aspect and clearly state therein as to whether there is any such procedure prescribed that deals with the situation mentioned above and if not, the steps proposed to be taken that can address such an eventuality effectively in the future. Needful shall be done within four weeks with a copy furnished to the learned counsel for the appellant/petitioner.

19. In view of the subsequent developments that have occurred during the pendency of the present appeal, the respondent/CBSE is also directed to issue a fresh marks sheet in favour of the appellant, after increasing the marks scored by him in the subject of Economics, from 86 to 89 marks.

Needful shall be done within two weeks from today.

20. List on 28.1.2020, to await the affidavit of the respondent/CBSE.

HIMA KOHLI, J

ASHA MENON, J

DECEMBER 02, 2019

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