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

+ **LPA No.453/2019 & CM No.31621/19**

PAAVANI GUPTA

.....Appellant

Through: Mr. V.K. Gupta and Mr. Ajay Gupta,
Senior Advocates along with Ms.
Mona Singh and Ms. Ruchira Gupta,
Advocates

versus

**CENTRAL BOARD OF SECONDARY
EDUCATION**

.....Respondent

Through: Mr. Amit Bansal, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

17.07.2019

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1. This appeal is directed against the judgement dated 04.07.2019, passed by the learned Single Judge dismissing WP(C) No.7062/2019 filed by the appellant/petitioner seeking directions to the respondent/Central Board of Secondary Education (in short 'CBSE') to conduct a re-valuation of the marks obtained by her in class 12th CBSE AISSCE Examination, conducted in March, 2019.

2. The facts of the case as set out in the writ petition are that the appellant was a student in Delhi Public School, RK Puram with an outstanding academic and extra-curricular career. In the examination conducted by the respondent/CBSE in March, 2019, the appellant had sat for

the exams in the subjects of Accountancy, Economics, Business Studies, Mathematics and English Core. The marks she had secured were as follows: 98/100 in Accountancy, 98/100 in Economics, 96/100 in Business Studies, 95/100 in Mathematics and 72/100 in English Core, with a total percentage of 91.8%.

3. Dissatisfied with the marks secured by her, particularly in English Core, the appellant applied for rechecking/re-evaluation of her answer sheets as per the policy of the respondent/CBSE. The modalities prescribed by the respondent/CBSE for this purpose is in three stages. Stage one is of verification of marks, Stage two permits obtaining of a photocopy of the evaluated answer books and Stage three is of re-valuation. On 04.05.2019, the appellant applied for verification of her marks. Upon verification, the respondent/CBSE notified the appellant on 08.05.2019, that there was no mistake found in the calculation of the marks awarded to her. On 20.05.2019, the appellant applied for obtaining photocopies of the evaluated answer books of all four subjects, namely, English Core, Accountancy, Business Studies and Economics. On 23.05.2019, she received photocopies of these answer sheets alongwith the marking scheme on the basis whereof the answer sheets of each subject were evaluated/checked by the respondent/CBSE. On 25.05.19, the appellant applied for re-valuation of marks in three subjects, namely, English Core, Accountancy and Economics, submitting alongwith it, a detailed chart with reasons for seeking re-valuation of marks in these three subjects.

4. On 13.06.2019, the revaluated mark sheets were sent by the respondent/CBSE wherein the appellant was awarded additional 15 marks in English Core thus raising her marks in the said subject from 72 to 87. There

was revision of one mark in the Accounts paper thus increasing her marks from 98/100 to 99/100. However, no additional marks were awarded to her in Economics. As a result, the total percentage of marks received by the appellant increased from 91.8% to 95%.

5. The grievance of the appellant is that the re-valuation of her answer sheets carried out by the respondent/CBSE was incorrect and not as per the prescribed marking scheme. According to her, adherence to the marking scheme would have resulted in her securing 98 marks in English instead of 87 marks and 99 marks in Economics instead of 98 marks. Since repeated communication with the respondent/CBSE did not result in any action, the appellant filed a writ petition seeking directions in the nature of mandamus to the respondent/CBSE for conducting a fresh re-valuation of the marks obtained by her in Class 12th CBSE AISSCE Examination, by appointing an independent evaluator.

6. Learned counsel for the respondent/CBSE contended before the learned Single Judge that since re-valuation had already been carried out once in terms of the modalities prescribed by CBSE under Clause (III)(f) of the Circular dated 02.05.2019, no appeal or review against the said re-valuation could be entertained and the prayer in the writ petition could not be allowed. *Per contra*, counsel for the appellant argued that it was not an appeal or review against the re-valuation conducted by the respondent/CBSE but an effort to seek redressal from the Court in the absence of any provision for appeal or review against the said re-valuation.

7. On a consideration of the submissions made and the judgements cited, the learned Single Judge concluded that re-valuation had already been done once and the provisions of the scheme of re-valuation of the

respondent/CBSE did not provide for any appeal or review. Citing the judgement of the Supreme Court in Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors. reported as (2018)2 SCC 357, the Court concluded that it would not be appropriate to order any further re-valuation by an independent examiner particularly when no glaring error was brought forth by the appellant/petitioner in the re-valuation of her marks by the respondent/CBSE. Reliance was also placed on the judgment dated 13.07.2015 of the learned Single Judge of this Court in Atul Kumar Verma Vs. Union of India, (WP(C) 5719/2015), to conclude that no case was made out by the appellant/petitioner for judicial review in the facts and circumstances of the case.

8. Aggrieved by the impugned judgment dated 04.07.2019, the appellant has preferred this appeal praying *inter alia* that the Court may appoint an independent evaluator for fresh re-valuation of the marks obtained by her in English Core and Economics in Class 12th CBSE AISSCE Examination.

9. Mr. V K Gupta, learned Senior Counsel appearing on behalf of the appellant contends that the learned Single Judge had misdirected herself by dismissing the petition and has misconstrued the scope and ambit of the decisions in the case of Ran Vijay Singh & Ors. (supra) and Atul Kumar Verma (supra). He argues that there was a grave mistake committed by the respondent/CBSE in evaluating the answer sheets of the appellant and a perusal of the answer sheets would show that the evaluators have not adhered to the marking scheme prescribed by the respondent/CBSE wherein marks had to be awarded as per suggested value points and there should have been an avoidance of deduction of marks while evaluating the answers. He submits that the error in the evaluation is discernible from the fact that

on rechecking at the Stage one itself, there was an improvement of one mark in the Accounts paper and an improvement of fifteen marks in the English Core paper. It is thus contended that since the entire career of a bright student is at stake due to the callous attitude adopted by the respondent/CBSE therefore, an independent re-valuation ought not to be denied to the appellant.

10. Mr. Amit Bansal, learned counsel for the respondent/CBSE opposes the appeal and submits that there is no error on facts or in law in the impugned judgement dated 04.07.2019 and the present appeal was liable to be dismissed.

11. Having heard the learned counsel for the parties and perused the impugned judgment, we do not find any merit in the present appeal. In the case of Ran Vijay Singh & Ors. (supra), the Supreme Court has clearly held that there can be interference in the results of an examination only in rare and exceptional situations and to a very limited extent. No doubt, the case of Ran Vijay Singh & Ors. (supra) relates to key answers being incorrect, but in that case, the Supreme Court has distilled the conclusions arrived at in the earlier decisions on the issue and summarized the same in paras 30 & 31 in the following words: -

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an

answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

*31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. **The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.***

(emphasis added)

12. In the present case, the correctness of evaluation of the answer sheets of the appellant has been questioned on the ground that it is not as per the marking scheme.

13. In H.P. Public Service Commission Vs. Mukesh Thakur and Ors.,

reported as **AIR 2010 SC 2620**, the Supreme Court had the occasion to deal with the question of re-valuation and while overturning the judgment of the High Court which had allowed re-valuation by another examiner, observed as under:-

“19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent No. 1 only.”

20. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.”

14. In Ran Vijay Singh (supra), the Supreme Court has quoted with approval, its earlier decision in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, reported as **(1984) 4 SCC 27**, wherein it was observed as follows: -

“12. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners.

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29. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by

professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.”..It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.”

(emphasis added)

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 re-valuation 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.

16. In Salil Maheshwari Vs. The High Court of Delhi, reported as **MANU/DE/2085/2014**, a co-ordinate Bench of this Court held as under : -

“20. In matters of judicial review which involve examination of academic content and award of marks, the previous rulings of the Supreme Court and other authorities have cautioned a circumspect approach, leaving evaluation of merits to the expertise of academics. However, if the approach complained of falls within the traditional parameters of judicial review - i.e. illegality, irregularity; non- consideration of material facts

or consideration of extraneous considerations; or lack of bona fides in the decision making process as contrasted with the decision itself, the action or decision can be corrected in judicial review. The last category is where the decision is so manifestly and patently erroneous that no reasonable person, similarly circumstanced, could have taken it, the court would intervene.”

(emphasis added)

17. In the instant case, as noted above, a procedure for evaluation has been prescribed by the respondent/CBSE and in the absence of any fact disclosing any bias, *malafides*, non consideration of the relevant factors etc., no ground for interference in judicial review is made out.

18. The appellant may be unhappy that she could not achieve the scores she had expected but that itself would not be a ground for the Court to interfere. It has rightly been observed by the learned Single Judge that there is no glaring error apparent on the face of the record and the appellant has failed to make out a case for the relief sought.

19. In the light of the above discussion, we find no merit in this appeal which is dismissed *in limine*, alongwith the pending application.

ASHA MENON, J

HIMA KOHLI, J

JULY 17, 2019

s/vaishali/mk