

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22290-2020(O&M)

Date of decision:27.01.2021

Anshul Garg and others

.....Petitioners

Versus

Panjab University and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Anurag Jain, Advocate for the petitioners

Mr.Arun Kumar Bakshi, Advocate for respondent No.1&2

Mr. Ishmeet Singh, Advocate for respondent no.3

ANIL KSHETARPAL, J.

The petitioners herein wrote terminal/final semester/final year/end year examination of 3 years degree course of Bachelor of Commerce (Hons). They are aggrieved of refusal to re-evaluate the answer sheets/books of the subject “Sectoral Aspects of Indian Economy”. Due to the COVID-19 pandemic online examination was held in view of the guidelines issued by the University Grants Commission.

The question which needs adjudication is :-

“Once the regulations made by the Supreme body of the University – the Senate provides for re-evaluation of the answer books, whether the Controller of Examination, in the absence of a specific decision of a smaller Committee, has the power to decide that the answer books cannot be re-evaluated with respect to an online examination in

which the students after writing answer books in their own handwriting have sent them to the University?

Before this Court answers the question posed, it would be appropriate to notice the scheme of the Panjab University Act, 1947. Section 8 provides that the Supreme Authority of the University shall vest in the Senate which is a body corporate. Also, Section 20 provides for the constitution of a Syndicate which has been given powers to run the executive government of the University. Section 31 enables the Senate, with the sanction of the Government, to frame regulations consistent with the provisions of the Act. No doubt, sub-Section 5 of Section 20 also enables the Syndicate to make rules, however, those are for carrying on the Executive Government of the University. At this stage, it would be appropriate to extract Sections 8, 11, 20 and 31 of the Act.

“8. Body Corporate.—Subject to the provisions of this Act the supreme authority of the University shall be vested in the Senate which shall consist of the—

- (a) Chancellor;
- (b) Vice-Chancellor;
- (c) *ex officio* Fellows; and
- (d) Ordinary Fellows.

11.Senate:- (1) [***]

(2) **Senate.**—The Senate shall have the entire management of and superintendence over the affairs, concerns and property of the University and shall provide for that management and exercise that superintendence, in accordance with the Statutes, Rules and Regulations for the time being in force.

(3) No act done by the University shall be deemed to be invalid merely by reason of any vacancy among

either class of elected Ordinary Fellows, or by reason of the total number of Ordinary Fellows, or of members of the profession of education to be included among Ordinary Fellows, being less than the minimum prescribed by this Act.

20. Syndicate.—(1) The Executive Government of the University shall be vested in the Syndicate which shall consist of:—

(a) the Vice-Chancellor as Chairman

(b) the Director of Public Instruction, Punjab

[* * *]

(ba)] Director of Education, Himachal Pradesh;

[* * *]

(bb) The Director of Public Instruction, Haryana, and]

(bc) The Director of Public Instruction, Chandigarh.]

(c) not less than twelve or more than fifteen ex-officio or Ordinary Fellows elected by the Faculties in such manner and for such period as may be prescribed by the Regulations.

(2) The Regulations referred to in sub-section (1) shall be so framed as to secure that a majority of the elected members of the Syndicate shall be Heads of or teachers in Colleges affiliated to the University or Colleges and teaching Departments maintained by the University.

(3) If in any election the question is raised whether any person is or is not the Head of or a teacher in a College affiliated to the University or a College of teaching Department maintained by the University the question shall be decided by the Vice-Chancellor.

(4) The Syndicate may delegate any of its executive functions to the Vice-Chancellor or to the Sub-Committees appointed from amongst the members of the Syndicate or to a Committee appointed by it which may include persons who are not members of the Syndicate or to any other authority prescribed by Regulations.

(5) The Syndicate may make such rules not inconsistent with the provisions of this Act and the

Regulations, as they may deem necessary, for carrying on the Executive Government of the University as specified in sub-section (1)].

31. Regulations.—(1) The Senate, with the sanction of the Government may from time to time make regulations consistent with this Act to provide for all matters relating to the University.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

- (a) the procedure to be followed in holding any election of Ordinary Fellows;
- (b) the proportion in which the various Faculties shall elect their representatives to the Syndicate and the mode in which such election shall be conducted;
- (c) the procedure at meetings of the Senate, Syndicate and Faculties, and the quorum of members to be required for the transaction of business;
- (d) the appointment of Fellows and others to be members of Boards of Studies, and the procedure of such Boards and the quorum of members to be required for the transaction of business;
- (e) the appointment and duties of the Registrar and of officers and servants of the University, and of Professors, Readers and Lecturers appointed by the University;
- (f) the appointment of Examiners, and the duties and powers of Examiners in relation to the examinations of the University;
- (g) the form of certificate to be produced by a candidate for examination under Section 25, and the conditions on which any such certificate may be granted;
- (h) the registers of graduates and students to be kept by the University, and the fee (if any) to be paid for the entry or retention of a name on any such register;

- (i) the inspection of Colleges and the reports, returns and other information to be furnished by Colleges;
- (j) the registers of students to be kept by Colleges affiliated to the University;
- (k) the rules to be observed and enforced by Colleges affiliated to the University in respect of the transfer of students;
- (l) the fees to be paid in respect of the courses of instruction given by Professors, Readers or Lecturers appointed by the University;
- (m) the residence and conduct of students;
- (n) the courses of study to be followed and the conditions to be complied with by candidates for any University Examination, 50* * * and for degrees, diplomas, licences, titles, marks of honour, scholarships and prizes conferred or granted by the University;

51(o) * * *

- (p) the conditions to be complied with by candidates, not being students of any College affiliated to the University, for degrees, diplomas, licences, titles, marks of honour, scholarships and prizes conferred or granted by the University;
- (q) the alteration or cancellation of any rules, regulation, statute, or bye-law of the Punjab University in force at the commencement of this Act by virtue of Section 40;
- (r) the preparation and maintenance of annual accounts and the audit thereof and the submission of the report thereon to the Government; and
- (s) the constitution for the benefit of the officers, teachers, clerical staff and servants of the University, of such pension, insurance and provident funds as it may deem fit;

52[(t) adequate arrangement to ensure security of service for teachers of the Colleges affiliated to the University

- (u) adequate arrangement for proper administration of the colleges other than Government Colleges affiliated to the University].

The Senate has framed various regulations. In Volume II, Regulation 31.1 provides for re-checking whereas Regulation 25 provides for re-evaluation for answer books of B.Com degree course. Regulation 21 of the amended regulation made on 15.12.2018 also provides for re-evaluation. Volume III of the Panjab University Calendar lays down detailed procedure required to be followed for re-evaluation of the answer books for examination.

In view of the COVID-19 pandemic, there was a delay in the conduct of examinations by the educational institutions. The University Grants Commission issued advisory to the colleges and universities to hold terminal/end year/ final semester examination of the courses so as to enable the students to plan their future and take further admissions. In pursuant thereto, the respondent-University decided to hold online examination of the final year degree course of Bachelor of Commerce. For that purpose, an online meeting of the Co-ordination Committee under the Chairmanship of the Vice Chancellor constituted by the Syndicate was held on 02.09.2020 to deliberate the issue of conduct of final year semester examination. The minutes of the meeting held on 03.09.2020 has been annexed as Annexure R-1 with the written statement. The plan worked out by the Controller of Examination for conducting online examination was approved. On 04.09.2020, the minutes of the meeting were approved by the Vice-Chancellor.

On 16.09.2020, in continuation of the guidelines issued on 15.09.2020, the Controller of Examination declared that there would be no provision for re-checking or re-evaluation of the answer books of the online examination. On 30.9.2020, the online examinations were concluded. On 10.10.2020 the result of the examination was declared. The petitioners had made a request for re-evaluation which has been rejected. The petitioners did get an opportunity to have a look at the copy of the answer sheets under Right to Information Act, 2005.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book. Learned counsel for the petitioners has contended that the Controller of Examination has no jurisdiction to amend the regulations framed by the Senate and therefore, the decision is liable to be set aside. From perusal of the Act and the rules and the regulations framed, it is apparent that the Senate is the supreme authority and once in the regulations re-evaluation has been provided, then the Controller of Examination has no jurisdiction to take a decision to the contrary. He further contended that even the executive power of the Vice-Chancellor under regulation 14 of the Panjab University Calendar Volume II does not enable him to amend the regulations framed by the Senate.

On the other hand, learned counsel representing the University has contended that a conscious decision has been taken by the Co-ordination Committee constituted by the Syndicate to exclude the provision for re-evaluation of the answer books while approving the procedure to be followed for online examination. He further contended

that the aforesaid decision has been approved by the Vice-Chancellor. He also relies upon the judgment in '**Ajay Kumar Kukreja vs. CAT, Chandigarh and another**' 2012 (1) PLR 165.

This Court has carefully analysed the arguments of the learned counsel for the parties and perused the paper book.

On careful perusal of the minutes of meeting of the Co-ordination Committee held on 02.09.2020, it is apparent that no decision of omitting or deleting the provision for re-checking and re-evaluation of the answer books was taken in the meeting. On careful reading of the minutes of the meeting of the committee, it is apparent that the proposal prepared by the Controller of Examination to conduct final semester online examination was approved. The University has now taken a stand that since in the minutes of meeting there is no provision for re-checking/re-evaluation of the answer books, therefore, the provision for re-checking/re-evaluation would be deemed to have been deleted/omitted. It may be once again noted here that in the meeting there is no decision that for online examination, the regulations already framed providing for re-evaluation of the answer books would stand amended or modified or deleted. In such a situation, particularly when the Supreme Body of the University has already made a provision for re-checking and re-evaluation of the answer books, it would not be appropriate for this Court to accept the contention of the learned counsel for the respondent-University that the decision providing for re-checking and re-evaluation would not apply to the online examination. The examination can be conducted in various manners like physically

attempting the paper or by oral or practical or online examination. As per Oxford Learner's Advanced Dictionary, the word 'examination' is defined as under:-

“a formal written, spoken or practical test, especially at school or college, to see how much you know about a subject.”

Thus, the word 'examination' would take within its sweep all the modes of conducting examination. Hence, the stand of the University that the regulation providing for re-checking and re-evaluation does not apply to online examination cannot be countenanced. At this stage, it would be relevant to note that even in online examination the students were required to write their answers on A-4 sheets and thereafter, either send it to the University online or through registered post. Thus, the record of the answer sheets is very much available with the respondent-University. In fact, the petitioners have been supplied the copies of the answer books under Right to Information Act, 2005.

Still further, it may be noted here that the Controller of Examination, on the basis of an inference, has taken a stand that the provision for re-checking and re-evaluation of the answer books submitted in the online examination stands deleted because the minutes of the meeting of the Co-ordination Committee does not provide for the same. Such inference drawn by the Controller of Examination does not have a sound basis. Once a specific regulation does provide for re-checking and re-evaluation of the examination and online examination is only one mode of conducting the examination. Hence, the regulations

for re-checking and re-evaluation will apply to the answer books submitted by the students in the online examination.

From careful reading of the Calendar of the Panjab University various regulations have been notified by the Senate. It is providing for re-evaluation of the answer books in annual, supplementary, bi-annual and semester examinations of theory papers. Re-evaluation is not permissible in case of a practical examination of different subjects or papers, sessional marks, internal assessment projects reports, dissertations, thesis and viva voce. Thus, the Senate while making the regulation intended to exclude the provision for re-evaluation only of the examinations conducted in the above-mentioned manner and the manner 'ejusdem generis' to it. The aforesaid regulation does not exclude an online examination. At this stage, it would be appropriate to extract relevant portion of Chapter C of the Calendar Volume III, issued in the year 2019:-

“The system of Re-evaluation of answer books will be continued.

A candidate who wishes to seek re-evaluation of his/her answer book/s may apply for re-evaluation to the Assistant Registrar (Re-evaluation), Panjab University, Chandigarh-160014 on the prescribed application form accompanied with a fee of Rs.300/- per answer-book for Bachelor Degree level courses and Rs.350/- for Postgraduate courses alongwith the detailed marks card/certificate, in original.

1. Re-evaluation is permissible in case of Annual, Supplementary, Bi-annual and Semester examinations conducted by this University only in theory papers. Re-evaluation is not permissible in case of practical examinations in different subject/s or paper/s sessional marks, internal assessment, project report, dissertations, thesis and viva voce.”

No doubt, the Vice-Chancellor does have powers under regulation 14, however, no specific decision of the Vice-Chancellor to this effect has been brought to the notice of the Court. The Vice Chancellor while approving the minutes of the Co-ordination Committee on 04.09.2020, did not take a conscious decision that there would be no provision for re-checking and re-evaluation of the answer books of the online examination.

This matter can be examined from yet another angle. As per proposal of the online examination which was approved, it is apparent that the students were required to download the question papers from the University website on the day of the examination and after attempting the question papers, they were required to send the scanned soft copy of the answer book in pdf format through an email. It was further required that the answers shall be attempted on A-4 size papers by the student in his/her own handwriting. Thus, it is apparent that the online examination conducted by way of a written examination and was not conducted by way of practical examination or sessional marks or internal assessment or project report or dissertations or thesis or viva voce. Further, from a careful reading of part C of Volume III of the Calendar published in the year 2009, it is apparent that re-evaluation of the answer books has been provided. The answer books, as noticed above, are available with the University. Therefore, the Controller of Examination is not correct in deciding that there is no provision for re-evaluation of the answer books.

Still further, the alleged online examination is only to the

extent of uploading the question paper at 8:30 am on the date of the exam. Remaining procedure for writing answers to the question paper remains the same. The only addition was that the question paper would be attempted by the candidate from a remote location and the scanned answer book shall be sent through an email. Even an option had been given to the students who faced network problem to deposit the hard copy of the answer book to the University within the stipulated time or send it via registered post. Further, the examination plan as approved by the Committee cannot be said to be a complete code to the exclusion of the regulations. Various other provisions made in the regulations would continue to govern the online examination except to the extent they are specifically excluded.

Learned counsel for the respondent places reliance on the judgment passed in **Ajay Kumar Kukreja (supra)**. This Court has carefully read the judgment passed by the Division Bench. In the year 2008 the Railway Department conducted a departmental examination in which by the writ petitioner failed. The Central Administrative Tribunal held that in the absence of any specific rule authorizing re-checking and re-evaluation, it would not be appropriate to order re-checking and re-evaluation of the answer books. The Division Bench, after examining various judgments, upheld the decision of the Central Administrative Tribunal. In the present case, the aforesaid judgment has no application particularly when the provision for re-evaluation of the answer sheets/books does exist.

This aspect can be examined from yet another angle. It is

not in dispute that the Senate is the Supreme Authority of the University. As per Regulation 31.1, the Senate frames regulations with the sanction of the Government. Once the regulations have been framed providing for re-checking and re-evaluation, neither the Co-ordination Committee constituted by the Syndicate has the power to amend or delete the same nor it ever exercised such power in the present case.

Keeping in view the aforesaid facts, the decision of the Controller of Examination dated 16.09.2020, is set aside. The University is directed to reevaluate the answer books as already requested by the writ petitioners.

Consequently, the writ petition is allowed.

27.01.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

**(ANIL KSHETARPAL)
JUDGE**