

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4192-2022

Reserved on 12.10.2022

Pronounced on: October 27, 2022

Maharshi Dayanand University and anr.

....Petitioners

vs.

Yaanshu Barak

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Deepak Balyan, Advocate,
for the petitioners.

HARKESH MANUJA J.

The present revision petition has been preferred at the instance of the petitioners-defendants challenging the orders dated 06.06.2022 and 22.07.2022 passed by both the courts below, whereby, an application under Order 39 Rules 1 and 2 CPC filed at the instance of respondent-plaintiff, has been allowed.

Facts leading to the present revision petition are that a suit was brought at the instance of the respondent-plaintiff under the following circumstances:-

- (i) the respondent being a student of IIInd semester, Bachelor of Technology (Civil Engineering), academic session 2020-21 appeared in his semester examination;
- (ii) the result was declared on 20.05.2022 and the respondent was awarded 22 marks out of the total of 75, in the subject of Basic Electrical Engineering; important to note here that in the other subjects his SGPA was 9.6 being an overall meritorious student;
- (iii) on 27.05.2022, the respondent-plaintiff applied for re-evaluation and simultaneously also applied for branch sliding from Civil Engineering to Computer Science Engineering, vide application

No.16., a right available to first year student to change his branch;

- (iv) the petitioners-defendants issued provisional merit list pertaining to the applications made by the students for branch sliding and fixed meeting of the Branch Sliding Committee for 07.06.2022; aggrieved of the action of petitioner-university for having failed to declare result of re-evaluation and before that having scheduled the meeting of branch sliding committee, the respondent-plaintiff filed a suit for declaration impugning the aforesaid action of the petitioners-defendants as regards fixing of meeting for 07.06.2022 along with seeking mandatory injunction for directing it to hold the same after declaration of re-evaluation result. Along with the suit, the respondent-plaintiff also filed an application under Order 39 Rules 1 and 2 CPC for seeking interim injunction in this regard.

The petitioners-defendants contested the suit by filing a detailed and comprehensive written statement, which may thus, shortly stated; that the respondent-plaintiff got 22 marks in Civil Engineering and thus, being a case of reappear could not be considered for branch sliding; consideration has to be strictly done as per the provisions/guidelines, which cannot be thrown to the winds as the same has to be done within 21 days from the date of announcement of result; and right of branch sliding is available to the students, who have passed on the last date of submission of application for branch sliding.

Considering the facts and circumstances of the present case as well as guidelines/regulations produced by the petitioners-University, the learned trial court vide its order dated 06.06.2022 partly allowed the interim injunction application to the extent that the petitioner-University can go ahead with their meeting scheduled for finalizing the list of candidates for

branch sliding, however, they shall reserve one seat of Computer Science stream, which shall be finalized after declaration and consideration of re-evaluation result of the respondent-plaintiff.

Aggrieved against the order dated 06.06.2022, the petitioner-University filed appeal bearing CMA-48-2022, which has also been dismissed by the court of learned Additional District and Sessions Judge, Rohtak, vide its impugned order dated 22.07.2022, by holding that the result of re-evaluation of the respondent-plaintiff, which was declared on 13.06.2022, wherein, he was awarded 30 marks in place of 22 marks out of the total of 75 shall relate back to the date when his original result was declared and the same was to be considered while determining his right of branch sliding.

By way of present revision petition, challenge has been made to the orders dated 06.06.2022 and 22.07.2022 passed by both the courts below.

Referring to instructions dated 13.02.2017 (Annexure P-6) at page 65 of the paper book, it has been contended by learned counsel for the petitioner-University that the branch sliding/branch change has to be made strictly according to the merit list prepared by the Colleges on the basis of total marks obtained by a student in First Semester University Examination only and those, students, who have passed in all the subjects on the last date of submission of application are eligible only for change of branch. He further submits that the change of Branch has to be completed within 21 days of the announcement of First Semester result and no application can be considered after 30th September. In addition, learned counsel for the petitioner-University also informs that as per University

Calendar Vol.II (Part-B) as amended up to 01.05.2009; the Controller of Examination has to ordinarily declare the results of re-evaluation within 45 days of the beginning of the session; he further submits that the marks obtained as a result of re-evaluation of paper of the last exam of the course are not to be counted for determining the position in the order of merit, distinction or award of gold medal and in case the result of a student is delayed in the process of re-evaluation, he/she is not allowed to the consequential benefits on that account.

I have heard learned counsel for the petitioner-University and perused the record, I find no substance in the aforesaid submissions.

In the facts and circumstances of the present case, the original result was declared on 20.05.2022, wherein, the respondent-plaintiff scored 22 marks out of the total of 75 in Civil Engineering examination. He applied for re-evaluation on 27.05.2022, simultaneously, also moved an application for branch sliding/branch change from Civil Engineering to Computer Science Engineering. Though, it has been submitted on behalf of the petitioner-university that ordinarily the result of re-evaluation can be declared within 45 days of the beginning of the session, however, considering the fact that the substantial rights of a student were involved, his entire career being at stake, the petitioner-university being his guardian, instead of taking all possible technical stand was required to show some kind of promptness while considering the re-evaluation application so far as declaring result thereupon before considering the application of Branch sliding/branch change. It is in fact important to quote here para 3 from a judgment rendered by Patna High court in the case of **Akhalesh Kumar and others Vs. Aryabhatta Knowledge University Mithapura, Patna**

through its Vice Chancellor and others, 2021 (2) PLJR 117 which reads as under:-

“31. This Court is firmly of the view that the University is not required to take any rigid or pedantic stand because it ought to be conscious of the fact that it is dealing with the lives of the students, who are the wealth of the nation. The growth of a University is largely dependent on Patna High Court CWJC No.7692 of 2020 dt.19-02-2021 the quality of the students that it churns out. University does not remain a place only for learning the tricks of the trade or expertise in a particular field but it also must endeavour to assist the students in developing a complete personality, specially in the subject which they are pursuing. If a University has a large number of grieving students that they have not been assessed properly, it would not be good for the status and reputation of the University. At the same time, every self-assessment of the student is not to be taken as the correct assessment. This is a tight rope walk for any educator or the University.”

In the present case, the meeting of Branch Sliding Committee was fixed for 07.06.2022, whereas, the result of re-evaluation was declared on 30.06.2022. The stand taken by the petitioner-University, placing reliance upon letter dated 13.07.2017 to the effect that the branch change has to be done as per merits of those students, who have passed in all the subjects on the last date of submission of application, even has no legs to stand upon, in view of the fact that the present is not a case of re-appear in examination but is a case of re-evaluation wherein, the respondent was awarded 30 marks and was declared pass. As has been rightly pointed out by both the courts below, having placed reliance upon two judgments

rendered by this Court to the effect that the re-evaluation of result would relate back to the date of original declaration of the result. Relevant portion of two judgments titled as **“Smrity v. Kurukshetra University, Kurukshetra”, 2017 (3) SCT 282 (P&H)** and **“Tejinder Singh vs. Punjab University”, 2012 (4) RSJ 136 (P&H)** is reproduced hereunder:-

“Para 6 of Smrity’s case (supra)

The answer to this question is not far-fetched because it appears that there was wrong evaluation initially by the examiner because in reevaluation, it has been found that she had more marks to her credit than what was awarded by the examiner initially. Had the evaluation been done properly initially then, the petitioner would not have to face this kind of difficulty through which she had passed. Secondly, the petitioner had applied for re-evaluation much before she took admission in the PGDCA Course, i.e. three months before the date on which she had applied for the PGDCA Course but the University did not re-evaluate the answer-sheet of the petitioner, rather declared the result of the petitioner after three months thereafter. In that situation, the judgment relied upon by the petitioner, of the Himachal Pradesh High Court, rendered in the case of Arun Gautam and others (supra) is fully applicable in which similar issue was involved and the Division Bench has held that “when the fault was rectified by the university in the revaluation, the petitioners are entitled to all the advantages that accrued to all the candidates who came out successfully.” Similarly, the declaration of re-evaluation result on 16.12.2016, the petitioner would also be similarly placed with those students who had passed the examination initially. If that is the position, then the University cannot deny the admission to the petitioner only on the ground that the petitioner is seeking admission in the PGDCA Course and not seeking promotion in the same course to a higher semester. Moreover, the process of re-evaluation is in the hands of the University who has taken six months' time. All these facts goes in favour of the petitioner

and thus, to my mind, the impugned orders are totally illegal and, hence, the same are hereby set aside. The writ petition is allowed accordingly.”

Paras 3 and 4 of Tejinder Singh's case (supra):-

I have heard learned counsel for the parties at length. The issue of delay in declaring the result of re-evaluation has been considered by a Division Bench of this Court in Abhijeet Partap Singh Chaudhary vs. Punjab University, Chandigarh and others (CWP No.18731 of 2007 decided on 14.2.2008) wherein it has been observed as under:- “So, accepting the above observation, we are of the considered view that the petitioner cannot be allowed to suffer on account of lapse on the part of the University in delaying the result of re-evaluation. Therefore, we accept this petition and direct the respondent-University to allow the petitioner to join classes on 6th Semester forthwith. The respondents shall arrange for extra classes so as to complete the syllabus of fifth semester. The petitioner shall be allowed to appear in the examination of fifth and sixth Semesters and the remaining uncleared papers of third semester and fourth semesters in accordance with the Rules of the University.” Apart from that, even on first principle, I do not see any wisdom in fixing cut-off date as a ground to deny further admission when re-evaluation of answer books applied for within the time permitted and late declaration of result thereof lies exclusively in the hands of the University for which a candidate cannot be penalized. The principle of “relation back” would come to the rescue of the petitioner. I would apply the equitable principle to this case. No other ground was pressed or pleaded before this Court other than the effect of the cut-off date.”

In view of the law laid down by this Court in the aforesaid two judgments, once, the declaration of result of re-evaluation is to relate back to the date of original declaration of result, the interpretation and the

reliance placed upon by learned counsel for the petitioner to clause 10 of the letter dated 13.02.2017 (Annexure P-6) cannot come to its rescue. In fact, the declaration of result of re-evaluation on 13.06.2022, stood relate back to 20.05.2022 i.e. the original declaration of result, meaning thereby, the respondent was also a student, who passed in all the subjects on the last date of submission of his application for branch sliding as on 27.05.2022 for all practical intents and purposes. Further, present case is merely of re-evaluation and not of reappear. The court cannot even lose sight of the important fact that the respondent-plaintiff has overall been a meritorious student having scored SGPA of 9.6 in all the other subjects besides the subject of Civil Engineering wherein he got 30 marks out of 75 on re-evaluation. Still further, in case the marks obtained after re-evaluation are not to be taken into consideration, its very purpose would be defeated. In addition, a student cannot be made to suffer on account of negligence on the part of the examiner in evaluating the answer sheets, more so when, the previous evaluation made is proved to be demonstrably wrong.

Further, the reliance placed upon certain clauses of University Calendar Vol.II (Part-B) as amended up to 01.05.2009, so as to contend that ordinarily result of re-evaluation can be declared within 45 days of beginning of the session and any delay in declaration of result in the process of re-evaluation, the student cannot be allowed consequential benefits is wholly misconceived in the facts and circumstances of the present case.

At the cost of repetition, it is again pointed out here that the career of a student is the most important and sensitive issue, which can materially affect the whole of his life and thus, cannot be dealt with by

applying hyper-technical approach by the University authorities in order to defeat his rights. I also derive my aforesaid view from the judgment passed by Allahabad High Court in the case of **Devarsh Nath Gupta Vs. State of UP and 3 others**, reported as 2019 (4) All WC 3127. Relevant paragraph numbers 18 & 28 of the same are reproduced as under:-

- “18. Our education system is such where merit of a student is judged simply by marks he has obtained in examination, which is conducted, ordinarily, annually, or semester-wise. What he has learnt throughout the semester/year, has to be shown by him in three hours examination. His merit is reflected in marks ultimately he has secured in said examination. Thus, virtually career of students is in hands of such Examiners or Evaluators, who are assigned duty of evaluation of answer sheets, which is virtually a three hours labour of a student and the ultimate assessment would be a benchmark about his knowledge, performance, learning, wisdom, intelligence etc, which he has acquired in the entire period of examination. If Examiners/Evaluators do not discharge their duties with due care and caution, instead perform in shallow and shabby manner, it is bound to cause permanent blot and loss to Examinee concerned, which he would have to suffer and carry throughout his career. It may cause permanent damage to his future also, in a given case.....*
- 28. We should also keep in mind that younger generation is future of this country and merit and brightness of younger students cannot be allowed to be wasted and their career cannot be compromised due to such incident of unmindful, irresponsible type of assessment of answer sheet in examinations.”*

More than that, once an application for re-evaluation was submitted on 27.05.2022 i.e. within a period of 7 days from the date of declaration of original result, it would have been in the fitness of things that

the petitioner-University would have declared its result there upon, prior to the decision of the Branch Sliding Committee. In fact, the petitioner-University cannot take advantage of its own wrong by having delayed the declaration of result of re-evaluation. Besides it, providing 45 days period for declaration of result on the re-evaluation application and a period of 30 days for taking a final call on the branch sliding application cannot mean that in all possible situations, the petitioner-University is supposed to take 45 days for declaration of result on re-evaluation specially considering the time limits fixed by itself as regards other substantial rights conferred upon students. In fact, both the time limits prescribed for the purposes of two different rights/ remedies and the decisions to be taken thereupon by the petitioners-University have to be applied harmoniously so as to make the rights/ remedies more practical and effective and to grant complete benefit to the students.

In view of the reasoning recorded herein above, the present revision petition is hereby dismissed in limine by upholding the impugned orders dated 06.06.2022 and 22.07.2022 passed by both the courts below. However, it is made clear that nothing stated herein above shall be termed to be an expression of opinion on merits of the case in hand.

Pending application(s), if any, shall also stand disposed of.

October 27, 2022
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No