

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

Date of decision: 23rd NOVEMBER, 2022

IN THE MATTER OF:

+ **LPA 589/2022 & CM APPL. 44931/2022**

DR. JITENDER KUMAR Appellant

Through: Mr. Sourabh Gupta and Mr. Puneet
Yadav, Advocates

versus

UNION OF INDIA Respondent

Through: Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor, Advocate
Mr. Jivesh Kr. Tiwari, Senior Panel
Counsel.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The Appellant seeks to challenge the Order dated 31.08.2022, passed by the learned Single Judge in W.P. (C) 13782/2022, dismissing the Writ Petition which was filed by the Appellant herein for a direction to the Respondent herein to declare afresh his result in paper-II of Orthopaedics specialty in Diplomate of National Board (DnB) Final Theory (Board Specialty) Examination held in December 2020.

2. Shorn of details, the facts of the case are as under:

a) The Appellant herein took admission in DnB in Orthopedics at Bokaro General Hospital, Jharkhand in 2018. It is stated that the Appellant appeared in DnB Final Theory (Board Specialty) Examination in December 2020. In terms of the DnB theory

examination, as set out in Information Bulletin for DnB/DrNB Final Examination June 2022, a candidate has to appear in four papers each having maximum 100 marks and the candidates must score at least 200 marks out of 400 marks in aggregate to qualify for DnB practical examination. In terms of the Information Bulletin, there is a provision of grace marks for up to 2% of maximum marks, i.e. 8/400, to be given to those candidates who score between 192-199 marks in aggregate. It is the case of the Appellant herein that one question, being Question No.3(b), carrying five marks, in Paper-II of Orthopedics specialty in DnB Final Theory Paper was incorrect and, therefore, five marks should be awarded to every candidate. It is stated that if five marks are awarded to the Appellant herein then his total, which at present is 189 out of 400 marks, would become 192 marks which will bring him within the zone of consideration for 08 grace marks that would make him eligible for DnB practical examination, for which the cut-off is 200 marks.

- b) The Appellant herein approached this Court by filing the Writ Petition, being W.P. (C) 13782/2022, stating that the paper-II must be revaluated and 05 marks must be awarded to every candidate. The University filed a reply in the Writ Petition stating that Question No.3(b) of paper 2 of the DnB Orthopedics Final Theory Examination December 2020 Session, which was found to be incorrect, carried a weightage of 05 marks and the University took a decision not to award any mark to any candidate and, therefore, after removing the technically incorrect

question, the maximum marks that can be awarded to a candidate comes to 95. It is further stated that in order to maintain uniformity of maximum marks across all specialties, i.e. 400 for all Board Specialties, it was necessary that the marks obtained out of 95 maximum marks in Paper 2 be extrapolated to the original 100 marks as the technically incorrect Question No.3(b) was not evaluated. Accordingly, the marks obtained by all the candidates out of 95 marks in Paper 2 were extrapolated to 100 marks based on the performance of the candidates in the valid question paper of 95 marks. It was, therefore, the stand of the University that the said extrapolation of marks obtained by the candidates out of 95 marks, cannot, in any manner be termed as marks awarded for the technically incorrect question which was never evaluated. Examples were given in the reply that if a student obtains 20 marks in paper – II which was of 95 marks, then his extrapolated marks out of 100 would come to 21 marks. Similarly, a candidate who obtained 30 marks out of 95 marks, then his extrapolated marks would come to 31.05 out of 100. The Appellant herein, who scored 39 marks out of 95, would get 41 marks out of 100 after applying the method of extrapolation.

- c) This method of extrapolation was challenged by the Appellant herein by filing the abovementioned Writ Petition. The learned Single Judge, *vide* Order impugned herein, dismissed the Writ Petition by holding that the decision of the University for extrapolating the marks could not be faulted with. It is this Order which has been challenged in the instant appeal.

3. The Appellant herein appeared in DNB Final Theory (Board Specialty) Examination in December 2020 and scored 189 marks out of 400 marks in aggregate. One question, being Question No.3(b), carrying five marks, in Paper-II of Orthopedics specialty in DnB Final Theory Paper was incorrect. The University adopted the method of extrapolation in Paper-II and the Appellant herein, who had scored 39 marks out of 95 marks in that paper, after applying the method of extrapolation, scored 41 marks out of 100 in paper-II. It is the case of the Appellant that if 05 marks are awarded to every candidate for the wrong question, then his total, which at present is 189 out of 400 marks, would come to 192 marks which will bring him within the zone of consideration for 08 grace marks that would make him eligible for DnB practical examination, for which the cut-off is 200 marks. The Appellant herein has, therefore, challenged the method adopted by the University.

4. The scope of interference by a Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India in educational matters has been crystallized by the Apex Court in several matters. The Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v Paritosh Bhupeshkar Sheth and Ors., (1984) 4 SCC 27, while dealing with a challenge posed to validity of Regulation 104(3) of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 which prevented the Petitioners therein from inspecting their answer books in the public examination observed as under:

“29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, 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 will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. 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. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.” (emphasis supplied)

5. The abovementioned judgment has been upheld by the Apex Court in The Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E & Ors. v. Khushboo Srivastava and Ors., (2014) 14 SCC 523, wherein the Apex Court, while observing that in absence of any laws prescribing re-evaluation, the same could not be conducted, held that the learned Single Judge or the Division Bench therein could not have substituted its own views for that of the examiners and awarded two additional marks to the Respondent No.1 therein for two questions that had been left unmarked in exercise of powers of judicial review under Article 226 of the Constitution as it was purely an academic matter.

6. Similarly, in Ran Vijay Singh and Ors. v. State of Uttar Pradesh and Ors., (2018) 2 SCC 357, the Apex Court, while dealing with interference of Courts in examinations, had deprecated the practice as the same led to

prolonging the finality to the results of the examinations. Underlining the overall negative impact of interference of Courts, it was observed as under:

“32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

7. In the facts of the present case, the University has taken a decision to adopt the method of extrapolation while dealing with an incorrect question.

This method had been applied to all the students. The Appellant herein, therefore, cannot claim that he has been singled out and has been discriminated against. The Information Bulletin for DnB Final December 2020 Session, which is relevant for the purpose of the present case, reads as under:

"4. Examination for Broad Specialties

4.1. For Broad Specialties:

4.1.1.DNB Final is a two-stage examination comprising of theory and practical examination.

4.1.2. An eligible candidate who has qualified the theory examination is permitted to appear in the practical examination. Those who fail to qualify the theory examination are required to reappear in the theory examination of session.

4.1.3. The practical examination of the session in which the candidate qualifies the theory examination shall be the mandatory first attempt. A candidate unsuccessful in the first attempt of practical examination is permitted to undertake two more attempt(s) of practical examinations. These two attempts shall be any two practical examinations conducted in next three consecutive sessions of DNB Final Examinations.

Example: Candidates qualifying theory examination of December 2020 session shall appear for their first attempt in the practical exams of December 2020 session compulsorily and in the event of they not passing this practical examination, the candidate(s) may take any two attempts at the practical exams of next three consecutive sessions as and when conducted.

4.1.4. Absentation from Practical Examination after successful submission of application is counted as an attempt.

4.1.5. The list of Specialties in which candidates can undertake DNB Final examination are mentioned at **Annexure-II**.

4.2. Examination (Broad Specialties):

4.2.1. Theory Examination

- The theory examination comprises of four papers, maximum marks 100 each.
- There are 10 short notes of 10 marks each, in each of the papers.
- The number of short notes and their respective marks weightage may vary in some subjects/some papers.
- Maximum time permitted is 3 hours.
- Candidate must score at least 200/400 in the aggregate of 4 papers to qualify the theory examination. Grace marks of up to 2% of maximum marks i.e. 8/400 shall be given only to the candidates falling in the zone of consideration i.e. securing between 192-199 marks out of 400.
- Only those candidates who have qualified the theory examination are permitted to take the practical examination. "

8. The reliance placed by the Appellant on the judgment of Kanpur University, through Vice Chancellor and Ors. v. Samir Gupta and Ors., (1983) 4 SCC 309, cannot be made applicable to the facts of the present case as in that case there was a disagreement between the students and paper setters and the students had alleged that the paper-setters had erroneously identified incorrect response as the correct one. The present case deals with a wrong question and, therefore, the only question that remains is as to whether the award of marks as per the method adopted by the University warrants any interference by this Court or not. The University has adopted

the method of extrapolation across the board in the present case. The method of extrapolation is a well recognized method which is applied by the Universities while evaluating answers when one of the question is wrong.

9. In light of the judgments of the Apex Court, the Appellant has not been able to substantiate as to how the method adopted by the University is so perverse which would warrant interference from this Court by exercising its jurisdiction under Article 226 of the Constitution of India. It is well settled that the Courts do not sit as an Appellate Authority over the decisions taken by the experts. This Court does not find any reason to interfere with the decision taken by the University in the manner of award of marks to the candidates. The Order passed by the learned Single Judge also does not warrant any interference from this Court.

10. Accordingly, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 23, 2022

Rahul