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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-2154-2021

Date of decision: 19.07.2023

Dr. Karan Abrol

...Petitioner

Versus

Baba Farid University of Health Sciences and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate and
Mr. Varun Veer Chauhan, Advocate for the petitioner.

Mr. Nitin Kaushal, Advocate and
Mr. Saurabh Chawla, Advocate for respondent Nos.1 to 3.

Mr. Rajiv Kataria, Advocate and
Ms. Sunita Punia, Advocate and
Mr. Aman Joon, Advocate for respondent Nos.4 and 5.

VIKAS BAHL, J. (ORAL)

1. The present Civil Writ Petition has been filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of mandamus directing respondent Nos.1 and 2 to reevaluate the theory papers of Masters of Dental Surgery (Prosthodontics) held in the month of May/June 2020 and for revising the result of the petitioner.

2. Learned Senior counsel for the petitioner has submitted that the petitioner had passed his Bachelor in Dental Surgery (BDS) in the

year 2009 from Baba Farid University of Health Sciences by obtaining 60% marks and was thereafter, appointed as Medical Officer (Dental) on 09.06.2011 and had then applied for MDS (Prosthodontics & Crown & Bridge) in the respondent University in the year 2016 and was, on the basis of merit, admitted in MDS (Prosthodontics And Crown & Bridge) in the Session 2016. It is further submitted that although, the petitioner had completed the MDS course but respondent Nos.4 and 5, who were the Associate Professors in the Department of MDS (Prosthodontics And Crown & Bridge), had personal grudge against the petitioner and had written letters to the Principal against the petitioner. It is contended that as per the "Dental Council of India Revised MDS Course Regulations, 2007" which deals with the evaluation of answer books, all the answer books are required to be evaluated by four Examiners, two of which are supposed to be Internal Examiners and two are External Examiners and the average of the marks given by the said Examiners, are to be computed. In order to pass the university examinations, a candidate is required to secure in both theory examination and practical examination which includes viva-voce, independently an aggregate of 50% of total marks allotted and the candidate securing less marks, is required to be declared as 'failed'. It is contended that respondent Nos.4 and 5 were the Internal Examiners when the petitioner appeared in MDS Examinations in the month of May/June, 2019 and the marks given by the said respondent Nos.4 and 5 were far less than the marks which were given by the External Examiners in each of the four papers. It is further contended

that the total marks awarded by the Internal Examiners, who were respondent Nos.4 and 5, was 263 out of 600 i.e., 43.83%, whereas the total marks awarded by the External Examiners was 375 out of 600 i.e., 62.5%. It is argued that the petitioner, at that stage, did not lay any challenge to the less marks awarded to him as he has respect for his teachers and thereafter, he re-appeared in the MDS Examinations held in the month of May/June, 2020 and even, in the said examinations, respondent Nos.4 and 5 were the Internal Examiners of the petitioner and even in the said examinations, the said Internal Examiners i.e. respondent Nos.4 and 5 had given less marks in each of the four papers to the petitioner than those given by the External Examiners and the total of the marks given by respondent Nos.4 and 5 was 232 out of 600 (38.6%) as compared to grand total of 332.5 (55.4%) given by the External Examiners in the said papers. It is further argued that the Internal Examiners i.e., respondent Nos.4 and 5 had given less marks to the petitioner on account of their personal bias, for which, reference has been made to the letter (Annexure P-1) and reply given by the petitioner (Annexure P-2). It is also contended that several representations were given by the petitioner to the respondent authorities seeking revaluation of the papers but when no action was taken, then the present writ petition was filed.

3. Learned Senior counsel for the petitioner has relied upon the judgment of the High Court of Judicature at Madras passed in **Writ Petition No.6727 of 2016 and WMP Nos.6002 and 6003 of 2016** titled as

S. Karlen Nesan Vs. Sri Manakula Vinayager Medical College & Hospital and others, to argue that even when there is no regulation/scheme for revaluation, the prayer of a student for revaluation can be considered, in case a student is able to show exceptional circumstances as has been shown by the petitioner in the present case. It is further submitted that in the present case, in case, the revaluation is ordered, no loss would be caused to any other student as the result of no other student would be effected and the revaluation is being sought only with respect to the marks awarded to the petitioner by respondent Nos.4 and 5. On the basis of above averments, learned Senior counsel for the petitioner has prayed for allowing the present writ petition and for directing respondent Nos.1 and 2 for revaluating the papers in question.

4. Learned counsel appearing on behalf of respondent Nos.1 to 3 i.e., Baba Farid University of Health Sciences and its Vice Chancellor and Controller of Examination, has submitted that as per Clause 7.4 of the University Calendar Volume-II 2006, revaluation of answer books has been prohibited inasmuch as it has specifically been mentioned that revaluation of answer books would not be admissible in any examination of any faculty. It is contended that once, there is a specific bar for revaluation, then, as per settled law, no writ petition seeking revaluation is to be entertained more so, when the said Clause has not even been challenged, as has not been done in the present writ petition. It is further contended that the relevant Rules and Regulations which have been relied upon by the petitioner would show that average of the marks given by the

External and Internal Examiners, were to be taken into consideration for the purpose of declaring the result and the said Regulation was framed as the authorities were well aware that there could be variance in the marks given by various examiners and since, after considering the average marks, the petitioner has been found to have failed, no interference is called for in the present writ petition. It is submitted that after having failed in the examination, the petitioner cannot turn around and raise submissions contrary to the Rules and Regulations which were applicable at the time when the petitioner had given the examinations.

5. Learned counsel appearing on behalf of respondent Nos.4 and 5 has submitted that no mala fide can be attributed to respondent Nos.4 and 5 as they have no personal bias against the petitioner. It is further submitted that the petitioner had been reprimanded by the Principal on account of his failure to perform the necessary assignments given to him. Learned counsel has made specific reference to para 4 of the preliminary submissions/objections in the written statement filed by respondent Nos.4 and 5, in which, specific plea has been taken to the effect that the allegation of mala fide is totally fallacious and when the marking was done, the Examiners were not even aware of the fact as to whose answer sheet is being marked by them as fictitious numbers were put on the same after removing the actual roll numbers and only scanned copies of the answer sheets were sent to respondent Nos.4 and 5 and on the same, marks were given without the respondent Nos.4 and 5 knowing the identity of the student whose answer sheets were being marked. It has

further been specifically stated in para 6 of the reply on merits, that in the practical examination also, the respondent Nos.4 and 5 were the Internal Examiners of the petitioner and during the said examination, respondent Nos.4 and 5 were aware of the candidate's identity at the time of marking and the petitioner has passed the said practical examination and in case, there was any mala fide on the part of respondent Nos.4 and 5 then they would have been given very less marks in the said practical examination to the petitioner. It is argued that with respect to the examination, which had taken place in the month of May/June, 2019, the petitioner has not made any prayer in the writ petition and thus, the said aspect has no relevance.

6. Learned Senior counsel for the petitioner, in rebuttal, has submitted that in the examination, which was held in the month of May/June, 2020, only three students had appeared and thus, it cannot be said that respondent Nos.4 and 5 were not aware that the papers in question were of the petitioner.

7. This Court has heard learned counsel for the parties and has perused the paper book and finds that the writ petition is meritless, and deserves to be dismissed for the following reasons:-

i) Clause 7.4 of the University Calendar Volume-II 2006 provides as under:-

"4. Revaluation of answer book(s) will not be admissible in any examination of any Faculty."

A perusal of the above provision would show that revaluation

is specifically prohibited. The said Clause is not under challenge in the present writ petition. It has been repeatedly held by Hon'ble the Supreme Court that revaluation can only be ordered in a situation where the Rule or Regulation, governing the examination, permits revaluation and that the Courts are not justified in ordering revaluation of the answer sheets in the absence of any Regulation for revaluation. It has further been held that sympathy or compassion does not play any role in the matter of directing or not directing revaluation of the answer sheets. Reference in this regard may be made to the judgment of Hon'ble the Supreme Court in **Dr. NTR University of Health Sciences Vs. Dr. Yerra Trinadh and others**, reported as **2022 SCC Online SC 1520**, in which, it has been held as under:-

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11. The short question which is posed for consideration before this Court is, "whether in the absence of any provision for re-evaluation, the High Court was justified in ordering re-evaluation after calling for the record of the answer scripts?"

12. While considering the aforesaid issue/question, few decisions of this Court including two, referred to hereinabove, which have been relied upon by the learned counsel appearing on behalf of the University, are required to be referred to and considered.

13. In the case of Pramod Kumar Srivastava (supra), it is observed and held by this Court that in absence of any provision for re-evaluation in the relevant rules, examinees

have no right to claim or demand reevaluation. In paragraphs 7 & 8, it is observed and held as under:

*"7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for reevaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. **In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks.** This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27: AIR 1984 SC 1543]. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they*

*may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. **There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.***

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What

will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

14. *In the case of Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357, in paragraph 32, it is observed and held 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."

15. In the case of Vikesh Kumar Gupta (supra), after considering catena of decisions on scope of judicial review with regard to reevaluation of the answer sheets, it is observed and held that the court should not re-evaluate or scrutinise the answer sheets of a candidate as it has no expertise in the matter and the academic matters are best left to academics.

16. Applying the law laid down by this Court in the aforesaid decisions to the facts and circumstances of the case on hand, we are of the opinion that the High Court was not at all justified in calling the record of the answer scripts and then to satisfy whether there was a need for reevaluation or not. As reported, the High Courts are calling for the answer scripts/sheets for satisfying whether there is a need for re-evaluation or not and thereafter orders/directs re-evaluation, which is wholly impermissible. Such a practice of calling for answer scripts/answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant rules for re-evaluation and that

too while exercising powers under Article 226 of the Constitution of India is disapproved.

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17. xxx xxx. *In any case, in absence of any regulation for re-evaluation of the answer scripts, either in the MCI rules or in the University Rules, the High Court is not justified in ordering re-evaluation of the answer scripts. As observed and held by this Court in the case of Ran Vijay Singh (supra) that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet.*

18. *In view of the above and for the reasons stated above, the common judgment and order passed by the learned Single Judge ordering re-evaluation of the answer scripts, confirmed by the Division Bench by the impugned common judgment and order, is unsustainable. However, as observed hereinabove, as the results of the original writ petitioners after re-evaluation or appearing in the supplementary examination have been declared, while quashing and setting aside the impugned common judgments and orders passed by the learned Single Judge as well as Division Bench of the High Court, the same shall not be affected and/or disturbed. The impugned common judgments and orders passed by the learned Single Judge as well as Division Bench ordering re-evaluation of the answer scripts in absence of any such provision in the relevant rules are hereby quashed and set aside.”*

In the abovesaid case, learned Single Judge had directed the revaluation of the answer scripts of the writ petitioners who had appeared in the Post Graduation in Diploma Course in NTR University of Health

Sciences and the said order of the learned Single Judge was upheld by the Division Bench and the University had preferred appeals against the said two orders before the Hon'ble Supreme Court. After hearing both the parties, a specific question was framed by the Hon'ble Supreme Court to the effect as to “whether in the absence of any provision for re-evaluation, the High Court was justified in ordering re-evaluation after calling for the record of the answer scripts?” After considering various judgments, including the judgment of the Hon'ble Supreme Court in **Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna**, reported as **2004(6) SCC 714**, **Ran Vijay Singh and others Vs. State of UP and others** reported as **2018(2) SCC 357** and **Vikesh Kumar Gupta Vs. State of Rajasthan** reported as **2021(2) SCC 309**, it was held that in the absence of any regulation for revaluation of the answer scripts, the Courts are not justified to order revaluation and also disapproved the practice of various High Courts in calling for the answer scripts and ordering revaluation in the absence of any specific provision for the same and after considering the abovesaid aspect, allowed the appeals and set aside the judgments of the learned Single Judge as well as the Division Bench of the High Court. However, since, at the time of issuance of notice in the appeals, Senior Counsel for the University had submitted that the result announced in respect of respondent Nos.1 to 23 would not be disturbed in any manner, thus, it was observed that the judgment passed by the Hon'ble Supreme Court would not affect the declaration of the result of the original writ

petitioners.

ii) The plea of exceptional case has been raised by the petitioner, in the present case, by attributing mala fide to respondent Nos.4 and 5. Respondent Nos.4 and 5, in para 4 of the preliminary submissions/objections of the written statement filed on their behalf, have raised the objections that respondent Nos.4 and 5 were never aware of the fact as to whose answer sheets were being marked by them since fictitious numbers were put on the answer sheets after removing the actual roll numbers and only the scanned copies of the answer sheets were sent to them. The said para 4 of the preliminary submissions/objections is reproduced hereinbelow:-

*"4. That the basis of writ petition is totally wrong when petitioner is alleging malafides on the part of respondents and the whole case is revolving around the allegations of malafide and the difference of marks given by the External Examiner and the Internal Examiner. **This plea is totally a fallacious plea for the reason that when the marking is done, the examiner is never aware of the fact as to whose answer sheet is being marked because it is fictitious numbers which is put after removing the actual roll number. so far as the present exams were concerned, it is only the scanned copy of the answer sheets on the computer which were sent to the Examiners and on those the marking is being given by the Examiner without knowing as to who is the students whose answer sheet was marked"***

No replication has been filed by the petitioner to the said specific averments made in the written statement filed on behalf of

respondent Nos.4 and 5. No material has been placed on record to show that respondent Nos.4 and 5 knew that the papers which they were checking were of the petitioner. The argument of learned Senior counsel for the petitioner to the effect that only three students had appeared in the examination held in the month of May/June, 2020 and thus, respondent Nos.4 and 5 must have been aware of the fact that the papers in question were of the petitioner, is based on surmises and conjectures and cannot be accepted. Additionally, it has been stated by respondent Nos.4 and 5 in para 6 of their reply on merits that in the practical examination, respondent Nos.4 and 5 were the Internal Examiners of the petitioner and the petitioner has passed in the said practical examination and in case, there was any mala fide/personal bias of respondent Nos.4 and 5 against the petitioner then respondent Nos.4 and 5 would have given the petitioner marks lesser than the marks required to pass the said practical examination as in the said examination, the identity of the petitioner was known to the respondent Nos.4 and 5. Even, the said averments have not been rebutted by the petitioner. It would also be relevant to note that in para 1 of the preliminary submissions/objections of the written statement filed by respondent Nos.4 and 5, it has been stated that respondent Nos.4 and 5 have no objection in case, the relief is granted to the petitioner if legally permissible and have only opposed the present writ petition on account of the fact that mala fide has been alleged by the petitioner against the said respondents. The said averments further show that respondent Nos.4 and 5 were not personally against the petitioner and

have done their duty without any mala fide.

iii) In para 5 of the writ petition, reference has been made to the "Dental Council of India Revised MDS Course Regulations, 2007". Para 5 of the writ petition is reproduced hereinbelow:-

"5. That the relevant Regulations called "Dental Council of India Revised MDS Course Regulations, 2007 which deals evaluation of answer books and criteria for declaration as pass are reproduced below for ready reference:-

"VALUATION OF ANSWER BOOKS

All the answer books shall be valued by four examiners, two internal and two external and the average marks will computed.

CRITERIA FOR DECLARING AS PASS

To pass in the University examinations, a candidate shall secure in both theory examination and in practical/clinical including via-voce independently an aggregate of 50% of total marks allotted (150 marks out of 300 allotted for theory and 150 out 200 for clinical plus 100 for via-voce together). A candidate securing less marks as described above shall be declared to have failed in the examination.

A candidate who is declared successful in the MDS examination shall be granted a Degree of Masters of Dental Surgery in the respective specially".

A perusal of the above para 5 of the writ petition would show that answer books are to be evaluated by four Examiners, two of which would be Internal Examiners and the other two would be External Examiners and it is the average of the marks given by them which is to be

taken into consideration. The said Regulations have been relied upon by the petitioner and it is not the case of the petitioner that the said Regulations have been violated. It is apparent that the said Regulations have been framed since, the authorities were aware that different marks could be given by different Examiners while checking the same paper as some Examiners may be liberal whereas other Examiners may not be so liberal and thus, it was thought appropriate that average of the marks given by the Examiners be taken into consideration before declaring the result. If the Court were to interfere in a matter on the ground that the marks given by the Examiners were different, then in a large number of cases, it would be incumbent for the Court to order revaluation in spite of there being a bar in the relevant Clause with respect to revaluation.

iv) Reliance placed upon *S. Karlen Nesan's* case (Supra) would also not help the case of the petitioner inasmuch as in the said case, the petitioner had made allegations of personal motive against respondent No.4 therein and respondent No.4 had not chosen to come forward to deny the allegations made against him in spite of the fact that notice was duly served upon him and thus, the Court had observed in para 11 of the said judgment that once, the allegations of mala fide were made against respondent no.4 therein, he ought to have entered in appearance in the writ Court to deny the said allegations. In the present case, respondent Nos.4 and 5 have appeared and have denied the allegations levelled against them and rather, the averments made in para 4 of the preliminary submissions/objections in the written statement filed on their behalf,

which have been reproduced hereinabove, have not been rebutted by the petitioner. Thus, the facts of the abovesaid case are on a different footing than the facts of the present case. Moreover, this Court is bound by the dictum of law laid down by Hon'ble the Supreme Court in the case of ***Dr. NTR University of Health Sciences*** (Supra).

8. Keeping in view the abovesaid facts and circumstances, this Court does not find any merit in the present writ petition, hence, the same deserves to be dismissed and is accordingly, dismissed.

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

19.07.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**