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

+ W.P.(C) 6650/2023 & C.M.Nos.26065-26066/2023

AADYA ANTAYA

..... Petitioner

Through: Mr.Apoorva Bhumesb with
Ms.Madhavi Khare, Advocates.

Versus

HIGH COURT OF DELHI THROUGH REGISTRAR GENERAL

..... Respondent

Through: Mr.Gautam Narayan with Ms.Asmita
Singh, Mr.Harshit Goel and Ms.Akriti
Arya, Advs.
Mr.Sanchay Mehrotra with Mr.Nitin
K.Gupta, Mr.Rahul Sinha, Mr.Mayank
Bhardwaj, Mr.Sudhanshu Kathuria
and Ms.Deeksha Yadav, Advs. for
R-2.
Mr.Prashant Kanha with Mr.Anand
Mishra, Advocates for R-3 & 4.

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Date of Decision: 11th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present petition has been filed seeking a direction to the respondent No.1 to re-evaluate her answer to the question 2(vii) of the Legal GK and English paper (Paper-I) for the Delhi Judicial Services Mains Examination

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2022 (hereafter referred to as the “DJS Examination 2022”) and award her additional two marks for the same. The petitioner prays for a consequential direction that her rank in the selection list dated 24th March, 2023 be settled in accordance with her enhanced score.

2. Learned counsel for the petitioner states that the contentious question in the mains examination was an objective True or False question, being Question 2(vii), of the Legal GK and English paper (Paper-I). He points out that the question 2(vii) was “*Article 21A prohibits religious instructions or any worship in educational institutions maintained by the State.*” and the answer given by the petitioner was “False”. He contends that though the correct answer to the question 2(vii) of the Legal GK and English paper (Paper-I) is “False”, yet the petitioner has been given no marks for the said question.

3. He further states that the petitioner secured 93rd rank and is currently placed in the Waiting List at No.5 with an aggregate score of 662. He states that after the award of two marks on correct re-evaluation, petitioner’s aggregate would become 664 and she would be placed at least in the Waiting List at serial no.1 and her chances of being selected would improve substantially.

4. *Per contra*, learned counsel for the respondent-DHC submits that Rule 15 of Delhi Judicial Service Rules, 1970 read with sub-clause (3) of Clause (D) of the Appendix specifically prohibits any re-evaluation of answer scripts.

5. Learned counsel for the respondent-DHC states that the Supreme Court in its judgment rendered today in *SLP (C) No. 3144/2023* being *Registrar General, High Court of Delhi vs. Ravinder Singh* has held that in



view of a similar prohibition contained in Clause XII of Rule 7 of DHJS Rules for re-evaluation and also in view of fact that there was no 'material error' in the evaluation warranting an interference with the decision, no re-evaluation should have been ordered by the High Court.

6. In any event, he states that the respondent had undertaken an exercise of verifying the answer of the four candidates above the petitioner in the waiting list (candidates placed at serial nos.1 to 4 of the waiting list of General Category) to the said question and it has been found that all the four candidates above the petitioner in the waiting list have also answered Question 2(vii) of the General Legal Knowledge and Language Paper as 'False'. Therefore, according to him, in case of a re-evaluation, two additional marks have to be awarded to the four candidates above the petitioner in the waiting list also. Consequently, he states that the position of the petitioner in the merit list would remain unchanged.

7. He further states that the respondent had carried out the exercise of re-evaluation in respect of the candidates who had secured less than 670 marks because even if the marks of the candidates who have secured 670 or more are reduced by two, their total marks will still come to 668 or more, which is more than the marks scored by the petitioner even after awarding her two additional marks, which will be 664.

8. In rejoinder, learned counsel for the petitioner submits that the constitutional power under Article 226 of the Constitution of India cannot be curtailed by any Rule. He further submits that this Court in exercise of its power under Article 226 can re-evaluate the answer sheet, as the candidate despite having given correct answer has been given no marks. In support of his submission, he relies upon the judgment of the Supreme Court in *High*



Court of Tripura vs. Tirtha Sarathi Mukherjee & Ors., (2019) 16 SCC 663,
wherein it has been held as under:

“20. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.”

9. He also relies on the judgment of a Co-ordinate Bench of this Court in ***Mayank Garg vs. Delhi High Court Through its Registrar General, W.P.(C) 12643/2022*** dated 12th September, 2022. The relevant portion of the said judgment is reproduced hereinbelow:-

“8. In Pranav Verma & Ors v. Registrar General of the High Court of Punjab and Haryana & Anr (supra), the Supreme Court found that 14301 (fourteen thousand three hundred and one) numbers of candidates had appeared for the preliminary examination and only 9 (nine) candidates were found fit for viva voce. Only 0.702% of the candidates had cleared the DHJS Main (written) examination and the rest 99.298% had failed. This was against the 107 (one hundred and seven) vacancies that were notified. In the circumstances, the Supreme Court exercised its power under Article 142 of the Constitution of India and directed awarding of grace marks to candidates to ensure that a larger number of candidates qualify to appear for the viva voce.”

10. Having heard learned counsel for the parties, this Court finds that in the present instance, sub-clause (3) of clause (D) of the Appendix to Rule 15 of Delhi Judicial Service Rules, 1970 contains an absolute prohibition against re-evaluation. The relevant portion of the said Rule is reproduced



hereinbelow:-

“3. There shall be no re-evaluation of answer sheets in respect of Preliminary Examination and Mains Examination (Written). No request for re-evaluation of answer sheets shall be entertained and the same shall be liable to be rejected without any notice to the candidates.”

11. In the case of ***High Court of Tripura vs. Tirtha Sarathi Mukherjee & Ors.*** (supra), there was no prohibition against re-evaluation. This distinction was noticed by the Apex Court in paragraph 3 of the said judgment itself.

The relevant portion of the said paragraph is reproduced hereinbelow:-

“3. In the review petition, the High Court finds that under the 2003 Rules, which apparently governed the conduct of the examination, there is no provision for re-evaluation of answer scripts. It was, however, found that there is no prohibition against re-evaluation provided it finds any patent error. This may include not awarding any marks for a correct answer or treating a correct answer to be an incorrect answer.....”

(emphasis supplied)

12. In fact, in ***Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors., (2018) 2 SCC 357***, the Supreme Court has observed as under:-

“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...”

(emphasis supplied)

13. Moreover, as pointed out by the learned counsel for the respondent-DHC, the Supreme Court has today in SLP (C) No.3144/2023 reiterated its earlier decision in ***Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors.*** (supra) and has held as under:-

“....The decision relied on by the respondent viz., the decision in Ran Vijay Singh V. State of Uttar Pradesh [(2018) 2 SCC 357] itself would reveal the position that when a statutory provision prohibits re-evaluation it cannot be ordered to be undertaken. So also, the decision is to the effect that 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 court may permit re-evaluation or scrutiny on if it is demonstrated very



clearly, without any “inferential process of reasoning or a process of rationalisation” and only in rare and exceptional cases that a material error has been committed. When that be the position, in the light of the provision of Clause XII, Rule 7C of the DHJS Rules and specially taking note of the fact that it is not a case where the respondent is seeking correction of a patent error in the matter of totaling of the marks, or an omission in evaluating an answer warranting an evaluation we do not think that it is a case where the prayer of the respondent could have acceded to in the light of the provisions under Clause XII, Rule 7C of the DHJS Rules and also in the light of the aforesaid decision, as per the impugned judgment, the petitioner-herein was directed to send the respondent’s answer to question No.9 for re-evaluation to any other examiner. We are of the considered view in the light of the specific prohibition in Clause XII of Rule 7 of the DHJS Rules for re-evaluation as also in view of our conclusion that there is no ‘material error’ in the evaluation warranting an interfering with the decision of the petitioner herein.

6. In the aforesaid circumstances, the impugned judgment cannot be sustained and it invites interference. Consequently, the judgment dated 13.01.2023 in WP(C) 434/2023 stands set aside and the Writ Petition stands dismissed. The Civil Appeal is allowed, accordingly.”

(emphasis supplied)

14. Consequently, the judgment of the Supreme Court in ***High Court of Tripura vs. Tirtha Sarathi Mukherjee & Ors.*** (supra) and of this Court in ***Mayank Garg vs. Delhi High Court Through its Registrar General*** (supra) offer no assistance to the petitioner.

15. Further, as the petitioner had participated in the selection process after being made aware about the aforesaid prohibition on re-evaluation, she cannot be permitted to seek re-evaluation contrary to the Rules.

16. Also, if the benefit of the incorrect answer is to be given to the petitioner, then the same will have to be given to the candidates placed above the petitioner as well, as they had answered question No.2(vii) in a similar manner. Consequently, there will be no change in the order of merit of the petitioner with respect to the aforesaid two selected and waitlisted candidates.



17. Keeping in view the aforesaid, this Court is of the view that no relief can be granted to the petitioner. Accordingly, the present petition along with pending applications is dismissed.

MANMOHAN, J

MINI PUSHKARNA, J

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