



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4911/2013**

Date of Decision: **04.08.2023**

IN THE MATTERS OF:

MS. SUREKHA

D/O SHRI SURESH KUMAR,
M-16, INDRAPRASTHA MARG,
SONEPAT ROAD, ROHTAK,
HARYANA

..... PETITIONER

Through: Mr. N.S. Dalal, Mr. Alok Kumar,
Ms. Rachna Dalal and Ms. Sweta
Kadyan, Advocates.

Versus

**UNIVERSITY GRANTS COMMISSION,
THROUGH ITS CHAIRMAN,
NATIONAL EDUCATIONAL TESTING (NET) BUREAU,
BENITO JUAREZ MARG,
NEW DELHI-110021**

.... RESPONDENT

Through: Mr. Arjun Harkauli and Ms. Muskaan
Gupta, Advocates.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner, *vide* the instant writ petition seeks for the following reliefs:-

“(i) issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent to award earlier marks obtained by the petitioner in Paper 3 as was so tabulated and is clear from the tabulation and declare the petitioner as

having passed as all the persons who have obtained 90 and above marks have been declared successful;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent to hold an enquiry as to the circumstances in which the paper 3 of the petitioner was misplaced and evaluated later on to cause harm to the petitioner;

(iii) issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent to hold an enquiry as to the circumstances in which paper 3 was again evaluated and marks were lowered down;

(iv) issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent to inform the Hon'ble Court as to the power under which the respondent can indulge in the act of evaluating again and again and whether there is any such provisions under the Act and Rules for permitting them to do so;

(v) award costs of the present writ petition in favour of the petitioner and against the respondent.”

2. Learned counsel appearing on behalf of the petitioner submits that in the instant case, a grave injustice has occurred to the petitioner. According to him, the respondent- University Grants Commission (hereinafter as to 'UGC') deliberately misplaced the answer script of the petitioner and evaluated the same much after the declaration of the result of other candidates.

3. He, therefore, submits that in the instant case, the marks which were awarded to the petitioner originally were lowered down. He has pointed out various discrepancies from the answer script of Paper-III. According to him, the original marks awarded to the petitioner were 99 which were reduced to 88 and later on the same were further reduced to 78. He has also shown various overwriting in the OMR sheet.

4. According to him, in the concerned year in which the petitioner appeared, the candidates from General Category who obtained less marks than the petitioner were considered eligible for lectureship. He, therefore, submits that had the answer script of the petitioner been appropriately evaluated, the petitioner would have been given the correct marks and eventually, the petitioner would have secured admission in the concerned course.

5. He, therefore, submits that the instant case is a clear case of various anomalies and discrepancies which requires appropriate directions to be issued not only against the respondent-UGC but also to award compensation in favour of the petitioner.

6. Learned counsel appearing on behalf of the respondent-UGC vehemently opposes the submissions made on behalf of the petitioner. While taking this court through the averments made in the counter affidavit, learned counsel appearing on behalf of the respondent-UGC submits that the petitioner did not circle the required column of the OMR sheet to indicate her correct roll number.

7. He, therefore, submits that in the absence of the roll number being correctly marked in the petitioner's answer script, her marks were not awarded against the roll number. Therefore, the petitioner was treated as absent.

8. He further submits that since the petitioner circled a different roll number, therefore, the marks were awarded against the circled roll number.

Learned counsel for the respondent-UGC also submits that the circled roll number candidate incidentally remained absent on the date of examination.

9. I have considered the submissions made by learned counsel appearing on behalf of the parties and perused the record.

10. The facts of the case would show that in the year 2011 the petitioner appeared in NET Examination for the post of lectureship, conducted by the respondent-UGC, which consist of three papers. There is no dispute with respect to the appearance of the petitioner against Paper-I and Paper-II.

11. The result of the said examination was declared on 08.12.2011. The mark sheets for Paper-III were uploaded on the official website on 18.12.2011 and it was found that the petitioner was awarded Code-999. The Code-999 denotes that the person concerned is absent. Meaning thereby, the candidate concerned has not appeared in the examination.

12. The petitioner while observing the same was taken aback. The petitioner, thereafter, made various applications and representations and on 22.03.2012, after evaluation 78 marks were awarded to her against Paper-III.

13. A perusal of the answer script placed on record by the petitioner would indicate that against question no.2 (a) of the Computer Science subject, there appears be an overwriting and scoring out figure 10 and 7 and instead 4 marks were awarded.

14. Similarly, with respect to answer no.2(b), there is an overwriting in awarding of marks, the overwriting marks would indicate that there are two

marks against the said answer i.e. 10 and 7. Finally, none of those figures were accepted and no marks were awarded.

15. It is also seen that against question no.16, there is an overwriting in awarding of marks. There appears to be three figures; first is 3, second is 4 and finally 3 marks were awarded. Similarly, with respect to question no.19, there are two figures i.e. 5 and 2 of which 5 is score out, and finally 2 marks were awarded.

16. The stand taken by the respondent-UGC would show that Paper-III, which was of 200 marks and the qualifying marks for Paper-III for General Category were 100 marks.

17. Learned counsel therefore, submits that in any case, even if the higher figure i.e. of 99 marks is accepted, in that case also, the petitioner would not qualify. He, therefore, explains that the answer scripts are evaluated and examined by the experts. He submits that against each answer, the figure which remains undisputed and visible has been accepted to be the correct figure.

18. According to him, there is no reason to award marks based on the figure which is score out. He also explains that the petitioner was allotted roll number 72870183 and she was required to dark the circles provided for the purpose, in the OMR sheet besides filling of the other entries.

19. He explains in paragraph no.6 of the counter affidavit that the petitioner darkened her roll number as 72870083 whereas her actual roll number was 72870183. He then explains that the roll number which was darkened by the petitioner was allotted to one Ms. Priyanka.

20. According to the averments made in the said counter affidavit, as per the attendance sheet Ms. Priyanka was incidentally absent in the said examination and on account of the wrong circle darkened by the petitioner, the marks were awarded against her roll number.

21. It is, therefore, seen that on submitting the representation by the petitioner, the staff of NET Bureau searched for the OMR sheet of the petitioner out of two lakh OMR sheets and after ascertaining the eligibility in Paper-I and Paper-II of the petitioner, copy of Paper-III was evaluated by a team of experts on 22/03/2013 and accordingly, the marks were awarded.

22. Paragraph nos.6 to 9 of the counter affidavit filed on behalf of the respondent-UGC are reproduced as under:-

“[6]. That so far as the petitioner is concerned, it is submitted that the Petitioner was allotted Roll No.72870183. Since Paper - I and Paper - II were of objective nature, the candidates were provided Optical Mark Reader (OMR) Sheet along with the Test Booklet. In the OMR Sheet, the candidates were required to indicate their Roll number by darkening the circles provided for the purpose, besides filling up other entries. It is submitted that the petitioner darkened her Roll number as 72870083 whereas her Roll number was 72870183. The Roll number darkened by the petitioner was allotted to one Ms. Priyanka.

[7]. That since Paper-I and Paper-II were of objective nature, the same were evaluated by the computer. Since the petitioner darkened her Roll number wrongly, the marks secured by her were shown against Roll No. 72870083 (Ms. Priyanka) who incidentally was absent in the said examination. A copy of the attendance sheet and mark statement in respect of Ms. Priyanka is given as ANNEXURE R-2 (COLLY).

[8]. That it is submitted that the candidates were required to fill up the entries correctly in the OMR Sheet. The evaluation of OMR Sheets is done by computers and the entries on each OMR sheets are not checked manually. In the NET Examination held in June, 2011, more than two lakh candidates appeared. Thus, it is evident that it was a mistake on the part of the petitioner who did not indicate the correct roll number by darkening the circles in her OMR sheet as per procedure laid down

by the UGC. Hence, the marks of the petitioner were shown against the roll number indicated by her while against the actual roll number allotted to the petitioner, the computer shown her as absent. Due to the above reason, the 3rd paper of the petitioner was not evaluated before declaration of result.

[9]. That it is further submitted that every candidate was required to give the following undertaking in the OMR Sheet for Paper - I and Paper - II:

"I hereby undertake that the information provided by me for my eligibility for Examination is true to the best of my knowledge. In case of any information found to be incorrect/incomplete at any stage, I am liable for disqualification for Examination and legal action."

The above undertaking was also given by the petitioner on the OMR Sheet for Paper-I & Paper-II, a copy of which has already been annexed by the petitioner herself at page -44 of the writ petition. In view of the aforesaid undertaking given by the petitioner herself, the UGC cannot be set to be under any legal obligation to get the copy of Paper – III evaluated, once the result has already been declared. However, it is submitted that once the error of the petitioner was brought to the notice of UGC, the staff of NET Bureau painstakingly searched the OMR Sheet of the petitioner out of 2 lakh OMRs in the interest of the petitioner. After ascertaining the eligibility in Paper-I and Paper-II, copy of the Paper-III was got evaluated by a team of experts on 22.03.2013."

23. In paragraph no.11 of the counter affidavit, the respondent-UGC submits that the final marks obtained by the petitioner are less than the minimum qualifying marks. Paragraph no. 11 of the counter affidavit of the respondent-UGC is reproduced as under:-

"[11]. That it is respectfully submitted that the petitioner applied under General Category and the marks secured by her are given below:-

*Paper-I: 64
Paper-II: 40
Paper-III: 78*

Further, the minimum qualifying marks required for General Category candidate is given in the following table:

Category	Minimum Qualifying Marks			
	Paper-I	Paper-II	Paper-I + Paper-II	Paper-III
GENERAL	40	40	100 (50%)	90 (45%)

It may be seen from the above that the petitioner failed to qualify the said examination.”

24. It is, thus seen, that the main discrepancy which has arisen is on account of the non-circle of a correct roll number. As a matter of fact, once the wrong roll number was circled, it was not incumbent upon the respondent-UGC to have searched for the answer script or to have examined all the OMR sheets to find out the answer script of the petitioner. However, the respondent-UGC in the interest of justice has undertaken the aforesaid exercise. Therefore, *prima facie* no *malafide* can be attributed in the instant case against the respondent-UGC.

25. However, there appear to be certain discrepancies in the manner in which the marks have been underscored and awarded. It is to be noted that in calculating the marks, the score out marks cannot be taken into consideration. Unless an appropriate evidence is led in that respect, there cannot be any finding as to which were the correct marks. As on date, the marks considered by the respondent-UGC as final marks, are the only undisputed marks.

26. Having perused the entire material available on record and in view of the facts and situations obtained in the instant case, this court finds that the

main prayer made by the petitioner in the instant writ petition, at this stage, cannot be accepted.

27. Since the final mark sheet has already been awarded based on the evaluation by the respondent-UGC, therefore, the same cannot be interfered with. The petitioner can also not be considered to be eligible for lectureship pursuant to the examination in which she appeared in the year 2011.

28. The marks awarded to the petitioner are less than the qualifying marks. It is, thus seen, that there arises no question for the grant of any compensation to the petitioner as well.

29. However, this court leaves it open for the petitioner to seek appropriate remedy and in case, the petitioner succeeds that the discrepancies in the evaluation of the answer script were deliberate and the petitioner was entitled to different marks, a further relief would depend on the outcome of the said recourse.

30. No further directions, at this stage, are called for.

31. With the aforesaid observations, the instant petition stands disposed of.

32. Needless to state that this court has not dealt with the submissions made by learned counsel appearing for the parties on merits.

33. All rights and contentions raised by them may be adjudicated in appropriate proceedings.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 04, 2023

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