

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice (Shampa Dutt (Paul), J.)

FMA 452 of 2015

The University of Burdwan & ors.

Vs.

Sayani Kolay & ors.

For the appellants : Mr. Achinta Kr. Banerjee
Mr. Raghunath Chakraborty

For the respondents : Mr. Uday Sankar Chatterjee
Mr. Suman Sankar Chatterjee
Ms. Trisha Rakshit
Mr. Rajarshee Tah
Ms. Aiswari Dutta

Heard on : 1st August, 2024

Judgment on : 1st August, 2024.

Harish Tandon , J:

The writ Court was approached by the writ petitioner/respondent for a direction upon the authorities to re-assess the answer scripts in respect of Mathematics Pass paper of B.Sc. Part-I Examination conducted by the University in the year 2012. The petitioner appeared in the Examination and after publication of the result, applied under Right to Information Act as she thinks that the marks awarded to her

in Mathematics Paper-I (Pass Examination) is improper. After the answer scripts was given to the writ petitioner/respondent, she noticed that one of the questions which she solved was assessed by the examiner by awarding five marks which was latter on converted into nil (0) without any comment or the observation nor any initial being put therein.

The answer script was produced before the Single Bench. Astonishingly, the direction was passed upon the University to submit a report. The report reveals the modalities and the mechanism in relation to the said Examination and the right of review and scrutiny have been conferred upon the candidate to be exercised in specified manner indicated therein. It is a specific stand of the University that there is no ambiguity in awarding "0" marks by the examiner who might have erroneously granted five marks earlier and the mistake which is remedied, should not be taken as a ground of challenge. The answer to the mathematical problem was incorrect and because of the human error at the time of examining voluminous answer scripts, initially five marks were allotted but the examiner immediately corrected such mistake and awarded "0" marks.

The Court cannot substitute itself in the arm chair of the examiners who are expert in their respective field. The Court is not an expert amongst the experts of the relevant field and should be slow and circumspect in interfering in the academic field unless there is a convincing and impeccable evidence having brought before the Court in

this regard. The evaluation of the answer is within the realm of the institution conducting the examination and the evaluation is done by the set of examiners.

The right to review was also provided in the instructions which admittedly was not applied by the writ petitioner/respondent. It is on the basis of a copy of the answer scripts provided to the writ petitioner/respondent under RTI, the case was made out that in absence of any initial having put by the examination while altering the marks, the aforesaid action is impermissible and illegal. There is a sufficient explanation offered by the University in the report and which does not suggest that there is any illegality and/or infirmity in correcting the initial mistake by the examiner and there is no mandate in the Rules or in general instructions that in such case the reasons as well as the initials have to be put in.

The Court cannot usurp the discretion of the examiner nor should transgress its power of judicial review in academic matter in absence of any convincing materials having brought before it. It is really surprising that without any basis or the reasons having provided in the impugned order, the writ Court directed the University to award five marks to the writ petitioner/respondent which in our opinion is an example of transgression of the limitation set forth in exercise of the power of judicial review enshrined under Article 226 of the Constitution of India. Our endeavour has failed to find out any reasons far to speak

of cogent reasons in the impugned order and, therefore, the order warrants interference.

The impugned order is thus set aside.

The writ petition filed by the writ petitioner/respondent is hereby dismissed without any order as to costs.

The appeal and the connected applications, if there be any pending, are accordingly disposed of.

All parties shall act in terms of the copy of this order downloaded from the official website of High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)