



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.565 OF 2024**

Arsh s/o Nitin Waghmare,
Age: 24 years, Occ. Student,
R/o Khasbag In Front of Nalanda
Budha Vihar, Tq. and Dist. Beed.

..Petitioner

Versus

1. Dr. Babasaheb Ambedkar Marathwada
University, Chhatrapati Sambhajanagar,
Through its Registrar.
2. The Director Examination And Evaluation
Board, Dr. Babasaheb Ambedkar Marathwada
University, Chhatrapati Sambhajanagar.
3. Swatantrya Senani Ramrao Awargaonkar,
Law College, Beed,
Through its Principal.

..Respondents

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Mr. H. V. Tungar, Advocate for the Petitioner.

Mr. S. S. Thombre, Advocate for Respondent Nos.1 and 2.

Mr. C. V. Thombre, Advocate for Respondent No.3.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 12th MARCH 2024.

JUDGMENT PRONOUNCED ON :- 19th MARCH 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India seeking directions against respondent nos.1 and 2 to accept form and fees submitted by respondent no.3-College and undertake the process of re-evaluation and re-checking of the answer-sheets.

3. The petitioner contends that he was student of five years B.A., LL.B. Course and prosecuting his studies in 5th year with respondent no.3-College. He appeared for 10th / final semester examination conducted by the respondent-University in the month of April/May-2023. On declaration of the result on 02.08.2023, the petitioner is shown to be failed in the subjects of C.P.C., Public International Law and Insurance Law (Optional Legal). On 07.08.2023 petitioner applied for photo copies of the answer-sheets of those subjects. However, he received two answer-sheets i.e. C.P.C. and Insurance Law. The Lecturer re-evaluated his answer-sheets and found that the petitioner could have been allocated 29 marks as against 23 marks shown in the answer-sheet, since, the marks allocated against question no.4 were not added in the final total. Even in the subject of Insurance Law, the petitioner was found eligible for 13 extra marks. As such, he could have secured 40 marks. According to the petitioner, he has deposited fees for re-checking of marks in the subject of Public International Law on 06.10.2023 with respondent no.3-College. Further, the petitioner submitted photo copies of the answer-sheets to respondent no.2 and requested him to declare the result as soon as possible. According to the petitioner, he has deposited requisite fees with respondent no.3-College for re-evaluation of C.P.C and Insurance Law answer-sheets and re-checking of the subject of Public International Law. As such, he took necessary steps as per rules.

4. According to the petitioner, on 04.11.2023, respondent nos.1 and 2 declared result of re-evaluation on official website. Surprisingly there was no trace about his result. On enquiry he came to know that respondent no.3-College failed to deposit fees/charges within specified time with respondent nos.1 and 2. Resultantly, his request for re-evaluation and re-checking is not considered. According to the petitioner, he is not at fault. It is the fault of either College or University Authorities. He made request to respondent no.2 to consider

the case of the petitioner and declare the result accordingly. In this circumstance, the petitioner prays for the directions against the University.

5. The respondent no.3 filed affidavit-in-reply contending that the petitioner deposited requisite fees on 06.10.2023. The re-evaluation fees alongwith covering letter containing list of candidates was submitted to the University. The Director of Examination and Re-evaluation Committee endorsed a Demand Draft dated 30.10.2023 that it is belatedly submitted, however, pleased to accept the same vide endorsement dated 08.11.2023 in the interest of students. It is further stated that from 08.11.2023 it was kept pending and finally returned to the College alongwith impugned communication dated 11.12.2023 stating that the result of the re-evaluation was already declared on 04.11.2023.

6. Mr. Tungar, learned Advocate appearing for the petitioner submits that the results of the main examination were declared on 02.08.2023. The petitioner applied for photo copies of the answer-sheets within five days of declaration of the result i.e. on 07.08.2023. After receipt of the answer-sheets he got evaluated the same from the Lecturer and found that he could have been awarded 29 marks as against 23 marks. The petitioner deposited fees with respondent no.3-College for re-evaluation of the two subjects and re-checking of one subject. However, because of negligence on the part of the College authorities, fees could not be deposited within time. The student cannot be made to suffer for such wrong on the part of respondent no.3-College.

7. Mr. S. S. Thombre, learned Advocate appearing for the University vehemently opposes the petition. He would invite attention of this Court to the communication dated 11.12.2023 issued by the University to the College, thereby returning the Demand Draft dated

30.10.2023. He would submit that the College deposited the Demand Draft on 08.11.2023, whereas the results of re-evaluation and re-counting were declared on 04.11.2023. Therefore, Demand Draft received from the College has been returned. Since, the entire procedure as per rule was already over, the University cannot reopen issue and permit re-evaluation of the petitioner's subjects at this stage.

8. We have heard the learned Advocate appearing for the respective parties. The University has prescribed the rules and procedure for re-counting of the marks and evaluation of the answer books. The Part-A deals with the "supply of photo copies of answer books to the examinee/s". The facility is made available with intention to bring transparency in the examination system and ensure its credibility. The examinee is required to submit prescribed application duly signed by the examinee alongwith requisite fees within five clear days from the date of declaration of result of relevant examination. The rule prescribes that "any application received after expiry of last date is liable to be rejected without assigning any reason". The obligation is cast upon the Principal of the College to forward the relevant information of the applicants through email/CD to the Controller of the Examination within eight clear days from the date of declaration of the result of relevant examination. The Principal is mandated to forward the Demand Draft alongwith application. The photo copies of the answer book is then made available to the students within 10 to 12 days from the receipt of the application.

9. The Part-B of the rules prescribes procedure for re-counting of the marks subject to the payment of the fee of Rs.50/-. In case any discrepancy on any count is found that can be corrected by the University with authentication by the Controller of Examination. Clause 4 provides that if any question or part thereof in the answer book is observed to be unvalued / unassessed, the same can be got

valued from the same Examiner and additional marks can be awarded. The change is required to be informed to the examinee by way of Notification and corrected statement of marks.

10. The rules and procedure for re-evaluation of the answer book is provided in Clause (C), it requires that the application shall be routed through the College within five clear days from the date of issuance of the photo copies of answer book by the University. The examinee is eligible to apply for two answer books. The application alongwith prescribed fees shall be submitted by the examinee to the respective Colleges. In case, change of mark in subsequent assessment / revaluation is plus by more than 10%, the 75% of the fees is refundable. The Principal of College is under obligation to forward such application to the University alongwith fees collected through Demand Draft within eight clear days from the date of issuance of photo copies. Thereafter, examination wise / subject-paper wise list of seat numbers needs to be forwarded by the College to the Examination Section. After receipt of applications the Vice Chancellor has to nominate the retired teacher or any other expert in the subject as a member of the Committee. The Committee so formulated requires to evaluate whether, *prima facie*, there is grievance warranting re-assessment of the answer book. The cases recommended by the Committee are required to be preferred to the teachers/experts in the relevant subject. If on re-assessment it is found that 10% plus marks more than original are secured by the examinee, the marks awarded by the subsequent examiner shall be awarded to the concerned examinee.

11. Looking to the aforesaid scheme, if we look to the facts of the present case, what can be noticed is that the results of the main examination were declared on 02.08.2023. The petitioner made his application for photo copy on 07.08.2023. The University provided photo copy to the College. The respondent no.3-College published a

Notification dated 27.09.2023 thereby informing the students to receive the photo copies and submit applications for re-evaluation during the period from 03.10.2023 to 07.10.2023. The petitioner has placed before us the receipt indicating that he has deposited the requisite fees with the College for re-evaluation of the answer-sheets on 06.10.2023 i.e. as per the schedule notified by the College. The University had granted time to deposit the application alongwith fees with the University upto 12.10.2023. However, respondent no.3-College deposited the fees alongwith applications to university on 08.11.2023. By that time the result of the re-evaluation was already declared.

12. The aforesaid sequence of events clearly suggests that the petitioner who is final year law student has taken the necessary steps for re-evaluation of the answer-sheets so also deposited charges with the College. Therefore, no fault can be found with the petitioner in the entire process. Apparently, respondent no.3-College belatedly deposited the fees and applications to University on 08.11.2023 i.e. even after declaration of the result of re-evaluation. In this background, the University returned the Demand Draft submitted by the College. The similar reasons are recorded by the University in the impugned order.

13. Pertinently, the petitioner is final year law student. His failure in the examination not only results in the loss of academic year, but also it would be lifelong stigma on his academic record. The University regulations provides the facility for re-evaluation and prescribed the procedure for that purpose. The obligation is casted upon the College to act as coordinator between students and University. Once student takes prescribed steps as per schedule, he would entitle for re-evaluation of the answer-sheets by the University. As stated above, there is no reason to find fault with the petitioner. It is respondent no.3-College, who acted in careless and negligent manner while discharging its duty as per the University Rules. The reply filed

by respondent no.3 do not offer any explanation for the delay in submission of re-evaluation fees to the University, though it was received from students within time frame.

14. We find that the delay in deposit of the fees could not have been saddled on the petitioner, when he deposited the requisite fees with the College within stipulated time. The failure of the College to transmit the re-evaluation fees to the University within time could have been condoned in the interest of the students. If necessary, the College could have imposed penalty. In peculiarity of situation, the University was expected to secure the rights of the students by penalizing the defaulting College. The negligence on the part of respondent no.3-College is unpardonable. However, the student cannot be made to sufferer for wrong of the College. Therefore, we deem it proper to direct the University to accept the re-evaluation fees from petitioner and carry re-evaluation of his answer-sheets as prescribed under Rules. We also deem it proper to impose cost upon respondent no.3-College, who is responsible for suffering of the students. Hence, we proceed to pass following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The respondent nos.1 and 2 shall accept re-evaluation fees from the petitioner and carry re-evaluation of his answer-sheets within a period of one month, and declare and forthwith communicate the result of such re-evaluation to the petitioner.
- c. The respondent no.3-College shall pay cost of Rs.25,000/- (Rs. Twenty Five Thousand only) within period of ten days from date of this order, out of which Rs.15,000/- (Rs. Fifteen Thousand only) shall be deposited with the University and Rs.10,000/- (Rs. Ten Thousand only) shall be paid to the petitioner.

- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

LATER ON:

15. At this stage, Mr. Thombre, learned Advocate appearing for respondent no.3 prays for stay to the operation of the order.

16. However, for the reasons as stated in the order, the request is rejected.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE