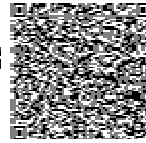


2024:PHHC:115564-DB



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

204

CWP-2199-2023 (O&M)

Reserved on: 25.07.2024

Pronounced on: 04.09.2024

Sudhanshu Gautam

...Petitioner

Versus

Guru Angad Dev Veterinary and
Animal Sciences University and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Sardavinder Goyal, Advocate for the petitioner.

Mr. Sarthak Gupta, Advocate for respondent No.1.

Mr. Himanshu Malik, Advocate for respondent No.2.

VIKAS SURI, J.

1. This petition under Article 226/227 of the Constitution of India has been filed by petitioner-Sudhanshu Gautam, a third year student pursuing Bachelor of Veterinary Science and Animal Husbandry course (for short 'BVSc & AH'), for quashing Rule 6.6(a), 6.6(c) and 6.5(d) of the Academic Rules for Undergraduate Programme(s) and for issuing direction(s) to the respondents to (i) scrutinize, re-total, award marks for unchecked questions and for re-evaluation of the answer books of petitioner in the subject of Parasitology (Paper-I & Paper-II)



Compartment Examination, 3rd year of BVSc & AH; (ii) supply/allow to inspect copy of answer books of the aforesaid answer books; (iii) consider the case of the petitioner for award of 3 marks for moderation in the aforesaid papers; and (iv) allow petitioner to appear in 4th Year of BVSc & AH course during pendency of present writ petition.

2. Sans unnecessary details, the facts in brief are, petitioner secured admission in BVSc & AH course at Khalsa College of Veterinary and Animal Sciences, Amritsar, affiliated to Guru Angad Dev Veterinary and Animal Sciences University (for short 'the University'), in accordance with Part-III of the Veterinary Council of India Minimum Standards of Veterinary Education (Bachelor of Veterinary Science and Animal Husbandry - Degree Course) Regulations, 2016 (for short 'MSVE Regulations'). As per the said regulations, the BVSc & AH course is of 5 ½ years, consisting of 4 ½ years of tuition/academic course and one year of internship period.

2.2 The petitioner, in third professional year was declared fail in two subjects, viz. (a) Veterinary Public Health and Epidemiology and (b) Veterinary Parasitology. He claims to have been orally informed of having secured 29.22 Overall Grade Point Average (for short 'OGPA') in Veterinary Parasitology and that he is eligible for taking compartment examination in both subjects.

2.3 Petitioner applied for scrutiny of the papers but result remained the same. Thereafter, petitioner appeared in compartment examination of both subjects in the month of October 2022. Every



subject consists of two papers, i.e. Paper-I and Paper-II. Petitioner secured pass mark in the subject of 'Veterinary Public Health and Epidemiology' but failed in both papers of 'Veterinary Parasitology'.

2.4 After declaration of result of compartment examination (Annexure P-6), petitioner again applied for scrutiny of paper books. Request for re-evaluation of the said papers was also made but is averred to have been denied citing scrutiny/re-totaling of marks etc. being not permissible with respect to compartment examinations and there being no provision for re-evaluation.

2.5 Copy of answer sheets of both papers of compartment examination was sought, through an application moved under the Right to Information Act, 2005 (for short 'RTI Act'). State Public Information Officer (SPIO) of the University denied supply of the answer books by referring to rule 6.6(c) of the Academic Rules for BVSc & AH course as per the MSVE Regulations (hereinafter referred to as 'Academic Rules'). The first appeal preferred thereagainst under the RTI Act was disposed of vide order dated 16.01.2023 (Annexure P-11) whereby the same stand of the University was forwarded to the petitioner. Representations made by the petitioner to the CEO and Vice Chancellor of the University as well as to the Principal of the College, for being shown his answer sheets and to scrutinize the same in front of him, were not responded to.

3. Aggrieved by the aforesaid, petitioner has invoked jurisdiction by way of the instant petition.



4. Upon notice, the University and Veterinary Council of India have filed their respective written statements to the writ petition, opposing the same.

5. Learned counsel for the petitioner has argued that imposing of a restriction that scrutiny is not permissible in compartment examinations is arbitrary, unconstitutional and contrary to plain language of Rule 6.6(a) of the Academic Rules. It is urged that no restriction has been imposed in the aforesaid sub-rule to exclude compartment examinations and if it is to be understood in a restricted manner, then it is liable to be quashed to that extent with reference to sub-rule (b) *ibid*, as 'scrutiny' has a narrow field of operation, i.e. for re-totalling and awarding of marks of unchecked questions only, despite there being every possibility of human error.

5.2 It is contented the Rule 6.6(c) of the Academic Rules, which imposes a bar on the answer books of annual professional examination from being shown to the students under any circumstances, is liable to be struck down in the light of the dicta in ***Central Board of Secondary Education and another vs. Aditya Bandopadhyay and others***, (2011) 8 SCC 497. It is, thus, urged that a candidate has a right to inspect his evaluated answer book and Rule 6.6(c) contravenes a vested right granted under the RTI Act.

5.3 Assailing Rule 6.5(d) of the Academic Rules, which provides that provision for moderation of results shall not apply to compartment examinations read with Rule 6.5(b), providing that any



moderation suggested shall be uniformly applied to all the students for that paper without altering the merit of the passed candidate(s), it is argued that the MSVE Regulations does not restrict granting marks for moderation in compartment examination and in view of the same, impugned Rule 6.5(d) is not sustainable. It is further argued that the petitioner secured 29.22 OGPA in the concerned subject and is short of only 0.78 OGPA to be declared pass. It is urged that in view of the negligible difference of marks/OGPA, necessary directions be issued to the respondents to reevaluate both the papers of the petitioner in the subject.

6. Per contra, learned counsel for the respondents vehemently opposed the submissions made on behalf of the petitioner, while submitting that the Academic Rules are as per the MSVE Regulations and Regulation 18(9) does not permit moderation in compartment examinations. The said Regulations have not been impugned in the instant petition and thus, challenge to *pari materia* provisions under consequential Academic Rules deserves to be rejected. It is further argued that Regulation 18 of the MSVE Regulations only provides for scrutiny of answer books and sub-regulation (9) thereof, categorically does not extend the provisions for moderation of results to compartment examinations.

6.1 The aforesaid provision also restricts enhancing of more than total of 05 marks in a professional year for a particular candidate and in no case, more than 03 marks in one subject. Petitioner scored



29.23 marks in the annual examination out of 60 marks. The said 60 marks comprised of two internal examinations of 10 marks each and two external examinations of 20 marks each. However, total marks of each external examination are 100, which are thereafter calculated to 20. Therefore, the shortage of 0.77 marks out of 60 translates to an actual shortage of 3.85 marks in total.

6.2 It was further urged that in so far as the compartment examination of the concerned subjects is concerned, petitioner has secured a total of 29.03 marks out of 60. The shortage of 0.97 marks thus translates to an actual shortage of 4.85 marks out of 100, however, in view of the provision of Regulation 18(9), in no case more than 03 marks can be enhanced in one subject. Thus, even if the petitioner was to secure benefit of 3 additional marks, final result of the petitioner would not be affected.

6.3 It was further submitted that the petitioner has no vested right to seek scrutiny of his answer books and the same is governed by the MSVE Regulations and the Academic Rules. It is further clarified that the answer books of internal assessment are shown to the students in terms of Rule 6.5(a) and the bar is only qua annual professional examinations.

6.4 It was also submitted that as per Academic Calendar 2022-23 for the 4th Professional BVSc & AH, classes had commenced in October 2022 and the first internal examination for the said year has also been conducted in March 2023. Hence, the prayer to attend classes of 4th



year cannot be granted.

7. We have heard learned counsel for the parties and perused the record with their able assistance.

8. Before discussing the rival submissions advanced on behalf of both the sides, it would be apposite to notice the relevant Rules and Regulations. The same are extracted hereunder for ready reference:-

Veterinary Council of India Minimum Standards of Veterinary Education (Bachelor of Veterinary Science and Animal Husbandry - Degree Course) Regulations, 2016

17. **Compartmental examination.** – (1) A student failing in a maximum of two subjects only may be allowed to appear in compartment examination for those subject(s) and the compartment examination shall comprise of the annual component of both the theory and practical of the failed subject(s) which shall constitute 40 and 40 per cent weightage, respectively, and the marks obtained in internal assessment of theory shall be considered for the evaluation of compartment examination.
- (2) The compartmental examination shall be conducted within twenty calendar days of subsequent year registration and if the student fails in the compartmental examination, he or she shall be reverted back to the original class and the results of such compartment examination shall be declared within ten days after the examination is conducted.
18. **Scrutiny of answer papers and rectification of errors.** – (1) There shall be a provision of scrutiny



of answer book(s).

- (2) A student, however, may be allowed to get his or her theory answer book(s) scrutinised, for which, the student shall have to apply to Controller of Examination or Coordinator of examination within three days after the declaration of result and after paying prescribed fee.
- (3) The Controller or Coordinator (Examination) shall arrange the scrutiny of answer book(s) by the Screening Committee to be constituted by the Dean.
- (4) The scrutiny shall be for re-totaling of the marks, and evaluation of unmarked question(s), if any.
- (5) In case, the total marks are found to be incorrect on scrutiny, the same shall be corrected and the result shall be revised accordingly (even if it is towards lower side) and if, any question is found to be unchecked by the examiner, the answer book(s) shall be sent to the Examiner for doing the needful and the result(s) shall be revised accordingly if there occurs any change in the marks.
- (6) No representation by the student(s) shall be entertained regarding the outcome of the result after scrutiny.
- (7) In case a student on the basis of the result of scrutiny becomes eligible for the compartmental examination, he or she may apply to the concerned authority to appear in the compartment examination on the announced scheduled date and the scheduled date of the compartment examination shall under no circumstances be changed on this account.
- (8) The Controller or Coordinator of Examination in consultation with the Dean of the College shall



form Committee of three members consisting of Dean of the College as Chairman and two other teaching faculty members to moderate the results obtained at the annual board examination and the Committee shall review the results and recommend the moderation in the event of failure of more than 10% of the student actually appearing in that particular subject and any moderation suggested shall be uniformly applied to all students for that paper (s) without altering the merit of the passed candidates.

- (9) Any moderation effected should not involve of enhancing of more than total of 5 marks in a professional year for a particular candidate, and in no case more than 3 marks in one subject and the provisions for moderation of results shall not apply to Compartment Examinations and there shall be no provision for grace marks in any case.

**Academic Rules for undergraduate programme(s) –
Bachelor of Veterinary Science & Animal Husbandary
(BVSc & AH)**

**6.5 Moderation of Annual Professional
Examinations:**

- (a) The Controller of Examinations in consultation with the Dean, College of Veterinary Science, Ludhiana shall form a **Committee of three members** consisting of Dean of the College as Chairman and two other teaching faculty members to moderate the results obtained at the Annual Professional Examinations. This Committee shall review the results for the normal distribution of marks and the percentage of pass or failure.



- (b) Any moderation suggested; shall be uniformly applied to all the students for that paper(s) without altering the merit of the passed candidate(s).
- (c) Any moderation effected; should not involve of enhancing of more than a total of 5 marks in a professional year for a particular candidate, and in no case more than 3 marks in one paper.
- (d) The provision(s) for **Moderation of results shall not apply to Compartment Examination(s)**.
- (e) There shall be no provision for grace marks in any case.

6.6 Scrutiny of answer books of Annual Professional Examinations:

- (a) Since there is no provision(s) of re-evaluation of answer book(s), a student, however, may be allowed to get his/her answer book(s) scrutinized, for which, the student shall have to apply to the Controller of Examinations **within three days after the declaration of result** and after paying the prescribed fee of Rs. 500/- per paper or as applicable from time-to-time. The Controller of Examinations shall arrange the scrutiny of answer book(s) by the Screening Committee.
- (b) Scrutiny shall only be re-totaling of the marks and examining of unmarked question(s), if any.
- (c) The answer book(s) of Annual Professional Examinations shall not be shown to the student under any circumstances.
- (d) In case, the total marks are found to be incorrect on scrutiny, the same will be corrected and the result shall be revised accordingly (even if it is towards lower side). If, however, any question is found to be unchecked by the Examiner, the answer book(s)



shall be sent to the Examiner or to the committee **as per clause 6.6 (a)** for doing the needful and the result(s) shall be revised accordingly, if there occurs any change in the marks.

- (e) No representation by the student(s) shall be entertained regarding the outcome of the result after scrutiny.
- (f) In case, a student on the basis of the result of scrutiny becomes eligible for the compartment examination, he/she may apply to the concerned authority to appear in the compartment examination on the announced scheduled date. The scheduled date of the compartment examination shall under no circumstances be changed on this account.

6.7 **Compartmental Examinations:**

- (a) A student failing in a **maximum of two subjects** only may be allowed to appear in compartment examination for those subject(s) and the compartment examination(s) shall comprise of the annual component of both the theory and practical of the failed subject(s) which shall constitute 40 and 40 per cent weightage, respectively, and the **marks obtained in internal assessment of theory shall be considered for the evaluation of compartment examination(s).**
- (b) The compartmental examination(s) shall be conducted **within twenty calendar days** of subsequent year registration and if the student fails in the compartmental examination(s), he or she shall be reverted back to the original class and the results of such compartment examination(s) shall



be declared **within ten days** after the examination is conducted.

9. The Hon'ble Supreme Court of India in *Central Board of Secondary Education and another vs. Aditya Bandopadhyay and others* (supra), was *inter alia* considering the questions whether an examinee's right to information under the RTI Act includes the right to inspect his evaluated answer books in a public examination or taking certified copies thereof; and if the examinee is entitled for inspection of the evaluated answer books or seeking certified copies thereof, whether such right is subject to any limitations, conditions or safeguards. With reference to definition of information in Section 2(f) of the RTI Act, it was held that when a candidate participates in an examination and writes his answers in answer book and submits it to the examining body for evaluation and declaration of the result, the answer book is a document on record. When the answer book is evaluated by an examiner appointed by the examining body, the evaluated answer book becomes a record containing the 'opinion' of the examiner. Therefore, the evaluated answer book is also an 'information' under the RTI Act. The Supreme Court laid down that every examinee will have the right to access his evaluated answer books, by either inspecting them or to take certified copies thereof, unless the evaluated answer books are found to be exempted under Section 8(1)(e) of the RTI Act. It is further held that unless the examining body is able to demonstrate that the answering book falls under the exempted category of information describe in clause



(e) of Section 8(1) of the RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. The Apex Court concluded that direction to the examining bodies to permit examinees to have inspection of their answer books was upheld subject to the clarification regarding the scope of RTI Act and the safeguards and conditions subject to which 'information' should be furnished.

10. Another two judge Bench of the Apex Court in ***Union Public Service Commission and others vs. Angesh Kumar and others***, (2018) 4 SCC 530, followed the ratio in ***Aditya Bandopadhyay's case*** (supra) and while considering the problems in showing evaluated answer sheets in the UPSC Civil Services Examination noticed in ***Parshant Ramesh Chakkarwar vs. UPSC***, (2013) 12 SCC 489, held as under:-

“9. Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information,



the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced.”

11. In the present case, challenge is to Rule 6.6(c) of the Academic Rules that provides the answer books of the annual professional examination shall not be shown to the students under any circumstances. The said provision being not in conformity with the law settled by the Apex Court is, thus, liable to yield to the exception of the provisions under the RTI Act.

12. The argument advanced on behalf of the petitioner that Rule 6.5(d) providing for Moderation of results not to apply to Compartment Examinations is arbitrary and there is no such restriction imposed under the MSVE Regulations, is only to be noticed and rejected. Perusal of Regulation 18(9) would show the said argument to be fallacious on the face of it. At the cost of repetition, the said sub-Regulation reads as thus,

(9) Any moderation effected should not involve of enhancing of more than total of 5 marks in a professional year for a particular candidate, and in no case more than 3 marks in one subject and the provisions for moderation of results shall not apply to Compartment Examinations and there shall be no provision for grace marks in any case.

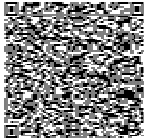
The above said regulation is not under challenge and is applicable to the petitioner. That being so, not much deliberation is called for but to notice that Annual Professional Examination cannot be equated with



Compartment Examination. The respondents have also sought to explain that in Annual Professional Examinations all the students appear/are supposed to appear, whereas in the Compartment Examinations, only the failed students appear. Since moderation is to be uniformly applied to all the students for that paper(s) without altering the merit of the passed candidate(s), applying moderation in the Compartment Examination(s) will have the effect of denial of equality as only the selected students who appear in the Compartment Examination(s) will get the benefit of the same, and it might further alter the merit of the passed candidate(s). Denial of moderation in the Compartment Examinations thus, is reasonable and has a rational nexus to the objective sought to be achieved.

13. The other argument feebly advanced that Rule 6.6(a) does not impose a restriction that scrutiny is not permissible in compartment examination, does not hold much weight. A perusal of Rule 6.6 would show that it deals with scrutiny of answer books of Annual Professional Examinations only. Compartment examinations are governed by Rule 6.7. At the hearing nothing has been pointed out to show that the petitioner has any vested right with regard to the manner an examination is conducted, evaluated or dealt with for re-evaluation or scrutiny. It is well settled that the provisions under one rule cannot be as a matter of right read into another rule, dealing with different aspects, which in the present case is two set of examinations.

14. No other point was argued.



15. In view of the above discussion, the present writ petition deserves to partly succeed in as much as it pertains to the challenge to Rule 6.6(c) of the Academic Rules, which imposes a bar on the answer books of annual professional examination being shown to the students under any circumstances.

16. Accordingly, the said provision under Rule 6.6(c) *ibid* is read down, to be subject to the vested right of a candidate for seeking information under the RTI Act and the limitations prescribed thereunder with regard to Section 8(1) of the Act (supra). As a sequel of the above, the petitioner may, if so advised, apply for inspection of answer books of the compartment examination afresh, which request will be considered as per law, keeping in view the aforesaid observations.

17. The writ petition is disposed of in the terms aforesaid.

(SHEEL NAGU)
CHIEF JUSTICE

(VIKAS SURI)
JUDGE

September 04, 2024
sumit.k

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No