



\$~42

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

% *Date of Decision: 01.02.2024*

+ **W.P.(C) 1471/2024 and CM Nos.6066/2024 & 6067/2024**

MONIKA

..... Petitioner

Through: Ms Haripriya Padmanabhan, Senior Advocate with Ms Pooja Dhar, Ms Trisha Chandran and Ms S.Ambica, Advocates.

versus

HIGH COURT OF DELHI AT NEW DELHI THROUGH
THE REGISTRAR GENERAL AND ANR

..... Respondents

Through: Ms Beenashaw Soni, Senior Panel Counsel and Ms Mansi Jain, Advocate for R-1.

Mrs Avnish Ahlawat, Standing Counsel, Ms Tania Ahlawat, Mr Nitesh Kumar Singh, Ms Laavanya Kaushik, Ms Aliza Alam and Mr Mohnish Sehrawat, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning Paragraph XII of the Appendix to the Delhi Higher Judicial Service Rules, 1970 (hereafter '**the Rules**'). The petitioner also prays that directions be issued to respondent no.1 (hereafter '**the Delhi High Court**') to form an independent committee for re-evaluation of the petitioner's answer-sheets in respect of Law-III



examination paper, of the Delhi Higher Judicial Service Mains Examination (Written), 2023 (hereafter '**DHJS Mains Examination**').

2. The petitioner had secured an aggregate of 422 marks out of a maximum of 750 marks in the DHJS Mains Examination. This is significantly higher than the qualifying threshold of 50%. However, the petitioner was not successful in clearing the examination as she was awarded 75 marks out of a maximum of 200 marks in Law Paper III, which is 15 marks short of the qualifying cut of 45%.

3. The petitioner is aggrieved as she has not qualified the DHJS Mains Examination despite performing well in three papers. It is in the aforesaid context that the petitioner seeks a re-evaluation of her answer sheets in Law Paper III. She also challenges the Rules to the extent that it provides that no request for re-evaluation of answer sheets would be entertained.

4. The Rules were notified on 27.08.1970 and came into effect from the date of publication in the Daily Gazette. The Rules have been amended from time to time. In terms of Rule 7C of the Rules, the High Court is required to hold a written examination(s) and *viva voce* test in the manner as prescribed in the Appendix to the Rules for the purposes of selection of candidates for appointment to the Delhi Higher Judicial Service (hereafter '**DHJS**') by direct recruitment.

5. The Appendix to the Rules provides that the Delhi Higher Judicial Service Examination (hereafter '**DHJS Examination**') would be held in three successive stages. The first being the DHJS Preliminary Examination



– an objective type examination with 25% negative marking – as a screening test of qualifying nature. Those candidates qualifying the DHJS Preliminary Examination would be admitted to the DHJS Mains Examination. And, those candidates that qualify the DHJS Mains Examination would be called for the third stage of *viva voce*.

6. Paragraph III of the Appendix to the Rules provides that the minimum qualifying marks for preliminary examination of general category candidates is 50% and those for the reserved categories is 45%. As stated above, those qualifying the DHJS Preliminary Examination would be admitted to the DHJS Mains Examination. The candidates would be selected on the order of merit based on their aggregate marks in the DHJS Mains Examination and *viva voce*.

7. The DHJS Mains Examination comprises of four papers. The aggregate maximum marks for the four papers is 750 marks. The minimum qualifying marks prescribed for the general category candidates is 45% in each paper and 50% of the aggregate marks. The brief description of the said papers, as set out in the Appendix to the Rules, is set out below:

“MAIN (WRITTEN) EXAMINATION

Papers	Description	Max Marks
Paper-I	General Knowledge & Language – This is to test the candidate’s knowledge of current affairs etc. and power of expression in English. Credit will be given both for substance and expression. Conversely deduction will be made for bad expression,	150



	faults of grammar and misuse of words etc.	
Paper-II	Law – I – Constitution of India, Code of Civil Procedure, Indian Evidence Act, Limitation Act, Registration Act and such other subjects as may be specified by the High Court from time to time.	200
Paper-III	Law – II – Transfer of Property Act, Indian Contract Act, Sale of Goods Act, Partnership Act, specific Relief Act, Arbitration Law, Personal Law and such other subjects as may be specified by the High court from time to time	200
Paper-IV	Law – III – Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and such other subjects as may be specified by the High court from time to time.”	200

8. The marks obtained by all the candidates who have successfully cleared the DHJS Mains Examination are required to be withheld till the evaluation of their *viva voce*. As mentioned above, the marks obtained by the candidate in the DHJS Mains Examination, and the *viva voce* determine the order of their inter-se merit.

9. On 13.07.2023, the Delhi High Court issued an advertisement inviting applications from eligible candidates for filling 16 vacancies by way of direct recruitment in the DHJS, by holding the DHJS Examination.

10. The petitioner claims that she is a practicing advocate and had submitted her application for DHJS on 27.07.2023 under the general category. The confirmation for the same was received by the petitioner on her mobile as well as her email and she was assigned application number 234710000086.



11. Subsequently, on 16.08.2023 the petitioner was given the admit card for the DHJS Preliminary Examination which reflected her Roll Number as 20020641. The said examination was conducted on 20.08.2023.

12. The petitioner secured 79.5 marks out of 148 in the DHJS Preliminary Examination and thus, qualified the said examination. Accordingly, she was admitted to appear for the DHJS Mains Examination.

13. The Delhi High Court conducted the DHJS Mains Examination from 14.10.2023 to 15.10.2023. The petitioner was assigned the Roll Number 33 and she appeared in all the four papers.

14. The Delhi High Court declared the results of the DHJS Mains Examination on 29.12.2023. The marks of all the candidates, who had not qualified the DHJS Mains Examination were disclosed but marks of those, who had qualified, were withheld. The petitioner did not qualify the DHJS Mains Examination and accordingly, her marks were disclosed. The same is reproduced as under:

"S. No.	Paper Name	Total Marks	Marks Obtained
1.	General knowledge and English	150	108
2.	Law-I	200	107
3.	Law-II	200	132
4.	Law-III	200	75
	TOTAL	750	422"



15. The petitioner had secured an aggregate of 422 marks out of 750 marks in the DHJS Mains Examination. Although, she had secured more than 50% marks in the aggregate, she was not successful in clearing the DHJS Mains Examination as her marks in Law Paper III were less than 45% - the qualifying threshold.

16. On 06.01.2024, the petitioner addressed a representation to the Registrar General of this Court requesting that Law Paper III be re-evaluated and re-checked by some independent faculty at the earliest and the marks of the shortlisted candidates who are due to appear for the interview rounds, be disclosed prior to commencement of the *viva voce*.

17. Ms Haripriya Padmanabhan, the learned senior counsel appearing for the petitioner contended that it was apparent that there was a systemic error in the marking of Law Paper III as only thirteen candidates had secured the minimum qualifying marks or more, in the said paper. She referred to the results of the DHJS Mains Examination, as declared by the Delhi High Court, and submitted that a large number of candidates who had performed exceedingly well in other papers had failed to secure the requisite marks in Law Paper III. She submitted that only eleven candidates out of seventy-eight candidates who had appeared in the DHJS (Written) Mains Examination have been short-listed for *viva voce*. She submitted that the number of candidates short-listed for the interview were less than the number of vacancies as advertised. She contended that in the given circumstances, denial of re-evaluation of examination papers works to the prejudice of deserving candidates.



18. The learned counsel also relied on the decisions of the Supreme Court in *Sahiti and Ors. v. Chancellor, Dr. N.T.R. University of Health Sciences & Ors.*¹, *High Court of Tripura v. Tirtha Sarathi Mukherjee & Ors.*², *State of Orissa & Ors. v. Prajanaparamita Samantra & Ors.*³, *Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.*⁴, *Centre for Public Interest Litigation v. High Court of Delhi*⁵ and on the strength of the said decisions submitted that there can be a variety of situations wherein re-evaluation is called for.

19. The petitioner also contends that Paragraph XII of the Appendix to the Rules is ultra-vires of the Constitution of India as it restricts the petitioner's freedom of trade and profession, which is guaranteed under Article 19(1)(g) of the Constitution of India. According to the petitioner denial of her request for revaluation of Law Paper III, in the given facts, effectively denies her the opportunity to compete for appointment to the DHJS. She submits that Paragraph XII also violates Article 14 of the Constitution because it is arbitrary and unjust. It is contended on behalf of the petitioner that an absolute prohibition of re-evaluation shuts out the chance of deserving candidates recourse against unfair marking.

20. Ms Beenashaw, learned counsel appearing for the Delhi High Court submitted that the petitioner had appeared as a general category candidate and only three vacancies were advertised under the general category. She

¹ (2009) 1 SCC 599

² (2019) 16 SCC 663

³ (1996) 7 SCC 106

⁴ (2018) 2 SCC 357

⁵ (2016) 13 SCC 163



submitted that the candidates of the general category that had qualified the DHJS Mains Examination were thrice the number of vacancies. She submitted that the vacancies that had been reserved for SC and ST candidates would not be filled as there was no candidate belonging to the ST category that had cleared the examination and only two candidates from the SC category had cleared the DHJS Mains Examination. She submitted that there would be no impediment in filling up all the vacancies of the general category candidates as a sufficient number of candidates had qualified the DHJS Examination.

REASONS AND CONCLUSION

21. Paragraph XII of the Appendix to the Rules which is subject matter of challenge in the present petition reads as under:

“XII RE-EVALUATION OF ANSWER SHEETS

There shall be no re-evaluation of answer sheets in respect of Preliminary Examination and Mains Examination. 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.”

22. The petitioner’s contention that the said Rule is violative of Articles 14 or 19(1)(g) of the Constitution of India is without merit. The denial of revaluation does not in any manner impose an unreasonable restriction on the freedom guaranteed under Article 19(1)(g) of the Constitution of India. The contention that the same is arbitrary or unreasonable is also ill founded. Clearly, the said Rule does not violate the equal protection clause.



23. The aforesaid question is not *res integra*. In ***Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Seth & Ors.***⁶ some of the examinees had successfully challenged the validity of the relevant Regulations *inter alia* permitting re-verification but not re-evaluation. The High Court allowed their representation and held that the examinees were entitled to seek disclosure, inspection and re-evaluation of the answer sheets. Maharashtra State Board of Secondary and Higher Secondary Education successfully appealed the said decision and the judgment passed by the High Court was set aside by the Supreme Court. The relevant extract of the said decision is set out below:

“20. We consider that the above approach made by the High Court is totally fallacious and is vitiated by its failure to follow the well-established doctrine of interpretation that the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic.....Clause (1) of the said regulation states that any candidate who has appeared at the HSC examination may apply to Divisional Secretary for verification of marks, particularly in any subject, but such verification will be restricted to check whether all the answers have been examined and whether any mistake has been committed in totalling of marks in that subject or in transferring marks correctly on the first cover page of the answer book as well as

⁶ (1984) 4 SCC 27



whether the supplements attached to the answer books as mentioned by the candidates are intact. Clause (3) of the said regulation imposes the further limitation that no candidate shall claim or be entitled to revaluation of his answer book or disclosure or inspection of the answer book or further documents as these are to be treated by the Divisional Boards as most confidential. It is obvious that clauses (1) and (3) have to be read together and not in isolation from each other as has apparently been done by the High Court. The right of verification conferred by clause (1) is subject to the limitation contained in the same clause that no revaluation of the answer books or supplements shall be done and the further restriction imposed by clause (3), prohibiting disclosure or inspection of the answer books.

XXXX

XXXX

XXXX

26. We are unable to agree with the further reasons stated by the High Court that since “every student has a right to receive fair play in examination and get appropriate marks matching his performance” it will be a denial of the right to such fair play if there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognized and permitted there is an infringement of rules of fair play.....The candidates have taken the examination with full awareness of the provisions contained in the Regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when we find that all safeguards against errors and malpractices have been provided for, there cannot be said to be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation.”

[emphasis added]



24. In *H.P. Public Service Commission v. Mukesh Thakur & Anr.*⁷, the Supreme Court referred to its earlier decision in *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Seth & Ors*⁶, and held as under:

“24. The issue of re-valuation of answer book is no more res integra. This issue was considered at length by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Seth*, wherein this Court rejected the contention that in the absence of the provision for re-valuation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules / Regulations not providing for rechecking/verification/re-valuation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision.”

25. The petitioner’s challenge to Paragraph XII of the Appendix to the Rules must fail for yet another reason. The petitioner having participated in the examination conducted in terms of the Appendix to the Rules cannot, after being unsuccessful, challenge the same. It is settled law that a candidate who willingly participated in a selection process cannot challenge the same after being unsuccessful. In *Madan Lal & Ors. v. State of Jammu & Kashmir & Ors.*⁸, the Supreme Court observed that “...It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of

⁷ (2010) 6 SCC 759



interview was unfair or Selection Committee was not properly constituted....”

26. The Supreme Court in a recent decision in **Ashok Kumar v. State of Bihar**⁹ has referred several earlier decisions and reiterated the above principle. The relevant extract of the said decision is set out below:

“12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.”

27. In **Anupal Singh & Ors. v. State of U.P & Ors.**¹⁰, the Supreme Court held that the candidates who had participated in the selection process could not challenge the Office Memorandum after they were unsuccessful.

28. In view of the above, the petitioner’s challenge to Paragraph XII of the Appendix to the Rules is rejected.

29. The next question to be examined is whether in the given facts, directions are required to be issued to the Delhi High Court to re-evaluate the examination papers.

30. The learned counsel for the petitioner is correct in her submission that in exceptional circumstances, where it is apparent that the selection process

⁸ (1995) 3 SCC 486

⁹ (2017) 4 SCC 357

¹⁰ (2020) 2 SCC 173



is vitiated, the court can in exercise of powers pass appropriate orders for re-evaluation.

31. In *Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.*⁴, a decision that was relied upon by the petitioner, the Supreme Court had 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 only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;”

32. It is apparent from the above that the Courts may direct re-evaluation of examination papers in rare and exceptional cases where it is found that a material error has been committed. It is important to note that such a re-evaluation would be ordered where the relevant Rules / statutes do not proscribe the same.

33. In *High Court of Tripura v. Tirtha Sarathi Mukherjee and Ors.*² the Supreme Court referred to the earlier decision in *Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.*⁴ and reiterated that in rare and exceptional cases a writ court could exercise its constitutional powers even when there was no provision for re-evaluation.

34. In cases, where the court finds that there is a systemic flaw in the process of evaluation or if it is found that there is a manifest error in evaluation, the courts may in exceptional circumstances direct re-evaluation



or further scrutiny if there is no rule prohibiting re-evaluation. In the given facts, we find no such error.

35. The petitioner's case rests solely on the ground that a large number of candidates have not qualified Law Paper III. According to the petitioner, all candidates have been awarded low marks in the said paper. It is apparent from the result that only thirteen out of seventy-eight candidates have secured 45% or more marks in Law Paper III. Thus, it could be reasonably inferred that Law Paper III was a tough question paper, or the evaluation of the said answer sheets was strict, or both. However, the fact that the examinees have not performed well in this paper does not mean that there has been any systemic error in the evaluation process. It is material to note that Law Paper III was marked by a single examiner. This was to obviate, the variation on account of different standards and approaches of different examiner, in the subjective evaluation of answer sheets.

36. It is material to note that in terms of Rule 7C of Part-II of the Instructions accompanying the advertisement for appointment, the maximum number of candidates to be shortlisted for *viva voce* could not exceed three times the number of vacancies in each category. In the present case, the maximum number of candidates in the general category that could be called for *via voce* have qualified the DHJS Mains Examination.

37. In the given facts, the petitioner's prayer that her answer sheet for Law Paper III be re-evaluated is liable to be rejected for two reasons. First, that in terms of Paragraph XII of Appendix to the Rules, re-evaluation of



answer sheets is prohibited. And second, that we do not find any flaw or infirmity in the evaluation process.

38. The petition is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 01, 2024

RK/gsr