

(2002) 12 P&H CK 0023

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12919 of 1998

Ms. Deepa

APPELLANT

Vs

Maharishi Dayanand University
and Others

RESPONDENT

Date of Decision: Dec. 20, 2002

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2003) 133 PLR 555 : (2003) 2 RCR(Civil) 342

Hon'ble Judges: S.S. Nijjar, J; M.M. Kumar, J

Bench: Division Bench

Advocate: Manoj Sud, for the Appellant; Balram Gupta, Senior Advocate and Suman Jain, for the Respondent

Final Decision: Allowed

Judgement

S.S. Nijjar, J.

In this petition under Article 226/227 of the Constitution of India, the petitioner seeks the issuance of a writ in the nature of certiorari/Mandamus quashing memo dated 20.1.1998, Annexure P-4 by which the claim of the petitioner for the award of a gold medal has been stated to have been considered by the authority and not acceded to. The petitioner also seeks the quashing/striking down of Clause 4.2 of the Ordinance concerning Revaluation of Answer Books (hereinafter referred to as "the Revaluation Rule") framed by the respondent-university to the extent that it provides that the marks obtained as a result of re-evaluation of the papers of the Course concerned shall not count towards determining the position in the order of merits, distinction and award of gold medal. The petitioner also seeks a direction to the respondents to award the gold medal to the petitioner along with another candidate for having secured highest marks in M.Sc. (Physics) examination held in May, 1997.

2. The petitioner claims to be a brilliant student having secured distinction in all the prestigious academic examination from matric onwards. After successfully completing B.Sc., the petitioner got admission in M.Sc. (Physics) in the respondent-University. In the M.Sc. (previous) examination conducted by the respondent-University, the petitioner secured 385/500 marks i.e. 77% marks. She appeared in the final examination under Roll No. 1712 in May 1997. She was expecting to secure 400 marks or above out of 500 marks in the final year examination. She was disappointed with the final year result which indicated that she had secured 390 marks out of 500 marks. In this manner, the petitioner was shown to have secured 775 marks out of 1000 in the M.Sc. (Physics) examination. Copy of the result-cum-detailed marks card issued to the petitioner by the respondent-University has been attached to the petition as Annexure P-1. Another candidate, namely, Sh. Navin Kumar son of Munshi Ram, Roll No. 1685 who secured 781/1000 marks was shown to have stood first in the aforesaid University examination. Not satisfied with the performance as depicted in the result-cum-detailed marks card, the petitioner sought re-evaluation of marks in M.Sc. final year examination. On re-evaluation, the respondent-University increased the marks of the petitioner from 390/500 to 396/500 in the M.Sc. final year examination. As a result of re-evaluation, the total marks of the petitioner in M.Sc. (Physics) increased from 775/1000 to 781/1000. The respondent-University issued a revised Result-cum-Detailed Marks Card on 24.11.1997. Now the results of the petitioner were equal to the marks obtained by Navin Kumar i.e. 781/1000. According to the provisions contained in MDU Calendar Vol. II, a candidate securing highest marks in an examination of the University is entitled for the award of Gold Medal which is conferred in annual convocation to be held in the year immediate after the examination in question. The annual convocation of the respondent-University in the year 1988 was to be held in the month of September/October. The petitioner, therefore, requested respondent No. 3 well in advance to send the Revised result of the petitioner to the office of respondents No. 1 and 2 with the recommendation that the petitioner is also a co-winner of Gold Medal in the M.Sc. (Physics) Examination, 1997. Office of respondent No. 2, however, rejected the claim of the petitioner for the award of Gold medal on 22.12.1997. The petitioner submitted another representation to the Vice-Chancellor of the University on 26.12.1997, seeking his intervention on the ground that the petitioner has been wrongly deprived of the Gold Medal. This representation was also rejected vide Memo dated 20.1.1998. The petitioner, therefore, challenges the action of the respondents and the vires of the relevant Clause 4.2 of the Revaluation Rule. The aforesaid Clause is as follows:-

"4.2. The marks obtained as a result of re-evaluation of the paper(s) of the last examination of the course concerned shall not count towards determining the position in the order of merit, distinction and award of Gold Medal."

3. It is pleaded that Clause 4.2 is arbitrary, irrelevant and it defeats the very object of providing for revaluation. The rule, therefore, does not stand the test of reasonableness as required by Article 14 of the Constitution of India. It is further pleaded that the result of a candidate becomes final only after revaluation. It is further pleaded that Clause 4.2 leads to disastrous results. Whenever a candidate seeks revaluation, a certain amount of risk is always involved. In a given case, marks secured by the candidate can be decreased. In that eventuality, Rule 4.2 would not come to the rescue of the candidate. However, if the marks of the candidates on re-evaluation are increased, Clause 4.2 in an arbitrary manner, deprives the candidate from getting the consequential benefits of such increased marks. If the increase in marks is not to be counted for determining the position of the candidate in order of merit, he or she does not get any actual benefit, despite improving the position on re-evaluation. Learned counsel for the petitioner submitted that similar rules have been struck down in a number of cases by different High Courts. Reliance is placed on the case of Fateh Kumari Sisodia v. Slats of Rajasthan and Ors. AIR 1997 Raj 191, [Anjay Bansal Vs. Bangalore University and another](#), , Rajendrakumar Chandrakant Nadkarni v. University of Bombay 1950(3) A.I.F.C. 650.

4. In the written statement filed by the respondents, the claim of the petitioner has been contested. It has been stated that no right much less any statutory right of the petitioner has been infringed. Consequently, the writ petition is incompetent. On merits, it has been submitted that the petitioner was not entitled to be considered for Gold Medal under Clause 4.2 of the Re-evaluation Rules. It is further pleaded that the provisions of any ordinance has to be read as a whole and one cannot claim application of any Ordinance/rule by adopting the method of "Pick and choose". The two provisions, namely, the one governing the award of Gold Medal and the other which specifically precludes consideration of marks obtained as a result of re-evaluation of papers for award of Gold Medal etc. do not work to the mutual exclusion of each other rather the two provisions supplement each other and have to be read as a whole. The petitioner had applied for re-evaluation under the relevant rules. She was well aware that she would not be entitled to Gold Medal, place in the merit list etc, as a result of re-evaluation of answer books. Therefore, the petitioner is now estopped for claiming the benefit of result of re-evaluation for Gold Medal. The rules and regulations having been framed by the highest statutory academic body of the University i.e. Academic Council, no Mandamus ought to be issued directing the respondents to act against the same or to annul/amend the same.

5. We have heard the Id. counsel for the parties at length.

6. Counsel for the petitioner reiterated the submissions made in the pleadings which have been noticed above. Mr. Balram Gupta appearing for the University submitted that re-evaluation is a concession. The benefits of this concession have a very limited scope. In order to be eligible for a Gold Medal, a candidate has to be

first in the merit list in the first attempt. Any person who reaches the first position in second attempt would not be eligible. Thus, a candidate whose marks are increased by re-evaluation would not be eligible for the award of a Gold Medal under Clause 4.2. This argument has to be stated only to be rejected. Revaluation is an integral part of the examination. The marks obtained on revaluation cannot be said to be the marks obtained in the 2nd attempt. Marks obtained on revaluation of any attempt would remain the marks of that attempt only. He further submitted that the procedure of re-evaluation is fraught with uncertainties. In order for two candidates to be put at par or bracketed, their papers would have to be examined by the same examiner. The judgments relied upon by the counsel for the petitioner in support of his submissions have not considered the provisions with regard to re-evaluation in a comprehensive manner. He further submitted that the constitutionality of a provisions/rules/regulations has to be adjudged only by a three-fold test, namely (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. In support of this submission, he has relied on a judgment of the Supreme Court in the case of [Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others](#), . He has submitted that since Clause 4.2 treats all candidates seeking revaluation in a similar manner, equality is inherent in the rule. Therefore, there is no infringement of Article 14 of the Constitution of India. The rationale of the rule, according to the learned Sr. counsel, is to give finality to the result of the candidates. Re-evaluation may take a long time. This would create uncertainty and create difficulties in the grant of the Gold Medal. The regulation has been framed with a view to providing certainty and finality to the result of the candidates.

7. In response, learned counsel for the petitioner submitted that re-evaluation is integral and inseparable part and parcel of the process of main examination. Therefore, the finality to the result can only be given after re-evaluation. In support of his submission, the learned counsel relies on a Division Bench judgment of the Madhya Pradesh High Court in the case of [Manoj Kumar Jindal Vs. Ravishankar University, Raipur and Others](#), .

8. We have anxiously considered the submissions made by the learned counsel for the parties. We have also perused the pleadings of the parties.

9. A candidate would normally seek revaluation of the result with the earnest hope of improving the result. The desire for revaluation is usually based on an apprehension that perhaps some mistakes have been committed by the examiner in evaluating the answer book. In the rules/regulations for re-evaluation, the candidate is given a chance to have the error detected and corrected. There is a legitimate

expectation of an increase in marks. We are of the considered opinion that providing such an opportunity to the candidates would be a source of solace to students who are devoted to studies and are meritorious. The rationale underlying the rule of revaluation seems to be that no candidate should suffer for the mistake of the examiner. In other words, every candidate should get the fruits of his/her labour in pursuing the studies with enthusiasm and vigour. The rule is framed to make sure that no candidate is deprived of the result he/she deserves. The principle of certainty as advocated by Mr. Balram Gupta would put a premium on the mistake committed by the examiner in the first instance. If after revaluation, a candidate secures higher position on merits, there would be no reasonable basis for the denial of consequential awards such as Gold Medals. Clause 4.2, in our opinion, nullifies the benefit of revaluation by declaring that the result of re-evaluation of the papers shall not count towards determining the position in the order of merit, distinction and award of Gold Medal. In such circumstances, revaluation would be sought only by the candidates who have either failed or secured a compartment. The real meritorious candidates like the petitioner in the present case, would be wholly deprived of the benefit of revaluation, when the marks of a candidate are increased on re-evaluation. The un-escapable conclusion is that we see no rationale in depriving the candidate of the benefit of the re-evaluation marks for the purpose of improving the merit or for award of Medals. In our considered opinion, the aforesaid rule is wholly arbitrary and has no nexus with the object sought to be achieved. We are further of the considered opinion that the judgments relied upon by the counsel for the petitioner are fully applicable in the facts and circumstances of the present case. In the case of Fateh Kumari Sisodia (supra), the Rajasthan High Court considered a number of earlier judgments relating to similar rules and observed as follows:-

"6. Counsel for the petitioner relies on a Single Bench judgment delivered in Ram Karan v. the University of Raj Jaipur (S.B. Civil Writ Petition No. 1268/87 decided on 9.9.1996), wherein in similar circumstances and under the same provision of debarring a person to be put on higher position after revaluation of marks, the petitioner in that case was given the benefit. The rule in that case was also similar to the one as in the present case. In Ram Karan's case, the rule was as under:-

"(II) The increase in marks obtained by a candidate as a result of revaluation shall not be taken into account for preparing the merit list of first 10 candidates standing in order of merit at an examination."

7. It was held by the learned Single Judge while interpreting Rule 11 as under:-"it was submitted that the result would become final only after the revaluation is over otherwise applying for revaluation would be meaningless. There is lot of substance in this submission. Ordinance 157A(II) is absolutely unreasonable and liable to be struck down. The candidate would not be at fault if there is mistake committed by the examiner in giving or totalling the marks. If this Clause (II) of the Ordinance 157

A is allowed to and then it will frustrate the very purpose of revaluation. Clause II is wholly unreasonable and, therefore, liable to be struck down and accordingly, it is declared to be invalid and struck down."

"Accordingly, this petition is allowed. Respondent is directed to include the name of the petitioner in the merit list for by including the marks obtained by him in the revaluation. Now the question is what will happen to the gold medal awarded to the first candidate who secured highest marks before revaluation. This petition is of 1987. Therefore, it would not be proper at this stage to direct the respondent to withdraw the gold medal from the first candidate and award of the petitioner. However, the respondent can certainly be directed to award gold medal to the petitioner in addition to the gold medal awarded to the first candidate. Accordingly, the respondent is directed to present gold medal to the petitioner for securing the highest marks in M.Sc Final Examination in Botany held in March 1986."

8. Learned counsel for the petitioner also relies on a judgment of the Bombay High Court in *Rajendra Kwnar Chandrakant Nadkarni v. University of Bombay* 1950 (3) A.I.F.C. 650 wherein the Ordinance/Regulations of the University of Bombay a similar clause was incorporated, which is reproduced as under:-

"The revised marks obtained by a candidate after revaluation as accepted by the University shall be taken into account for the purpose of amendment of his results in accordance with the rules of the University in the behalf, but these marks shall not be taken into account for the purpose of award of scholarships, prizes, medals and/or the order of merit."

9. It was held by the Bombay High Court as under:-

"If revaluation is permitted and if ranking in so far as class is concerned is awarded to candidates who get the benefit of revaluation, there is no reason to restrict the result to the mere declaration of a class. The full benefit to the vindicated candidate has to be awarded and his marks have to be taken into account for the purpose of scholarship, prizes, medals and/or the order or merit. Agreeing with the learned Single Judge of the Karnataka High Court, I make the rule absolute by quashing Ex. F and confirming the correctness of Ex. D i.e., the special certificate awarded on 17.8.1983. Rule in these terms is made absolute with parties being left to bear their own costs."

10. In another judgment of the Karnataka High Court in [Anjay Bansal Vs. Bangalore University and another](#), a similar rule made by the University was declared to be ultra vires and the notification to the fact that no revised rank will be declared in respect of those who get benefit in the revaluation (review) and no incidental benefit which accrue due to the revaluation (review) will be granted except declaration of class was quashed with the direction to the University to award rank to the petitioner in that case and to place the petitioner in that case at a proper rank.

11. In view of the law discussed above, the writ petition of the petitioner is allowed and a direction is given to the respondents to put the petitioner in due merit in accordance with the revised mark-sheet by allocating total 488 marks as she may be declared to be at first position holder in the merit and the rule formulated in regard to the conditions of award for medals so far as it debars the candidate to be eligible for award of Gold Medal consequent upon the revision in the result due to revaluation is held to be ultra vires, by fully agreeing with the judgment of the learned Single Judge delivered in the case of Ram Karan referred to above.

12. In the facts and circumstances of the case, the writ petition is allowed. The respondents are directed to include the name of the petitioner in the merit list and award the Gold Medal to her and in case the University does not want to withdraw the gold medal from the candidate who had lower marks than the petitioner, the University is directed to award Gold Medal to the petitioner in addition to the Gold Medal already awarded to the candidate who had been put earlier at first position for the examination in question. No orders as to costs."

10. The aforesaid observations make it abundantly clear that Rule 4.2 is arbitrary, unreasonable, oppressive, and therefore, does not satisfy the equality clause contained in Article 14 of the Constitution of India. The Division Bench of the Madhya Pradesh High Court in the case of Manoj Kumar Jindal (supra) considered the rationale underlying the statutes for revaluation and observed as follows:-

"13. Apropos the contention that on basis of the Merit List the candidates meanwhile take admissions on its basis or get jobs and if the Merit list is subsequently change "after five or six months", it may create anomalous position and the candidates who are declared in the Merit-List may suffer irreparable injury. This contention is counter to the provision of the revaluation which, as stated earlier, has its own significance and meaning. There is no reason why after revaluation, if the petitioner is found to have obtained "first position", he should be continued to be ranked in "third position". This would be rank injustice to a student devoted to studies with meritorious performance. The object behind revaluation is that every man should get his due which he deserves. That is the rule of law and also equity. This appears to be a case where the position in the Merit-List entails consequential benefits also. Generally, the toppers have further benefits not only of Division and Merit, but often Medals and Prizes. If that be so, it is all the worst that the petitioner is deprived of his legal right to such benefits. There is no reason why the petitioner should suffer for the fault of the University. There is no question of any legal injury to the other two respondents just because under the rules relating to revaluation, they would be relegated from their positions, Nos. 1 and 2, to positions Nos. 2 and 3. If the relegated No. 3 had any grievance, he could have availed of the provisions regarding revaluation within 30 days. It is not correct to say that amendment in the impugned Merit List would not be in the interest of public at large."

11. We are of the considered opinion that the aforesaid observations are a complete answer to any doubts which have been expressed by Mr. Gupta about the uncertainty of the result due to revaluation. In our considered opinion, Clause 4.2 completely negates the very object it seeks to achieve.

12. In view of the above, the writ petition is allowed. Clause 4.2 is declared ultra vires Article 14 of the Constitution of India and is struck down. Consequently, the order, Annexure P-4 is quashed. A writ of Mandamus is issued directing the respondents to grant the Gold Medal to the petitioner along with Navin Kumar and declare that she has topped the University in the 1997 M.Sc. (Physics) Examination alongwith Navin Kumar.