Gyan Chandra Mehrotra Vs University of Allahabad and Another

Court: Allahabad High Court

Date of Decision: April 4, 1963

Citation: AIR 1964 All 254

Hon'ble Judges: V. Bhargava, J; B.D. Gupta, J

Bench: Division Bench

Advocate: S.N. Kacker, for the Appellant; G.P. Singh, for the Respondent

Final Decision: Partly Allowed

Judgement

V. Bhargava, J.
This appeal has been filed by Gyan Chandra Mehrotra against the dismissal of a petition filed by him under Article 228 of

the Constitution. In the month of May 1962 the appellant appeared as a candidate at the LL.B. Previous Examination of the Allahabad University

in which ha was required to answer seven papers including one paper on Law of Easements and Torts. In each of the papers he obtained marks

which were in excess of the minimum of 36 per cent required in order to qualify him for being declared a successful candidate. The Ordinance

further laid down that in order to succeed he had to obtain a minimum of 50 per cent marks in the aggregate. The total marks being 700, a

minimum of 350 marks in the aggregate was needed by him to be declared successful. In fact only 349 marks were assigned to him so that he was

not included amongst the list of successful candidates. The contention of the appellant in the petition was that he in fact secured more than 350

marks in the examination and consequently he prayed for issue of a writ of mandamus commanding the respondents, the University of Allahabad

and the Registrar of the University to rectify the mistake and declare the appellant as a candidate who had passed the LL.B. Previous Examination.

2. The case was contested on behalf of the respondents and counter-affidavits were filed. In the counter-affidavit the marks obtained by the

appellant in the various papers were disclosed. It appears that in the charts prepared showing the marks obtained by this appellant there was no

mention of any marks received by him for general impression in the paper on law of Easements and Torts. It seems that since the appellant had

failed by only one mark in the aggregate it was held by the Vice-chancellor that the answer books of the appellant had to be scrutinised by him in

consultation with the Heed of the Department under Ordinance 13 of Chapter 29 which runs as follows:

13. The answer books of a candidate who fails by not more than three marks in any one subject, or in any one paper (in examinations in which

minimum pass marks are required in individual paper), or by not more than six marks in the aggregate of all the subjects shall be scrutinised by the

Vice-Chancel for in consultation with the Head of the Department concerned, with a view to check if any question or part of a question has been

left unmarked or if a mistake has been made in the addition of marks and to arrange for the rectification of such omission or mistake.

3. On a scrutiny being made, the Vice-Chancellor came to the finding that there had been an omission to allot marks for general impression in this

paper and further held that he had to arrange for the rectification of the omission. On the recommendation of the Dean and the Registrar, the Vice-

Chancellor, in these circumstances, agreed that marks for general impression may be allotted by the Dean to the appellant and the other candidates

similarly circumstanced. The position was that in the paper on the law of Easements and Torts the maximum marks prescribed were 100 and there

was a note that the six questions which had to be answered each carried equal marks, while 4 marks were reserved for general impression. The

Registrar''s proposal, founded on the basis of a report of the Dean of the faculty of Law, was that each candidate should be awarded marks for

general impression in proportion to the marks received in the various questions. On scrutiny of the appellant''s paper books it was found that he

had been allotted marks for answers to each question, but there was no note at all to indicate whether any marks had been awarded to him for

general impression. The Vice-Chancellor having directed the Dean to award the marks, the Dean awarded 2 marks to the appellant. This was in

proportion to the marks received by the appellant in the various questions. Subsequently, a letter was issued by the Registrar to the examiner

inviting his attention to the 4 marks reserved for award on general impression, and requesting him to allot marks for general impression also in the

answer books of the Supplementary Examination.

The examiner, thereupon sent a reply stating that he had all along been conscious of the 4 marks reserved for general impression for which he had

his principle and practice which he had been following awarding marks on general impression not only in this University but also in other

Universities, for the last 20 years, whereupon the Dean of the Faculty of Law reiterated his view that marks should be allotted in cases of the type

of the appellant in proportion to the marks received in the specific questions. The papers were then placed ""before the Vice-Chancellor who

perused the letter of the examiner and then had a talk with the examiner on the telephone, The impression gathered by the Vice-chancellor as a

result of this telephonic talk appears to have been that It had been the practice of the examiner concerned not to make any specific award at all in

respect of marks allotted for general impression in cases in which the examiner was of the opinion that the candidate did not deserve any mark at

all for general impression. After this talk the Vice-Chancellor reversed his previous order allowing the Dean to allot marks for general impression

on the ground that that order had been made under the mistaken impression that there had been an omission on the part of the examiner with

regard to the award of marks on general impression. The result of this final decision by the Vice-Chancellor was that the appellant was not

declared successful as he was short by one mark in the aggregate. It was in these circumstances that he came to this Court by the writ petition

giving rise to this appeal.

4. The main point urged in this appeal by learned counsel for the appellant was that the Vice-Chancellor, having once passed an order that the

Dean should allot marks for general impression out of the 4 maximum marks prescribed for it, was not competent to review that order and to set it

aside, so that all the subsequent orders passed by the Vice-Chancellor have no force, and that the-result of the appellant should, therefore, have

been declared in accordance with the action which had already been taken in pursuance of the earlier order of the Vice-Chancellor.

5. In examining this argument advanced on behalf of the appellant, the first question that arose was as to the power of jurisdiction of the Vice-

chancellor to make that order. The affidavit filed on behalf of the University, which was also adopted by the Vice-Chancellor, indicates that the

Vice-Chancellor purported to act in exercise of his powers under Ordinance 13 of Chapter 29. It appears that, on a strict construction of the

language used in the Ordinance that Ordinance, though to a certain extent applicable to the case of the appellant, did not authorise the Vice-

Chancellor to make an order for allotment of marks for general impression by the Dean. Under Ordinance 13, a duty is cast on the Vice-

Chancellor in consultation with the Head of the Department concerned to scrutinise the answer books of a candidate who, inter alia, has failed by

not more than 6 marks in the aggregate of all the subjects and to this extent the ordinance was applicable to the, case of the appellant also because

he had failed by only 1 mark in the aggregate. The ordinance further lays down that this scrutiny has to be made with a view to check if any

question or part of a question has been left unmarked or if a mistake has been made in the addition of marks. Difficulty arises on account of the fact

that, in the case of the appellant, no question or part of a question had been left unmarked, nor had any mistake been made in the addition of

marks, so that this would be a case which may not be covered by the provisions of this ordinance. Mr. S.N. Kacker, appeared on behalf of the

appellant in these circumstances urged that we should hold that the Vice-Chancellor, in passing the order directing the Dean to allot marks for

genera! impression to various candidates including the appellant, acted in exercise of the powers conferred on him by Section 12(7) of the

Allahabad University Act. Section 12 (7) of the Allahabad University Act lays down that

In any emergency, which in the opinion of the Vice-Chancellor requires immediate action to be taken he shall take such action as he deems

necessary and shall at the earliest opportunity, report the action taker to the officer, Authority or other body who or which in the ordinary course

would have dealt with the matter but nothing in this sub-section shall be deemed to empower the Vice-Chancellor to incur any expenditure not duly

authorised and provided for in the budget.

Mr. Kacker"s submission was that, in view of the fact that Ordinance 13 of Chapter 29, in terms, appears to be inapplicable, and in the absence of

any other provision empowering the Vice-Chancellor to pass that order, we should hold that that order was made by the Vice-Chancellor u/s 12

(7) of the Allahabad University Act quoted above. We consider that it is not possible to accept this submission. We have already indicated earlier

that the Vice-Chancellor when passing the order purported to act under Ordinance 13 of Chapter 29 which, if applicable, would have permitted

the Vice-Chancellor to take action on the mere finding that there had been failure to allot marks on any question or part of a question. Under that

ordinance, there was no requirement at all that, before passing any order, the Vice-Chancellor must also be of the opinion that there is an

emergency which requires immediate action to be taken. There is also nothing on the record to show that the Vice-Chancellor in fact ever formed

any such opinion before making the order in question. The affidavit adopted by the Vice-Chancellor shows the circumstances in which he made the

order and they do not indicate any opinion being formed by the Vice-Chancellor about the existence of an emergency requiring immediate action.

The powers of the Vice-Chancellor u/s 12(7) can only be exercised after the Vice-Chancellor arrives at the opinion that there is an emergency

requiring immediate action to be taken, and, unless this preliminary condition is satisfied, the Vice-Chancellor will not be competent to take action

u/s 12 (7) of the Allahabad University Act. In this case, since no such opinion was recorded by the Vices-Chancellor and while there is no material

on the record of the writ petition to show that he ever arrived at any such opinion, it has to be held that the Vice-Chancellor did not and could not

act u/s 12 (7) of the Allahabad University Act. This view of ours is further strengthened by the fact that even the Vice-Chancellor, according to

himself, never purported to exercise the powers vested in him under this provision and, on the other hand, purported to act under Ordinance 13 of

Chapter 29. Consequently, we are unable to accept the argument on behalf of the appellant that the earlier order of the Vice-Chancellor should be

held to have been passed by him in exercise of his powers u/s 12 (7) of the Allahabad University Act.

6. Mr. Kacker on behalf of the appellant also relied in the alternative, on the powers of the Vice-Chancellor mentioned in Section 12 (4) of the

Allahabad University Act. Under that provision it is laid down that the Vice-Chancellor shall exercise general control over the affairs of the

University and shall be responsible for the due maintenance of discipline therein."" We cannot accept that the order made by the Vice-Chancellor

purporting to be under Ordinance 13 of Chapter 29 can be held to be an order made in the exercise of general control over the affairs of the

University or an order made for the flue maintenance of discipline in the University. It is manifest that the order would not be covered by the

provisions of Section 12 (4) of the Allahabad University Act.

7. The question, in the circumstances, that we have to consider is whether that order could be validly made by the Vice-Chancellor under

Ordinance 13 of Chapter 29 which is the only residuary provision on which reliance may be placed for holding that that order was valid. As we

have indicated earlier, the language used in this ordinance does not Include any mention of cases where the omission consists of allotting no marks

for general Impression though no question or part of a question has been left unmarked. We are, however, of the opinion that even though there

are no specific terms in this Ordinance to cover cases where there has been an omission to allot marks for general impression, we should read this

Ordinance as covering by implication such a case also. It seems to us that Ordinance 13 of Chapter 29 was framed with the specific object of

giving powers to the Vice-Chancellor to secure rectification of omissions and mistakes, which would be prejudicial to the candidates appearing at

an examination and would make them suffer for no fault of their own. Provision was therefore made to protect examinees for suffering as a result of

an error or omission on the part of the examiner or tabulator of the examination result. It seems that, when this ordinance was framed, the framers

lost sight of the fact that accidental errors could occur not only by omission to allot marks to a candidate on any question or part of a question or

by making an error in addition but also by failure to allot marks which under the system of examination, the candidate could earn under some other

head in respect of which the examiner was expected to make award of marks such as the marks for general impression. A case where there has

been omission to allot marks for general impression would be of a nature exactly similar to the cases specifically mentioned in Ordinance 13 of

Chapter 29, and we think that in these circumstances we should interpret Ordinance 13 as having application to such cases also.

One of the rules of interpretation of Statutes is that Courts are competent, in extraordinary circumstances, to enlarge the meaning of an expression

used in Statute in order to give full effect to the intention of that Statute as appearing from the various provisions contained in it. The present case

appears to us to be one of such a nature, so that we should in interpreting this ordinance Statute, give it a meaning which would fully carry out the

intention of this and all other Ordinances. As we have said earlier, there is no specific mention in this Ordinance of a case where there has been

omission to allot marks to a candidate for general impression, but it has to be kept in view that the general impression has to be formed by the

examiner on the basis of the content and manner of the answers recorded by the candidate to the questions actually answered by him at the

examination. The general Impression has, therefore, an intimate relation with the answers to the various questions put down by the examinee, and in

this light it may be held that marks reserved for general impression are marks to be allotted in view of the answers of the examinee to the questions

taken together as a whole. It is, of course, not necessary that the marks allotted for general impression should bear any particular relation to the

marks allotted for each separate question or part of a question or to the total of the marks allotted far all the questions.

The allotment of marks for general impression has to be left to the discretion of the examiner who is to take into account not only the correctness of

the answer to each question but various other factors, such as the language used, the manner in which the questions have been answered, the

indication that the answers may give about the breadth or thoroughness of study by the candidate, and so on. In every case, however, the marks

will have to be allotted on the basis of all the answers recorded, and as such we think we are justified in holding that even marks set apart for

general impression are marks which have to be awarded to a candidate on the basis of answers recorded by him to all the questions answered,

and any omission to allot such marks should be treated as a failure to allot marks for all the questions as a whole.

8. Learned counsel appearing on behalf of the University stated that the interpretation of Ordinance 13 of Chapter 29 which the University seeks

from the Court is also the same as given by us above, viz., that this Ordinance does cover cases of failure to allot marks out of any number of

marks which in an examination paper a candidate is entitled to receive for any work done by him, whether it tie for answers to specific questions or

for general impression. The interpretation that we are placing on Ordinance 13 of Chapter 29 may possibly amount to a slight enlargement of the

scope of the Ordinance as indicated by a very strict interpretation of its language, but that enlargement of the scope is justified on the language itself

because of our view that marks for general impression have also to be treated as marks to be awarded on the basis of answers to the questions.

This interpretation of Ordinance 13 of Chapter 29 thus leads us to the conclusion that the Vice-Chancellor after the scrutiny of the answer book of

the appellant was competent to make an order arranging for rectification of the omission.

9. The next question, however, is whether the Vice- Chancellor''s order directing the Dean of the Faculty to allot marks for general impression was

valid. Ordinance 13 of Chapter 29, on which reliance is placed, merely empowers the Vice-chancellor in consultation with the Head of the

Department to arrange for rectification of the omission. We think that in complying with this requirement of the ordinance the arrangement that has

to be directed by the Vice-Chancellor must be in accordance with the rest of the provisions of the Allahabad University Act and the various

Statutes and Ordinances which may be applicable to such a case. For the purpose of allotment of marks to a candidate, the Statutes require

appointment of examiners and they leave to the discretion or judgment of the examiners as to how many marks are to be allotted to each candidate

in each examination paper or parts of it. It is for an examiner to decide how many marks should be given for each question or part of a question

and it is also for him to decide in exercise of his judgment as to how many marks are to be given for general impression. That being the requirement

of the Statute, we do not think that the Vice-Chancellor could, acting under Ordinance 13 of Chapter 29, do away with the examiner and arrange

for rectification of the omission by the Dean of the Faculty. Siren an order would only have been justified if under any other provision of the Act,

Statutes or Ordinances, the Vice-Chancellor had the power to substitute the Dean of the Faculty as an examiner for the purpose of allotting marks

for general impression in place of the examiner previously appointed in accordance with the Statute.

We asked Mr. Kacker appearing on behalf of the appellant to point out to us whether there was any provision in the Act or the Statutes under

which the Vice-Chancellor could have taken away the powers of the examiner already appointed and instead empower the Dean of the Faculty to

allot marks for general impression where there had been an omission covered by the provisions of Ordinance 13 of Chapter XXIX. Learned

counsel drew our attention again to the provisions of Section 12 (7) of the Allahabad University Act and further relied on Section 38(2) of that

Act. We have already had occasion to examine the scope of Section 12 (7) of the Allahabad University Act end we have held that the Vice-

Chancellor can exercise his power under that provision of law only after arriving at an opinion that there is an emergency requiring immediate action

to be taken. u/s 38 (2) of the Allahabad University Act, the Vice-Chancellor can appoint a substitute examiner only if the examiner originally

appointed is found for any cause to be incapable of acting as such. In the present case, when the Vice-Chancellor directed the marks to be allotted

by the Dean of the Faculty, he neither recorded the opinion that there was an emergency requiring immediate action to be taken, nor did he hold

that the examiner already appointed had become incapable of acting as such. Consequently, the order made by him authorising the Dean to allot

marks was not justified either u/s 12(7) or 38(2} of the Allahabad University Act.

These provisions of the Act not being applicable, it seems to us that the course which was open to the Vice-Chancellor, at that stage, was to send

the answer book of the appellant to the same examiner who had originally examined his answer book and to call upon that examiner to allot marks

for general impression. On the finding recorded by the Vice-Chancellor that there had been an omission to allot marks for general impression, it

was his duty to adept the course of asking the examiner to allot marks to the appellant so as to rectify this omission.

10. On behalf of the University our attention was, however, drawn to the subsequent facts and circumstances which led the Vice-Chancellor to

arrive at a different opinion to the effect that there in fact had been no omission at all to allot marks to the appellant for general impression. It seems

to us that the exercise by the Vice-Chancellor of the powers vested in him under Ordinance 13 of Chapter XXIX cannot be made dependent upon

circumstances brought to his notice subsequently. When the Vice-Chancellor found that there had been an omission to allot marks, he was

required by the Ordinance to arrange for rectification and the only manner in which he could do so was to ask the examiner to rectify the omission

by allotting marks to the appellant for general impression also. It would then have been for the examiner to allot marks for general impression

which, in his opinion, the appellant deserved. The result of the incorrect course adopted by the Vice-Chancellor was that, instead of the answer

hook of the appellant going to the examiner, the Dean of the Faculty allotted marks to the appellant and thereafter a communication was sent to the

examiner drawing his attention to the omission and requiring him not to make such omissions in future.

Thereupon, it appears that the examiner wrote back a letter, the contents of which have been partly brought to our notice in an affidavit filed on

behalf of the University. It is said that in his reply the examiner stated that he had all along been conscious of the 4 marks reserved for general

impression for which he had his principle and practice which he had been following in awarding marks on general impression not only in this

University but also in other Universities for the last 20 years.

We are not concerned with the principle and practice adopted by the examiner in awarding marks for general impression. The question that we

have to examine is whether he did in fact award any marks. In awarding the marks it was of course, open to him to award a zero or any number of

marks up to a maximum of 4 marks. It appears to us that, in the absence of any record by the examiner as to what positive was his award to the

appellant in respect of marks reserved for general impression, the Vice-Chancellor''s earlier decision holding that the case felt within the ambit of

Ordinance 13 of Chapter XXIX was perfectly correct founded as it was on his scrutiny of the answer book of the appellant under ordinance 13 of

Chapter XXIX which contained no record of marks awarded for general impression.

It appears from the affidavit that in the answer books, which are given to the candidates, no special place is earmarked for recording the marks

allotted to each candidate for general impression, but the practice seems to be that the marks for each separate question awarded to a candidate

are recorded against the answer to that question. These marks are brought on to the cover of the answer book and total and then the number of

marks awarded for general impression is recorded on the cover only at this stage. In the case of a number of candidates, where marks were

allotted for general impression, it was found that the cover contained a note that they were in addition to the marks allotted for answer to each

separate question. In the case of the appellant the cover contained a note of marks allotted for answers to different questions only and there was

no separate figure indicating the number of marks awarded to him for general impression. That being the state of the answer book of the appellant,

the natural presumption u/s 114 of the Indian Evidence Act was that there had been an omission to award marks for general impression. The

alternative inference sought to be drawn on behalf of the University and urged before us by learned counsel for the University that in such a case

the candidate should be deemed to have received zero mark does not, in our opinion, appear to be reasonable or justified. It has to be kept in

view that the examiners are after all human beings and to err is human.

It is quite possible that in some cases the examiner may forget to allot marks for general impression and in such cases the state of the record on the

cover of the answer book would be exactly similar to the state of the record on the cover of the answer book of the appellant. We do not in

envisaging this possibility, intend to cast any reflection on the motive or competence of any examiner. It has to be held that a possibility cannot be

ruled out that such art error may be committed by an examiner quits inadvertently. It has appeared to us from the practice adopted by examiners,

as indicated on behalf of the University that every examiner first allots marks to a candidate for each question or part of a question answered by

him and then reproduces those marks on the cover of the answer book, and it is only thereafter that he proceeds to allot marks for general

impression. We can envisage a case where an examiner, while examining the answer book of a candidate, may have completed the stage of

recording on the cover all the marks for each question or part of a question and then he may suddenly be interrupted by some emergency requiring

him to leave the place and on return he may forget that he had not allotted marks for general impression. He may proceed to record the total

forgetting that he had not yet exercised his judgment for awarding marks for general impression. The fact that the examiner has exercised his

judgment and has allotted marks for general impression to each candidate must, in these circumstances, be evidenced by some record being made

on the answer book of each candidate, and it seems to us that, in cases where an examiner decides that the candidate deserves no marks at all for

general impression, he must record his decision by putting down zero as indicating the mark allotted for it. In the absence of such a record, there

would be nothing in the answer book to distinguish a case where the examiner intended to give and consciously decided to give zero from a case

where he inadvertently forgot to consider the question of awarding marks for general impression.

In these circumstances, it seems to us that if we were to accept the submission made by learned counsel for the University, a Vice-Chancellor

acting under ordinance 13 of Chapter XXIX would never be able to come to a decision whether there had been an omission to allot marks or

whether the examiner deliberately intended to award zero in cases where there is no record of the marks allotted for general impression. In fact the

same situation can be extended to other cases also where there may be no marks recorded against a question or part of a question. An examiner

may choose to adopt the course of not recording any marks at all against a question or part of a question on arriving at his decision that the

candidate deserves no mark at all for that question or part of the question. If he does so, he would leave the question unmarked and the Vice-

Chancellor on scrutiny of the answer book under Ordinance 13 of Chapter XXIX would be left in doubt as to whether the examiner had omitted

to award marks for that question or part of the question, or whether he had actually awarded marks and the mark awarded was zero.

These being the circumstances, we think that at the stage when the Vice-Chancellor had to take action under ordinance 13 of Chapter XXIX the

only conclusion that he could arrive at and the only basis on which he had to proceed was that in the case of the appellant there had been an

omission to award marks for general impression. The affidavit on behalf of the University does not state that the letter of the examiner mentioned

by us above contained an assertion that this particular examiner had the practice of leaving a blank where he intended to award zero as the mark.

In this connection our attention was drawn by learned counsel for the University to the averment made in the counter-affidavit sworn by Herbert

Williams in paragraph 12(iii) which is to the following effect:

that there appears to be a divergence in the practice of the examiners with regard to the marking in those cases where the examinee does not in

the estimation of the examiner deserve any mark on general impression. A perusal of the answer books of the LL.B. Previous Examination of 1962

reveals that about one-third of examiners have indicated by zero the said award whereas the rest have not shown the award as such. The marks on

general impression in the latter class of case have been shown only in those cases where some marks have been awarded.

It is to be noticed that the facts averred in this paragraph are not on the basis of any information conveyed to the deponent or the Vice-Chancellor

by any of the examiners. The paragraph purports to contain an inference drawn by the deponent from the various answer books seen by him. The

deponent says that he found that answer books examined by about one-third of the examiners contain the figure zero as indicating the award of no

mark to a candidate for general impression, and that in the case of the remaining examiners no such figure zero seems to have bean put down. We

do not see any justification for the inference drawn by the deponent that, in the case of those two-thirds of the examiners, the examiners did in fact

consciously apply their mind and decided to allot zero out of 4 as the mark to be awarded to each candidate, even though they have made no note

at all in this respect. In fact, as we have indicated above, the only reasonable inference that should have been drawn was that there had been an

omission to award marks for general impression in all those cases.

The view put forward on behalf of the University is, therefore, not one which necessarily follows, as a reasonable inference, from the state of the

answer books, and further it is significant that not a single examiner has stated either before the Court in the form of an affidavit or even to the

Vice-Chancellor, or to the deponent, that he in fact adopted the practice of not recording zero as the mark allotted where he intended to give no

mark at all after conscious exercise of his judgment. If the examiners had in fact adopted this course, it should have been easily possible for them,

and in this particular case before us for the examiner who actually examined the answer book of the appellant, to state on oath that they had

exercised their judgment and awarded zero by omitting to record any mark at all for general impression. Even if they had done so, we do not think

we could have accepted this statement because each examiner examines a large number of books and there must have been a fairly large number

of cases where no marks for general impression were recorded. It seems to us that it would be impossible for any examiner, after the lapse of a

period, to state positively and be certain of the correctness of his statement that in all those cases he had in fact exercised his judgment and had

decided to give zero, and that not one of those cases was or could possibly be a case where there might have been an accidental omission by the

examiner to apply his mind and to decide whether the candidate should or should not be given any marks for general impression.

As we have said earlier, there is no positive statement that any examiner had stated even to the Vice-chancellor that he was adopting the practice

of recording no mark at all where he intended to award zero, but if in fact such a practice was being adopted by an examiner, we are constrained

to hold that the practice was decidedly undesirable and incorrect as it could easily result in an innocent candidate being a sufferer in a case where

the omission to record the marks might be the result of an error arising out of an inadvertent omission on the part of the examiner to apply his mind

to and deal with the question of awarding marks for general impression. An error of this type, in our opinion, is not such as can be completely

excluded from the domain of possibility. In these circumstances we think that the Vice-Chancellor having once arrived at the finding that an

arrangement for the rectification of the mistake in the case of the appellant was required, it was his duty to have the answer book re-examined in

accordance with the provisions of the Allahabad University Act and the Statutes.

11. In this case, a difficulty has teen expressed before us that the examiner, who examined the answer book of the appellant, has already indicated

to the Vice-Chancellor that, while examining the answer books, he was conscious of the marks to be allotted for general impression, though it is

not specifically stated before us that he also told the Vice-Chancellor that in the case of the appellant he had decided to award zero. In these

circumstances, we think that the appropriate order to be passed by us in this appeal would be to direct that action be taken in accordance with

Ordinance 13 of Chapter 29 to rectify the omission in the case of the appellant on the footing that there has been an omission to allot marks to the

appellant for general impression, it will now be for the Vice-Chancellor to make arrangements in accordance with the Act and the Statutes. The

Vice-Chancellor may have to take into account the circumstance that the examiner concerned in the case of the appellant has already taken the

stand that be had been conscious of marks to be allotted for general impression and that failure to allot any marks for general impression was to be

considered as equivalent to allotting zero in pursuance of some principle or practice that he had been adopting.

We have already expressed our opinion that no such examiner can at this late stage be definite that in the case of a particular candidate he was in

fact conscious of those marks and had decided to award zero. There can be cases of genuine accidental omissions, and that circumstance may

have to be taken into account by the Vice-Chancellor, in making arrangements for further examination of the answer book of the appellant to

rectify the omission, in deciding whether his answer book should be sent to the same examiner or whether it would be a fit case where the Vice-

Chancellor might exercise his powers u/s 38 (2) of the Allahabad University Act so as to have this work of rectifying the omission done by a mode

other than that of sending back the answer book of the appellant to the same examiner.

12. Further, it was urged before us by learned counsel for the appellant that the appellant is at present placed in a very difficult situation because,

depending on whether he is declared successful or unsuccessful in the LL.B. previous examination, he has to appear at the LL.B. final or re-appear

at the LL.B. previous examination which are to commence sometime in the last week of this month. Unless orders are passed at an early date and

a final decision is taken in his case within two weeks, he may unfortunately have to lose another year. Learned counsel urged before us that, in

these circumstances, we should direct the Vice-Chancellor to exercise his emergency powers u/s 12 (7) of the Allahabad University Act to make

an early arrangement for rectification of the omission in the case of the appellant by appointing another examiner who may be available immediately

at Allahabad. u/s 12 (7) of the Allahabad University Act, it is for the Vice-Chancellor to form his own opinion whether an emergency exists which

requires immediate action and we have no doubt that the Vice-Chancellor will give due consideration to the circumstances in the present case, so

that it will be for him to decide whether he should adopt the course suggested on behalf of the appellant u/s 12 (7) of the Allahabad University Act.

13. In the result we partly allow this appeal and direct that a writ of mandamus shall issue to the University containing a direction that the Vice-

Chancellor of the University should arrange for rectification of the omission to award marks for general impression in the case of the appellant in

the light of our observations made above. In the circumstances of this case, we direct the parties to bear their own costs of the appeal.