

(2014) 03 AHC CK 0062

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 64991 of 2013

Priti Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: March 5, 2014

Citation: (2014) 6 ADJ 771 : (2014) 6 AWC 5780

Hon'ble Judges: Pradeep Kumar Singh Baghel, J

Bench: Single Bench

Advocate: Ganesh Shankar Srivastava and R.D. Kishore, Advocate for the Appellant; Vivek Varma, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

P.K.S. Baghel, J.

The petitioner is a brilliant student. She passed her High School and Intermediate with first division marks, and in B.A. Part-I & II also she secured first division marks. She has preferred this writ petition for issuance of a writ of certiorari for quashing the order dated 3.7.2013 passed by respondent No. 3, Examination Controller, Mahatma Gandhi Kashi Vidyapith, Varanasi, whereby in response to her application under Right to Information Act, 2005 she was informed that her answer script of Sanskrit-III paper has been weeded out. The essential facts are; the petitioner was a student of B.A. in Swami Ramnarayanacharya Mahila Mahavidyalaya, Belthara Road, Ballia (for short, "the College"). The said College is affiliated with Mahatma Gandhi Kashi Vidyapith, Varanasi (for short, "the University"). The University is governed under the provisions of U.P. State Universities Act, 1973 and it has its First Statutes and Ordinance, which regulate the affairs of the University and its affiliated Colleges.

2. It is stated that the petitioner has a brilliant academic record. She passed her High School with 68% marks and Intermediate with 74% marks. She appeared in B.A.

Part-I as a regular student in the year 2010 and secured 64.50% marks. In B.A. Part-II also she secured 62.16% marks. In B.A. Final year, she selected two subjects; Home Science & Sanskrit; and there were three papers in Sanskrit. The petitioner appeared in B.A. Final year examinations in 2012 and in IIIrd Paper of Sanskrit she had taken extra two additional answer scripts and solved all the questions. However, when the result was declared, to the utter surprise of the petitioner, she had been shown only 34 marks awarded in the third paper of Sanskrit. In first and second paper she had secured more than 60% marks and only in third paper she had got 34 marks.

3. Dissatisfied with her marks in Sanskrit (IIIrd Paper), the petitioner made a request to the Principal of the Institution on 09 August, 2012 for re-evaluation of her answer book of Sanskrit (IIIrd Paper). A copy of the said application has been appended to the writ petition as annexure-5. When her grievance was not attended she preferred a Writ Petition bearing No. 55700 of 2012 (Priti Sharma v. State of U.P. and others) in this Court. On 19 October 2012 the said writ petition was disposed of with the liberty to the petitioner to approach the University under Right to Information Act, 2005 and the University was directed to consider the petitioner's request in the light of law laid down by the Supreme Court in [Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others](#).

4. It is stated that in compliance of the order of this Court, the petitioner submitted her representation on 01 November 2012. The said application failed to elicit any response from the University.

5. The petitioner, thereafter, filed a contempt application being Contempt Application (Civil) No. 2571 of 2013 (Priti Sharma v. Sahab Lal Maurya, Examination Controller, M.G. Kashi Vidya). On 21 May, 2013 this Court disposed of the contempt application giving last opportunity to the University to comply the order of this Court dated 19 October, 2012 passed in Writ Petition No. 55700 of 2012 within a period of six weeks.

6. In compliance of the order passed in the contempt application, the respondent University has passed the impugned order dated 03 July, 2013 and has rejected petitioner's application on the ground that in pursuance of the decision of the Examination Committee the application for the xerox copy of the answer script becomes time barred (90 days from the date of declaration of the result). The petitioner's application was rejected being time barred, and consequently the University refused to provide copy of the answer script of the petitioner. Aggrieved by the order of the University the petitioner has preferred this writ petition.

7. On 05 December, 2013 the Court has asked the learned Counsel for the University to seek instruction whether petitioner's answer script of Sanskrit, IIIrd Paper, B.A. (Regular) has been weeded out or not. On 18 December, 2013 learned Counsel for the University informed the Court that petitioner's answer-script has been weeded

out. The Court directed the University to file an affidavit of a responsible officer of the University. In compliance thereof the University has filed a counter-affidavit sworn by the Deputy Registrar, wherein it is stated that petitioner's answer script of Sanskrit (IIIrd Paper) has been weeded out.

8. I have heard Sri Ganesh Shankar Srivastava, learned Counsel for the petitioner and Sri Vivek Varma, learned Counsel for the University.

9. Learned Counsel for the petitioner submits that it is a practice of the various Universities to award general marks in such a situation. His submission that average marks can be awarded may have merit acceptance.

10. Learned Counsel for the petitioner submits that the petitioner had moved an application to the Principal of the College within 90 days. The petitioner is a girl student and is living in a rural area of District Ballia, there was no negligence or laches on her part. She had made a representation to the University and thereafter she has preferred writ petition earlier as well as a Contempt Application. Learned Counsel for the petitioner further submits that the University has failed to point out any provision under its Statutes or Ordinance, wherein it is provided that the copy of answer script would not be provided to a candidate after 90 days. If such resolution has been passed by the Examination Committee, it has not been brought on the record. Lastly he urged that the petitioner has secured 69 marks in Sanskrit (First Paper) and 64 marks in Second Paper, her answer script of third paper has not been properly evaluated as only 34 marks have been awarded to her.

11. Sri Vivek Varma, learned Counsel for the University submits that the Examination Committee of the University has taken a resolution that the answer-scripts of the candidates are weeded out after 90 days. Therefore, it is not possible to re-evaluate the answer script of the petitioner. He has also relied on a judgment of this Court in Jagdish Kumar v. State of U.P. and others, passed in Writ-C No. 29207 of 2013. Against the said order, the Special Appeal has been rejected.

12. I have heard learned Counsel for the parties and considered their respective submissions.

13. Ordinarily this Court does not interfere in the matter of result of the candidates where there is no provision of re-evaluation in the Statutes or the Rules but the Supreme Court in [Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others](#), has held that even in the case where there is no rule of re-evaluation, the High Court can issue a direction for re-evaluation of the answer scripts. The Supreme Court has further held that if there is no provision for re-evaluation, there is more responsibility on the examiners to evaluate the answer scripts with responsibility and with due care. Paragraph Nos. 32 & 37 of the said judgment read as under;

"32. The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the judgment impugned should not be interfered with, cannot be accepted. Re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the Court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the Court should show due regard to the opinion expressed by the authority.

37. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statutes at the instance of the candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts, re-evaluation may be found necessary."

14. In the present case the petitioner has passed her High School and Intermediate Examinations with first division marks and she has also passed her B.A. Part-I and II with the same University with first division marks. In the Ist and IInd Papers of Sanskrit also the petitioner has secured more than 60% marks but only in the third paper she has got 34 marks.

15. The grievance of the petitioner is genuine, she has approached this Court for a direction upon the University to produce her answer script. The University is taking shelter of its resolution of the Examination Committee that after 90 days it weeds out the answer script of the candidates. In the present case the result was declared on 30 June 2012 and the petitioner moved an application on 09 August, 2012 within 90 days. She had also approached this Court on 17 October, 2012 that is the reasonable time when her grievance was not attended.

16. In peculiar facts and circumstances of this case, in my view, the end of justice would be met if a direction is issued to the University to award average marks to the petitioner in IIIrd Paper of Sanskrit in which she has been awarded only 34 marks. Accordingly a direction is issued upon the University to award average marks to the petitioner in the IIIrd Paper of Sanskrit within two months from the date of communication of this order.

17. The writ petition is, accordingly, disposed of. No order as to costs.