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

Date of decision: 31st May, 2021

+ **W.P.(C) 7183/2020 & CM APPLs. 24289/2020, 27918/2020**

SHREEM MITTAL Petitioner

Through: Mr. Anshul Kumar and Mr.
Parwesh Kumar, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION

..... Respondent

Through: Ms. Seema Dolo, Advocate.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. The present petition concerns the process of re-evaluation of answer sheets in terms of a Circular dated 14.07.2020 [“the Circular”] issued by the respondent/Central Board of Secondary Education [“CBSE”]. The petitioner seeks general directions relating to the CBSE scheme for re-evaluation of papers, as well as orders relating specifically to re-evaluation of her own papers.

Facts

2. The petitioner was a student of Bal Bharti Public School, Pitampura, Delhi. She appeared for the Senior Secondary School (Class XII) Examinations, 2020 conducted by the CBSE. The CBSE

declared the results of the examinations on 13.07.2020, wherein the petitioner had scored as follows:

SUB JEC T CO DE	SUBJECT NAME	THEOR Y	PRACTICAL	TOTAL	TOTAL (IN WORDS)	POSIT IONAL GRAD E
301	ENGLISH CORE	077	020	097	NINETY SEVEN	AI
028	POLITICAL SCIENCE	077	020	097	NINETY SEVEN	AI
030	ECONOMICS	075	020	095	NINETY FIVE	AI
041	MATHEMATIC S	077	020	097	NINETY SEVEN	AI
265	INFORMATICS PRAC. (OLD)	067	030	097	NINETY SEVEN	AI
500	WORK EXPERIENCE			-		AI
502	HEALTH & PHYSICAL EDUCATION			-		AI
503	GENERAL STUDIES			-		AI
RESULT: PASS						

3. The petitioner was not satisfied with the marks awarded to her in Political Science (Subject Code: 028) and Economics (Subject Code: 030). She therefore invoked the procedure for “(I) Verification of Marks, (II) Obtaining Photocopy of the Evaluated Answer Book(s), (III) Re-evaluation of Marks”, as set out in the Circular.

4. After the first stage of the aforesaid procedure, viz., verification of marks, the petitioner sought photocopies of the answer sheets. She claims to have matched her answers with the Model Answer Key of the CBSE and discerned that as per the Answer Key, there were seven

questions where marks were erroneously not awarded to her. Therefore, on 06.08.2020, she applied for re-evaluation of those seven questions – four in Economics and three in Political Science. It thus appears that the petitioner expected a score of 99/100 in Economics and 100/100 in Political Science.

5. The petitioner received the result of the re-evaluation vide email dated 30.08.2020 alongwith a new marks statement. After re-evaluation of the answer sheets, the petitioner was awarded one extra mark in each of the two subjects, meaning that she achieved a mark of 96/100 in Economics and 98/100 in Political Science.

6. Unfortunately, the petitioner remains unsatisfied with her performance and has sought the intervention of this Court. The present writ petition has been filed in these circumstances, with the following prayers:

“(a) Issue a writ of mandamus or any other appropriate writ/ order or direction thereby directing the Respondents to issue comprehensive plan for revaluation of the answer sheets considering the concerns of the students and which should not be discretionary/arbitrary; and/or

(b) direct the Respondent to reevaluate the answer sheet of petitioner as per standard model specimen answer issued by the Respondent or

(c) direct the Respondent to give the reason, that why only 1 mark each has been given to the Petitioner in her both papers for which revaluation applied and also give reasons for not given marks in 7 questions which are the concern of the Petitioner in her revaluation application; and/or

(d) Pass any other order(s)/direction(s) as this Hon'ble court may deem fit and appropriate in the facts and circumstances of the present case."

The reliefs claimed thus encompass general directions regarding the scheme of re-evaluation, and specific directions for disclosure of reasons and further re-evaluation of the petitioner's answer sheets.

Submissions of counsel

7. Mr. Anshul Kumar, learned counsel for the petitioner, submitted in the course of argument that the petitioner does not press for a further re-evaluation of her answer sheets at this stage. However, he assails the CBSE's method for re-evaluation, as it does not provide any reasoning for addition or deduction of marks. He also submitted that the process is arbitrary and discretionary, inasmuch as it does not provide for any appeal or review after the process of re-evaluation.

8. On the other hand, Ms. Seema Dolo, learned counsel for the CBSE, submitted that re-evaluation of answer scripts cannot be claimed as a right, and is always subject to the rules laid down by the examining authority. She relied for this purpose upon the judgment of a coordinate bench of this Court in *Aarushi Goyal vs. Central Board of Secondary Education* [W.P. (C) 8552/2017, decided on 28.02.2019] and a Division Bench judgment dated 17.07.2019 in LPA 453/2019 [*Paavani Gupta vs. Central Board of Secondary Education*].

9. Ms. Dolo submitted that the petitioner, having invoked the modalities mentioned in the Circular, cannot now seek modification of the same. She emphasised that the Circular provides three levels of checks, and submitted that addition of further stages of supplying

reasons, appeal and review would render the evaluation process inconclusive. Ms. Dolo drew my attention to the contents of the affidavit filed by the CBSE in respect of the scale of the examinations conducted by it, leading to the practical difficulties which would ensue if such further steps are read into the said Circular.

Analysis

10. At the outset, it may be noted that the scope of interference of the writ court in matters of re-evaluation of examination papers is very limited. In *Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors.* (2018) 2 SCC 357, the Supreme Court considered the authorities on the point, and summarised its conclusions as follows:

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

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;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. *The court should presume the correctness of the key answers and proceed on that assumption; and*

30.5. *In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.*

31. *On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.*

32. *It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference*

where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

11. This judgment has been followed in several later judgments, including *Bihar Staff Selection Commission & Ors. vs. Arun Kumar & Ors.* (2020) 6 SCC 362 (paragraph 25) and *Vikesh Kumar Gupta & Anr. vs. State of Rajasthan & Ors.* (2021) 2 SCC 309 (paragraphs 14 and 15).

12. It follows from the approach laid down by the Supreme Court in the aforesaid judgments that an opportunity for re-evaluation of answer sheets cannot be claimed by candidates in any examination as a right. It is available only if the rules governing the examination provide for it. The opportunity would therefore have to be circumscribed within those rules.

13. The Circular dated 14.07.2020 provides for three steps which a candidate dissatisfied with her marks may take – she may seek verification of marks, ask for copies of her answer sheets, and lastly, seek re-evaluation. The process by which the CBSE conducts the re-evaluation is set out in the following paragraphs of its counter-affidavit:

“4. That it is submitted that Challenges/objections received for scrutiny/re-evaluation of answer scripts are placed before the respective two Subject Experts. The objections so received are considered and examined exhaustively by the subject experts of CBSE.

5. That it is submitted that the re-evaluation of answer script is carried out by the examiner (subject experts), other than the original examiner who had evaluated the answer script earlier, by blocking the marks assigned by the original examiner. The answers attempted by the students are reassessed by the new examiner during the re-evaluation process. Examiners are advised to follow the guidelines as stated in the Marking Scheme provided for each subject by the CBSE, while assessing the answer scripts of the students.

6. That upon re-evaluating the answer script, if the subject experts are of the opinion that the answer given by the student deserves an increase of marks, appropriate marks is then awarded to the student, and CBSE issues revised mark sheets for that particular subject reflecting new revised marks. However, if the subject experts are of the view that the answers given by the students has been assessed and justly awarded marks by the original examiner, then in that case no modification in the marks is carried out.”

14. The Circular, upon which the petitioner relied in order to seek re-evaluation – and has in fact benefited by one mark in each of the two papers – does not require reasons to be given by the re-evaluating examiner, nor for an appeal or review. Clause III(e) of the Circular specifically excludes appeal/review against the re-evaluation, and the Circular also expressly stipulates that the decisions of the Competent Authority thereunder shall be final. In my view, there is no arbitrariness or unreasonableness in the omission of these provisions. When the process of re-evaluation itself is one which may or may not

be provided, it cannot be said that candidates have to be given further chances at improving their marks. There has to be a point at which the process ends, and the marks awarded to a candidate attain finality. In its counter-affidavit, the CBSE has pointed out the scale of the examinations conducted by it, and also averred that the entire process of re-evaluation is completed within a relatively short time frame, so that the final results are declared in time for candidates to participate in the admissions process in institutions of higher education all over the world. To require a further process to be undertaken even after re-evaluation is, in these circumstances, unjustifiable.

15. The matter is in fact covered to a considerable extent by the judgment of the Division Bench in *Paavani Gupta* (supra), cited by Ms. Dolo. The Division Bench was considering a circular issued by the CBSE in respect of the 2019 examination, which appears to have been substantially similar to the Circular dated 14.07.2020. After noticing the judgment in *Ran Vijay Singh* (supra), the Division Bench held as follows:

“12. In the present case, the correctness of evaluation of the answer sheets of the appellant has been questioned on the ground that it is not as per the marking scheme.

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14. In Ran Vijay Singh (supra), the Supreme Court has quoted with approval, its earlier decision in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, reported as (1984) 4 SCC 27, wherein it was observed as follows: -

“12. The principles of natural justice cannot be extended beyond reasonable and rational limits

and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners.

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29. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.”..It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.” (emphasis added)

15. Thus, it is apparent that in the absence of any specific provision conferring such a right upon an examinee to have her answer books reevaluated, no such direction can be issued by the Court. Admittedly, there is no provision in the Rules of the respondent/CBSE that provides for reevaluation by an independent examiner and therefore, such a prayer cannot be acceded to. Taking a pragmatic view too, if independent examiners are permitted to be introduced into the system at the instance of a dissatisfied candidate, it would be unsettling the established system of examination. It is not as if an examinee is left remediless if she is dissatisfied with the declared results. She has the option of approaching the respondent/CBSE

as per the modalities prescribed. In the present case, the appellant had in fact exhausted her remedies as per the modalities prescribed by the respondent/CBSE for re-valuation.

16. In Salil Maheshwari Vs. The High Court of Delhi, reported as **MANU/DE/2085/2014**, a co-ordinate Bench of this Court held as under : -

“20. In matters of judicial review which involve examination of academic content and award of marks, the previous rulings of the Supreme Court and other authorities have cautioned a circumspect approach, leaving evaluation of merits to the expertise of academics. However, if the approach complained of falls within the traditional parameters of judicial review - i.e. illegality, irregularity; non-consideration of material facts or consideration of extraneous considerations; or lack of bona fides in the decision making process as contrasted with the decision itself, the action or decision can be corrected in judicial review. The last category is where the decision is so manifestly and patently erroneous that no reasonable person, similarly circumstanced, could have taken it, the court would intervene.” (emphasis added)

17. In the instant case, as noted above, a procedure for evaluation has been prescribed by the respondent/CBSE and in the absence of any fact disclosing any bias, malafides, non consideration of the relevant factors etc., no ground for interference in judicial review is made out.

18. The appellant may be unhappy that she could not achieve the scores she had expected but that itself would not be a ground for the Court to interfere. It has rightly been observed by the learned Single Judge that there is no glaring error apparent on the face of the record and

the appellant has failed to make out a case for the relief sought.”

16. A claim for further re-evaluation, after one round of re-evaluation had already been undertaken, was also rejected by a coordinate bench of this Court by a judgment dated 09.02.2018 in W.P.(C) 8552/2017, review whereof was declined by the judgment dated 28.02.2019, relied upon by Ms. Dolo.

17. In the light of the principles laid down in the aforesaid authorities, it is generally beyond the remit of the Court to enter into an independent evaluation of a candidate's answers. However, it is placed on record that Mr. Kumar drew my attention to the answer given by the petitioner to Question 10 of the Economics paper, in support of his contention that the petitioner has been denied marks even for questions which she answered in accordance with the Model Answers provided by the CBSE. In response, Ms. Dolo states, upon instructions, that this is the very answer for which the petitioner was awarded an extra mark upon re-evaluation of her Economics paper.

18. In the aforesaid circumstances, the petitioner has not made out a case for grant of relief in this petition. The petition is consequently dismissed.

PRATEEK JALAN, J.

MAY 31, 2021
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