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Court : Kolkata

Decided On : Oct-05-1999

Reported in : (2000)1CALLT205(HC),2000(1)CHN375

Judge : Ruma Pal and ;Samarendra Nath Bhattacharjee, JJ.

Acts : [Constitution of India, 1950](#) - Articles 19, 21 and 226;;[Evidence Act, 1872](#) - Section 114

Appeal No. : Civil Appellate Jurisdiction A.P.O. No. 154 of 1998 and W.P. No. 2516 of 1994

Appellant : The University of Calcutta and ors.

Respondent : Sk. Monir and ors.

Advocate for Pet/Ap. : Mr. Dipankar Dutta, Adv.

Judgement :

S.N. Bhattacharjee, J.

1. This appeal arises out of an order dated 21.5.97 passed by a learned single Judge of this court In matter No. 2516 of 1994 whereby the writ petition was allowed by issuing following directions :-

'Taking the broad principle from Gopa Chakraborty's case. I direct the University authorities to take average marks of all the papers and award the differential marks against paper No. 6. In case the petitioner gains some more marks in paper No. 1 and paper No. 6, The University authority shall take into consideration of such addition of marks and announce the result within a period of 4 weeks from the date of communication of this judgment, and communicate the same to the petitioner.'

2. The petitioner was unsuccessful in M.A. Examination as a private candidate for Ancient History and Culture held in the year 1988. A few days after the publication of the result in the month of April, 1989, petitioner obtained mark-sheet and found that he obtained a total marks 317 as against the minimum pass marks being 320. An application for review of the answer scripts of 1st paper and 6th paper filed by him on depositing requisite fees could not bring out any reply from the University of Calcutta in spite of repeated persuasion and reminders for five years. The petitioner then filed a writ application on 18.4.1994 before the learned single Judge praying for a direction upon the respondents to declare the result of review in respect of two papers and to produce the original answer scripts thereof before the court for re-examination by an expert. The respondent No. 2 did not file an affidavit-in- opposition but sent a report under an order of the court indicating that the answer script of the second half of the paper No. 6 was not traceable. It further states that there was no change of marks in the 1st half of paper No. 6 on revaluation and in case of 2nd half the answer script being not traceable average marks were awarded under the order of Vice-Chancellor which came to 20 i.e. 4 marks short of original marks ($12 + 24 = 36 - 04 = 32$). Similarly on review of the 1st paper the petitioner scored 15 in lieu of 17 in the 1st half and 17 in lieu of 15 in the 2nd half leaving the total unchanged.

3. The learned trial Judge after having heard both the sides passed the above order which has been impugned before us on the ground of the order being violative of the Statutory Rules of re-examination framed by the University.

4. It has been argued by the learned counsel appearing for the appellant that the learned Judge has transgressed his jurisdiction by entering into the exclusive

domain of functioning of the University and compliance with the decision of the High Court would not be possible otherwise by violating the University Rules. It has been further argued that the learned trial Judge has passed the Judgment relying upon a decision in Calcutta University v. Smt. Gopa Chakmaborty reported in : AIR1993 Cal1 which cannot be treated as a precedent by reason of the order of the apex court dated September 15, 1992 In Special Leave Petition (Civil) No. 8130 of 1992.

5. The learned counsel appearing for the respondent has contended that the appellants have failed to discharge their statutory obligation to publish the result of review after acceptance of prescribed fees and further that the appellants by their reticence for 5 years have caused serious Injury to the professional career of the respondent/writ petitioner who as a Headmaster of a school could not become eligible for higher scale. According to him, had the result of the review been communicated to the petitioner in due time he could avail himself of the privilege for sitting afresh in the M.A. Examination as a private candidate without appearing at the test examination.

6. The result of the M.A. Examination was declared In April, 1989. The application for review on 1st paper and 6th paper was made on 4th May. 1989. Last representation was made by the petitioner before respondent No. 2 on 4th March, 1994. The process of review was completed on 23.5.94 after, the filing of the writ application. The writ petition was filed on 18.4.94. No affidavit-in-opposition was filed by the respondents. The court by its order dated 17.6.94 directed the Respondent No. 2 to submit a report. The report dated 14.7.94 was submitted. The court then by Order dated 13.1.97. directed the respondents to produce answer scripts of the petitioner under review but that order could not be complied with as the re-examination answer-scripts of the writ petitioner were disposed of by destruction In the meantime, (vide para 13 of the stay petition).

7. The entire report is reproduced below as this is the only material before this court for ascertaining whether the review process was conducted in conformity with the rules :

'Pursuant to the order dated 17.6.94 passed by the Hon'ble Justice Satyabrata Sinha, I have conducted an enquiry over the matter and have found that :

(a) The candidate bearing Roll Cal (N) A.I.H.C. No. 179 applied for re-examination of his answer scripts In paper I & VI at the M.A. Examination In Ancient Indian History and Culture, 1987. On re-examination, marks have decreased from 17 to 15 in 1st paper 1st half and the marks have been Increased from 15 to 17 in paper 1 second half. There has been no change in paper VI first half. The script of Paper VI second half is not traceable. It Is an old case, We have tried our best to search out the script but could not trace out.

(b) Since the second half of Paper VI was reported to be missing, the matter was placed before the Vice-Chancellor with the recommendation for awarding average marks in terms of Rules for re-examination.

(c) It could be ascertained that on 23.5.1994 the Vice-Chancellor has been pleased to approve the recommendation of average marks In second half of Paper VI.

(d) On perusal of the records of re-examination It could be ascertained that :-

(i) On re-examination First Paper first half and original marks which Is 17 (seventeen) were decreased to 15 (fifteen) and In the Second half the original marks which is 15 (fifteen) were Increased to 17 (seventeen). So total marks of the First Paper remain the same.

(ii) In case of VI paper there Is no change In the first half, in the second half average marks were awarded under the orders of the Vice-Chancellor which comes to 20 (twenty) i.e. 4 (four) marks short of original marks $12 + 24 = 36 - 04 = 32$).

(iii) Due to decrease of marks there is no change In his result.

The candidate is entitled to get a revised mark-sheet on deposit of the old one with the University.'

8. The report does not spell out how calculation of average marking was arrived at. The answer-scripts have been destroyed after submitting report. The Rules for re-examination or re-view have not been produced though the existence thereof has been reiterated.

9. In the report of the Controller of Examination dated 14.7.94 there is no whisper about destruction of records. Such report could not be prepared without reference to the answer scripts. The answer scripts cannot reasonably be destroyed before the process of review is complete and before communication of the result of review to the candidate. The Vice-Chancellor approved average marking on the missing paper only on 23.5.94. It is, therefore, evident that the records were destroyed during pendency of the litigation before the Hon'ble Court. We are constrained to observe that this act of destroying the answer scripts during the process of adjudication by this court not only has caused a positive interference with the administration of justice but also speaks volume against the bona fide of the respondents. The answer scripts and the rules for re-examination not being made available for judicial scrutiny the writ court had to evolve a procedure of averaging in consonance with the principles of equity, Justice and fair play as also with the prevalent practice of the University. The appellants have alleged that the writ court has transgressed his jurisdiction and entrenched into the exclusive domain of an autonomous body like the Calcutta University by evolving this procedure and has compelled them to act in violation of the Rules for re-examination. Unfortunately, such rules of re-examination have never been produced before this court.

10. High Courts have always observed a self-imposed restriction in exercising writ jurisdiction by way of non-interference with the policy-decisions and statutory rules framed by a statutory and autonomous body like the respondent No. 1 on the premises that such Institution runs its administration with the help of body of experts and highly qualified academicians having high sense of responsibility. The jurisdictional sphere of such Institutions or Statutory Bodies is never entrenched by this court unless the actions complained of are in gross violation of the statutory rules. In this case, the officials of the respondent No.1 themselves adopted the procedure of averaging without allowing the court to be convinced that the rules

prescribed therefore were actually followed.

11. Arbitrariness is an antithesis of law. It has been held by the apex court that public bodies are required to follow certain principles and guidelines. (See Ramctna Dayaram Shethy v. International Airport Authority of India reported in : (1979)IILLJ217SC). When the statutory authority or an autonomous body dealing with matters of public Importance acts arbitrarily with procedural Impropropriety the court exercising writ Jurisdiction within established parameters would not hesitate to declare the same to be bad and illegal with a view to uphold the legal right of the victim of Injustice.

12. It will appear from paragraph (III) of the memo appeal as also paragraph 22 of the stay petition that such Rules and Regulations of re-examination have been framed by the University of Calcutta. The Controller of the respondent No. 1 states in his report that the average marks were awarded in terms of the rules for re-examlnation. In paragraph 4 of the stay petition the appellant craved leave to refer and rely on the relevant Regulations at the time of hearing of the appeal. It is highly unfortunate that such rules were neither relied upon nor produced before this court at any stage. On our request to file such Rules only a statute entitled 'THE CALCUTTA UNIVERSITY FIRST STATUTES. 1979' and a xerox copy of the principles to be adopted in calculing average marks framed by the respondent No. 2 for B.A. and B.Sc. Examination were produced but those have no relevance to the present case. We regret to say that such a xerox copy of the notification dated 12.4.S9, If It can be called a notification at all, does not lay down any rule or guideline regarding awarding of average marks in re-examination on M.A. papers. In this case it has been stated that the petitioner obtained 4 marks short of original marks by the process of average marks and as such there was no change in his result. It was, however, not spelt out how the calculation was arrived at and as such we are not convinced that such process of averaging was based on some norms prescribed under the rules.

13. The appellant was duty bound under the law to produce the relevant rules by virtue of which it claims to have reviewed the answer scripts but they have withheld the same without any reasonable explanation or excuse. They have

destroyed the answer scripts during pendency of litigation. This is eminently a fit case where adverse presumption can be raised under section 114 of the Evidence Act that had the rules and the answer scripts been produced before this court, those would go against the appellants.

14. In the backdrop of such facts and circumstances, the writ court has adopted the procedure of awarding average marks following the decision of the Division Bench of this High Court In *University of Calcutta v. Smt. Gopa Chakraborty and Anr.* reported In : AIR1993 Cal1 to render equitable Justice to the writ petitioner. The directive of the Supreme Court that the decision of the Division Bench should not be taken as a precedent does not act as a prohibition when the Appellants could not show at all that such procedure of averaging adopted by the writ court is violative of the Statutory Rules framed by them.

15. We, therefore, do not find any reason to interfere with the decision of the learned single Judge. We record with regret that the conduct of the officials of the Appellant No. 1 would definitely send a wrong signal to the numerous students and educationists who have reposed their trust and confidence in the esteemed Institution like Appellant No. 1.

16. We, therefore, uphold the Judgment and Order passed by the learned trial Judge and dismiss the appeal without costs. Appellants are directed to comply with the directions of the trial court within 4 weeks from this date. If not already complied with.

R. Pal, J.

17. I agree.

Let a xerox copy of this Judgment duly signed by the Assistant Registrar of this court be made available to the parties upon their undertaking to apply for an obtain certified copy thereof on payment of usual charges.

18. Appeal Dismissed

