

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 01.05.2024
Pronounced on: 10.05.2024

OWP No. 121/2019
[WP(C) No. 326/2019]
CM No. 726/2019

Abdul Basit, age 19 years ... Petitioner
S/o Reyaz ud Din Masoodi
R/o Bandipora

Through: Mr. Bhat Fayaz Ahmad, Advocate.

v.

1. University of Kashmir through its ... Respondents
Registrar, Hazratbal, Srinagar.

2. Controller Examination,
University of Kashmir, Hazratbal, Srinagar.

Through: Mr. Syed Faisal Qadri, Sr. Advocate, with
Mr. Asif Maqbool, Advocate.
Respondents 1 & 2 present in person.

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

JUDGEMENT

10.05.2024

1. Extraordinary writ jurisdiction of this Court enshrined under Article 226 of the Constitution is invoked by the petitioner in the instant petition imploring the following reliefs:

- “(i) A Writ of Mandamus commanding upon the respondents to award the marks for all three questions that have been done by the petitioner as reflected in the answering sheet.
- (ii) A Writ of Mandamus commanding upon the respondents to explain that why the respondents are reluctant in rectifying the error and under which provisions of law the respondents have adopted, the multiplication and deduction of marks in reevaluation. Besides that respondents be directed to compensate the petitioner for loss caused to the petitioner.

- (iii) A Writ of Mandamus commanding upon the respondents to rectify the error by awarding marks to all the three questions and reflect the marks of the petitioner in the marks sheet of 5th semester final examination.
- (iv) Any Other writ, order or Direction which the Hon'ble court may deem fit and proper in the given circumstances of this case may also be issued in favour of the petitioner and against the respondents, the same would be in consonance with law and justice.”

2. The background facts under the cover of which the aforesaid reliefs have been prayed by the petitioner are that the petitioner appeared in B.A. 5th Semester Examination under Roll No.18814862 for the Session 2017-18 conducted by the Respondent-University of Kashmir, Respondent no.1 herein. After declaration of the results, the petitioner was shown to have failed in General English Paper having secured 27 marks as against 38 pass marks, whereafter the petitioner upon making an application obtained xerox copy of his answer sheet from the Respondent-University, upon examination of which, it got revealed that one of the questions of the answer sheet had not been evaluated and no marks thereof awarded; as a consequence whereof the petitioner applied for re-evaluation of the said paper, whereupon such re-evaluation, the petitioner was shown to have secured 40 marks, however, the Respondent-University scaled down the said 40 marks to 34 marks on the basis of a rule and in the process changed the result of the petitioner for the said paper from pass to fail yet again.

3. **Objections** to the writ petition have been filed by Respondent 2 wherein the following has been averred:

“The reply affidavit of facts on behalf of the answering respondents is most respectfully submitted as under:

That the answering respondents, at the very outset, seek to deny all such averments and contentions made in the writ petition as are inconsistent with or repugnant to submissions made herein this reply or which have not been specifically admitted. All such averments that are inconsistent with or repugnant to the submissions made herein this reply or which have been specifically admitted, be, therefore, deemed to have been specifically denied and hence traversed.

Preliminary Submissions:

1. That, the writ petition under reply is grossly misconceived both in law and on facts, inasmuch as none of the petitioner's rights, much less the fundamental rights, that could be enforced by this Hon'ble Court in its writ jurisdiction, have been infringed or violated by the answering respondents.

2. That the grievance projected by the petitioner in the writ petition has been already addressed and resolved. The petitioner does not have any grievance in the matter as the discrepancy pointed has been properly settled.

3. That since grievance of the petitioner has been addressed, the ends of justice demand that writ petition be dismissed as no purpose would be served by keeping the petition alive.

In the premises, it is, therefore, humbly prayed that Writ Petition be dismissed with costs for the same would be inconsonance with law and justice.

For which act of kindness, the answering respondents as are duty bound in law shall always pray."

Heard learned counsel for the parties, considered the matter and perused the record.

4. Learned counsel for the petitioner, while making his submissions in line and tune with the case set up in the petition, would reiterate that the respondents have infringed the legal and fundamental rights of the petitioner by their arbitrary and unreasonable acts of omission and commission, firstly having not awarded marks to one of the questions in the answer sheet of the petitioner and thereafter though awarded the due marks to the said question making the petitioner pass in the paper yet by applying some unknown rule slashed down the said pass marks and yet again declared the petitioner failed in the paper in question and even thereafter in order to cover-up their unfair acts compelled the petitioner to once again reappear in the paper in question though the petitioner have had passed the same after re-evaluation.

On the contrary, although learned counsel for the respondents admits that the petitioner secured 40 marks upon re-evaluation of the paper in question, yet would contend that by application of Statute 10 of the University pertaining to the re-evaluation of answer scripts, the said 40 marks got slashed down to 34 marks rendering the petitioner 'fail' again, however, thereafter the petitioner in a fresh examination conducted by the Respondent-University of the paper in question passed the same.

5. Before proceeding further in the matter, it would be appropriate to refer hereunder to Notification No. F(Amend-St.Re-evaluation)Acad/KU/20 dated 21.10.2020, produced by the respondent 2 in person, who had been summoned by this Court in terms of order dated 21.04.2024:

Statute 10(v)&(vi) as it existed	Statute 10(v) & (vi) as it would read after amendment
<p>(v) Final result after re-evaluation will be based on average marks of 1st & 2nd examiners. As Such the marks may increase or decrease after the re-evaluation.</p> <p>(vi) In case there appears to be deviation of 30% or more marks in the original and the re-evaluation result in a particular answer script it shall be referred to a panel of subject experts, constituted for the purpose for final assessment and suitable action shall be initiated against the negligent evaluator after affording him/her a chance to be heard, and the decision of the panel with regard to the result of the candidate and the punitive action, if any, for the negligent evaluator shall be final and binding. If after the final evaluation of such answer scripts there is a positive change in the result of the candidate to the extent of 30% or more marks the re-evaluation fee charged from the candidate shall be refundable and the same shall be levied from the negligent evaluator in addition to the penalty imposed by the panel.</p>	<p><u>Statute 10(v)</u></p> <p>After re-evaluation the marks upto the difference of 30% in the two evaluations, the best of the two shall be considered. However, if the difference is more than 30% the answer script shall go to the third examiner and in such situation best of the three evaluators shall be considered as final.</p>

A bare perusal of the aforesaid Statute would manifestly tend to show that same did not in any manner apply to the case of the petitioner having regard to the issue pertaining to the paper in question, be it the un-amended or amended statute, in that, the respondents admittedly have applied the Statute to the case of the petitioner arbitrarily and illegally and in the process have acted unreasonably and unfairly having resulted into substantial and grave prejudice to the petitioner by subjecting him to reappear in the examination afresh in the paper in question, although the petitioner was found to have passed the paper in question, but for the wrong application of the aforesaid statute inasmuch as to cover-up the patent and blatant acts of omission by the Respondents.

Here it is significant to understand the meaning of expressions, ‘Re-evaluation’ and ‘Re-checking’ pertaining to academic matters and ‘Re-evaluation’ is said to be process of reassessing or re-evaluating an

examination answer script or is an academic assessment to determine if there were any errors or discrepancies in the original evaluation and involves a detailed review of the answers provided by the student and the marks allocated to each answer, whereas, 'Re-checking' is said to mean to recheck something again involving a process of removal of errors or discrepancies in marking missed points or any other errors/discrepancies that may have affected the original grade.

6. Having regard to the aforesaid facts and circumstances, the mindless action of the respondents for having applied the statute *supra* wrongly to the case of the petitioner pertaining to the paper in question inasmuch as compelling the petitioner to reappear in the examination again disregarding the marks secured by the petitioner in the paper in question after re-evaluation / re-checking is apparent and the petitioner thus cannot be left remediless and the very grounds noticed in the preceding paragraphs, therefore, necessitates that the petitioner be compensated by payment of damages in **Public Law** on the basis of the principles laid down by the Apex Court in a series of judgements including in case titled as *United Air Travel Services v. Union of India* reported in (2018) 8 SCC 141 wherein at paragraph 14 following has been observed:

"14. The principles of damages in public law have to, however, satisfy certain tests. In Nilabati Behera v. State of Orissa, it was observed that public law proceedings serve a different purpose than private law proceedings. In that context, it was observed as under:

'The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Articles 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation

under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.'

It was also emphasized that it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation in exercise of writ jurisdiction. The objective is to ensure that public bodies or officials do not act unlawfully. Since the issue is one of enforcement of public duties, the remedy would be available under public law notwithstanding that damages are claimed in those proceedings."

7. In the facts of the present case, the illegality and arbitrariness on the part of the respondents is manifest and writ large, besides being patently wrongful, undoubtedly constituting a fit case for grant of compensation in favour of the petitioner and the Court being conscious of the fact that there is no quantification based on actual loss, but then the award of damages to the petitioner payable by the Respondent-University is in Public Law.

8. Viewed thus, what has been observed, considered and analyzed hereinabove, the instant petition is disposed of with a direction to the Respondent-University to pay an amount of Rupees One lakh to the petitioner as damages within a period of four weeks from the date of passing of this order, failing which the amount would carry an interest @ 6% per annum apart from any other legal remedy as may be available to the petitioner.

9. **Disposed** of along with connected CM.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

10.05.2024

Isaaq/Tas

Whether the Judgment is reportable: Yes