High Court Of Tripura Through The ... vs Tirtha Sarathi Mukherjee on 6 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3070, 2019 LAB IC 3334, (2019) 127 CUT LT 1020, (2019) 1 ORISSA LR 467, (2019) 2 PAT LJR 114, (2019) 2 SCALE 708, (2019) 2 SCT 117, 2019 (3) KCCR SN 202 (SC), AIR 2019 SC (CIV) 2329, AIRONLINE 2019 SC 2565

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Bench: K.M. Joseph, Ashok Bhushan

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).1264 OF 2019
(Arising out of SLP(C)No.12624 of 2018)

HIGH COURT OF TRIPURA THROUGH
THE REGISTRAR GENERAL ...APPELLANT(S)

VERSUS

TIRTHA SARATHI MUKHERJEE & ORS. ...RESPONDENT(S)

JUDGMENT

K.M. JOSEPH, J.

1. The appeal by Special Leave is directed against the order passed by the High Court of Gauhati dated 19.03.2018 in Review Petition No.21 of 2018. By the impugned order, the Review Petition filed by the respondent No.1 against the dismissal of his Writ Petition, has been allowed and the Court has directed the re-evaluation of his answer papers in regard to the selection to the post of Grade-I in Tripura Judicial Service.

2. By advertisement dated 18.01.2011, applications were invited from practicing Advocates for appointment as Grade-I in Tripura Judicial Service. 3 vacancies were notified. Pursuant to the advertisement, Respondent No.1 appeared in preliminary examination held on 12.06.2011. The results were declared on 24.06.2011. The petitioner along with 16 other candidates were shown as qualified. The main examination was held on 30.07.2011 and 31.07.2011. The written examination comprised of 3 papers. The result of the main examination was declared on 29.09.2011 in which Respondent No. 1 was declared as not qualified. He sought disclosure of marks under the Right to Information Act, 2005. However, he was allowed to inspect his answer scripts on 01.11.2011. It is the case of the respondent No.1 that some correct answers were found marked as incorrect. He secured 175 marks out of 300. Thus, he was 5 marks short to be shortlisted for appearing for the interview as the requirement was 60%. He filed Writ Petition No.1809 of 2012 seeking re-evaluation of his answer papers in Papers I, II and III and declaring the decision holding him as not qualified for the interview as null and void. The said Writ Petition came to be dismissed on 12.12.2012. The respondent filed Special Leave Petition before this Court which was dismissed on 23.07.2013. It is, thereafter, he filed the Review Petition. In the Review Petition, the High Court finds that under the 2003 Rules, which apparently governed the conduct of the examination, there is no provision for re-evaluation of answer scripts. It was, however, found that there is no prohibition against re-evaluation provided it finds any patent error. This may include not awarding any marks for a correct answer or treating a correct answer to be an incorrect answer. The Court, no doubt notes it has to be bear in mind that it cannot step into the shoes of the examiner and undertake the exercise of re-evaluation like a super examiner. Thereafter, the following finding is rendered:-

> "25. We have gone through the answer scripts of the petitioner both in Paper- I and Paper-II. To us, answers given in respect of Question Nos. 3 (xiii), 2(xviii) and 3(xv) of Paper II which were marked as incorrect answers and Question No.I(xiv) of Paper II for which no marks were awarded may require a relook. However, we hasten to add that we have not expressed any final opinion in this regard".
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> 3. Regarding the case set up by the petitioner based on the dismissal of the Writ Petition, it was found based on adjudication related to Paper-III and that it did not adjudicate the grievance of respondent No. 1 in respect of Papers I and II, as perhaps, it was not highlighted by the respondent No.1. Noting that long time has elapsed the Court allowed the Writ Petition and modified the Judgment by which the Writ Petition was dismissed and the Court directed the Registrar General of the Tripura High Court to re-

evaluate the answer sheet scripts pertaining to Papers II and III of the main examination re-evaluated. For this purpose, the answer papers in the custody of Gauhati High Court was to be transmitted in sealed cover to the Registrar General, Tripura High Court.

4. We have heard learned counsel for the appellant and learned counsel appearing on behalf of respondent No.1.

5. Learned counsel for the appellant would rely upon the judgment of this Court in K. Rajamouli Vs. A.V.K.N. Swamy reported in 2001 (5) SCC 37. As per the said decision, it is contended that the Review Petition in this case, was not maintainable. This is not a case, where the Review Petition was filed before filing of the Special Leave Petition. The Review Petition was filed after the filing of the Special Leave Petition and thereafter, on this ground alone, the Review Petition should not have been entertained by the High Court, runs the argument.

6. Secondly, he would point out the inordinate delay with which the Review Petition was filed. The Special Leave Petition was dismissed as we have noted in 2013. It is nearly 5 years thereafter, that the present Review Petition was filed. Learned counsel highlights the fact of subsequent developments in the form of selections which have commenced after the date of the final judgment in the Writ Petition.

7. Thirdly, learned counsel for the appellant would point out that this Court has spoken about circumstances which justify an order for revaluation. The most important aspect is there is no right to seek re-evaluation unless there is a provision which entitles a candidate to seek revaluation. Admittedly, in this case, there is no provision which entitles the candidate to seek revaluation. In such circumstances, the High court was not justified in allowing the Review Petition and directing re-evaluation of papers. In this regard, he drew our attention to the judgment of this court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors. reported in 2004 (6) SCC 714.

8. Per contra, the first respondent would point out that this is a case where the examiner has not given marks to him for the correct answers which he has given and the High Court having found the injustice which has been done to him had to intervene. Learned counsel for respondent No.1 drew our attention to the judgment of this Court in Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors. reported in 2018 (2) SCC

357. The said judgment, no doubt, was rendered by two learned Judges. It has been laid down inter alia as follows:-

> “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 rationalization” and only in rare or exceptional cases that a material error has been committed.”
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> 9. In fact, we also permitted the respondent No.1 who was personally present to make submissions at his request. He would also emphasize upon the facts and how he has been at receiving end of grave injustice, as a result of the clear mistake committed in not awarding marks where he was entitled to.
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> 10. The first question we must decide is whether we should allow the appeal on the ground that this is a case where the Review Petition was filed after the dismissal of

the Special Leave Petition. No doubt, in K. Rajamouli Vs. A.V.K.N. Swamy reported in 2001 (5) SCC 37, relied upon by the petitioner, it was held that inter alia as follows:-

"4. Following the decision in the case of Kunhayammed & Ors. (supra) we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the review petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be an abuse of the process of the law."……

11. However, we notice that a different note was struck by another Bench, in the decision Gangadhara Palo Vs. Revenue Divisional Officer & Anr. reported in 2011 (4) SCC 602. In the said judgment, a Bench of two learned Judges has held inter alia as follows:-

"10. We have carefully perused SCC para 4 of the aforesaid judgment. What has been observed therein is that if the review petition is filed in the High Court after the dismissal of the special leave petition, "it would be treated as an affront to the order of the Supreme Court". In our opinion, the above observations cannot be treated as a precedent at all. We are not afraid of affronts. What has to be seen is whether a legal principle is laid down or not. It is totally irrelevant whether we have been affronted or not."

12. Noticing cleavage of judicial opinion, the matter has been referred to a larger Bench. In the light of these developments we do not think that the appellant is entitled to relief on the basis that the Review Petition was filed after the dismissal of the Special Leave Petition.

13. The next question to be considered is regarding the merits of the order. In Pramod Kumar Srivastava case (Supra), a Bench of three learned Judges after, in fact, adverting to the judgment of a Bench of two learned Judges in 1984 (4) SCC 27 proceeded to lay down as follows:-

……."7. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re- evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

> 8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-

books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re- evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

14. In Himachal Pradesh Public Service Commission Vs. Mukesh Thakur & Anr. 2010 (6) SCC 759, a Bench of two learned Judges held as follows:-

> "20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court." (Emphasis supplied) It was further held more importantly as follows:

> "24. The issue of revaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education V. Paritosh Bhupeshkumar Sheth; (1984) 4 SCC 27, wherein this Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/ Regulations not providing for rechecking/ verification/ revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision."

15. After referring to the Pramod Kumar Srivastava decision (supra), it was laid down as follows:-

> "26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/ regulations, the Court should not generally direct revaluation."

16. In Central Board of Secondary Education Through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination & Ors. Vs. Khushboo Shrivastava & Ors. reported in 2014 (14) SCC 523, again

a bench of two learned Judges after undertaking a Review of earlier decisions, held as follows:-

> "9. We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission; (2004) 6 SCC 714, has clearly held relying on Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth; (1984) 4 SCC 27, that in the absence of any provision for the re-evaluation of answer books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava v. Bihar Public Service Commission; (2004) 6 SCC 714, was followed by another three-Judge Bench of this Court in Board of Secondary Education v. Pravas Ranjan Panda;
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> (2004) 13 SCC 383, in which the direction of the High Court for re-
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> evaluation of answer books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answer books in the rules."

17. It is, finally, in Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors. reported in 2018 (2) SCC 357, that the Court proceeded to cull out the conclusions which include para 30.2. We may also notice conclusion in para 30.5 which reads as follows:-

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

18. We have noticed the decisions of this Court. Undoubtedly, a three Judge Bench has laid down that there is no legal right to claim or ask for revaluation in the absence of any provision for revaluation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction under Article 226 of the Constitution to direct revaluation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of revaluation.

19. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may

continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

20. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.

21. We would understand therefore the conclusion in paragraph 30.2 which we have extracted from the judgment in Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors. 2018 (2) SCC 357 only in the aforesaid light. We have already noticed that in V.S.Achuthan vs Mukesh Thakur's case reported in 2010 (6) SCC 759, a two Judge Bench in paragraph 26 after survey of the entire case law has also understood the law to be that in the absence of any provision the Court should not generally direct revaluation.

22. In this case we have already noted that the writ petition was filed challenging the results and seeking revaluation. The writ petition came to be dismissed in the year 2012 by the High Court. The Special Leave Petition was dismissed in the year 2013. The review petition is filed after nearly 5 years. In the interregnum, there were supervening development in the form of fresh selection. While it may be true that the delay in filing the review petition may have been condoned, it does not mean that the Court where it exercises its discretionary jurisdiction under Article 226 is to become oblivious to the subsequent development and the impact of passage of time. Even in the judgment of this Court in U.P.P.S.C. through its Chairman & Anr. Vs. Rahul Singh & Anr. reported in 2018 (2) SCC 357 which according to the first respondent forms the basis of the High Court's interference though does not expressly stated so, what the Court has laid down is that the Court may permit revaluation inter alia only if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases on the commission of material error. It may not be correct to characterize the case as a rare or exceptional case when the first respondent approaches the Court with a delay of nearly 5 years allowing subsequent events to overtake him and the Court. We feel that this aspect was not fully appreciated by the High Court. The review, it must be noted is not a re-hearing of the main matter. A review would lie only on detection without much debate of an error apparent. Was this such a case? It is here that we must notice the argument of the appellant relating to question in Part III of the examination alone, engaging the attention of the Court for the reason that the first respondent pressed this aspect alone before the High court. The judgment of the High Court in the writ petition appears to bear out this submission of the appellant. The issue relating to the anomaly in the evaluation of the Paper III has been discussed thread bare in the judgment. The view of the High Court has not been disturbed by this Court. Despite this the High Court in the impugned judgment has proceeded to take up the plea relating to questions in Part-I and Part-II and proceeded to consider the review petition and granted relief that too after the passage of nearly 5 years. This suffices to allow the present appeal.

Despite all this we would also make a few observations on the merits of the matter.

23. The first respondent has fallen short of 5 marks. In the impugned judgment in paragraph 25, the Division Bench picks up four questions. The Court has premised its interference on the basis of the aforesaid answers given to the 4 questions by the first respondent. If we take Question 3(xiii), the question was as follows:

> "Question no.-3(xiii) of paper-II Adjournment under order xvii Rule 1 C.P.C. cannot be granted under any circumstances for more than 3 times to a party during trial of the suit (Mark
>
> -1)".

24. The first respondent's answer is that it is incorrect but he has been given no marks as apparently cross sign is given as he has given wrong answer.

Order XVII Rule 1 reads as follows:

"1. Court may grant time and adjourn hearing – (1) The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

> Provided that no such adjournment shall be granted more than three times to a party during hearing of the suits."

25. The case of the first respondent is based on the judgment of this Court in Salem Advocates Bar Association Case 2005 (6) SCC 344. According to him even though under Order XVII Rule 1 under no circumstances can adjournment be granted to a party during trial for more than three times, this Court in the aforesaid judgment has taken the view that beyond 3 times adjournment can be granted. It is clear that going by the provisions of Order XVII Rule 1, the answer given by the first respondent is wrong. It is on the basis of interpretation placed by the Court that adjournment can be in excess of 3 times. If the examining body has proceeded to evaluate the answers on the basis of actual provision of Order XVII Rule 1, it is not a matter where particularly there is no right to revaluation, we are persuaded to interfere. We would defer to the view which the examining body would have taken.

26. The next question is Question No.2 (xviii) which reads as follows:

> "Q.No. – 2(xviii) in paper no. – (II) The Plaintiff can file an application under section 5 of Limitation Act seeking extension of the period of limitation prescribed (Mark – 1)".
>
> The choices given are as follows:
>
> (a) for filing a suit,

(b) for filing an appeal,
(c) for filing an application
under Order XXI CPC
(d) for all the above.

27. The complaint of the first respondent is that he ticked Answer No.B but he is given cross sign which means his answer is wrong whereas he would contend that all the other answers namely A,C and D were incorrect and it is only B which could possibly be correct.

28. We will proceed on the basis that there is merit in the contention of first respondent. The next question is Question No.3 (xv) in Paper No.2. The question was "Appellate Court cannot allow a party to produce additional evidence." But for the answer given `incorrect'. Respondent was given the cross sign and no marks given. Here also we proceed on the basis that first respondent may have legitimate grievance.

Finally, there is Question No.1 (xiv) in Paper No.2 which reads as follows:

"Q.No. – 1(xiv) in paper no. – (II) Plaintiff sues the defendants for recovery of Rs. 1,00,000/- in order to prove the case, the plaintiff proved the entries in his books of account showing the defendant to be indebted to him to the said amount (Mark – 3)".

29. The answer of the petitioner appears to be as follows:

"In civil case, the case is proved by preponderance of probabilities. But in the above case, neither written of nor money receipt was proved.

So, entries in the Books of account is not sufficient."

30. It is to be noted that it is not an objective type question, the maximum marks are 3. This is not a case even if we proceed on the basis that the answer is correct, marks is to be awarded as such. We noticed that for 5 questions, the respondent No. 1 has been given 1 mark, even though, the maximum is 3 marks. It would appear that awarding full marks is based, not merely, on the correctness of the answer.

31. However, we would like to rest our conclusion on the basis that not being armed with a right given by a provision providing revaluation and in the facts which we have already set out and the reasons we have alluded we would think that the High Court ought not to have allowed the review petition. We may incidentally also notice that the High Court has, on the one hand reasoned that what was covered by the judgment in the writ petition was a complaint related to Paper III.

Despite this, the direction is given for evaluation of Paper II and Paper III. It may be true that direction to evaluate Paper III may be a mistake but even if this is treated as Paper No.I & II, the High Court has premised its interference on the premise of answer to Paper No.II. In such circumstances, we allow the appeal and set aside the impugned judgment. The review petition filed before the High Court shall stand dismissed. There shall but no order as to costs.

.....J. (Ashok Bhushan) .....J. (K.M. Joseph) New Delhi;

February 6, 2019