

Before : N. K. Sodhi, J.

SANJAY KUMAR GUPTA,—Petitioner.

versus

THE KURUKSHETRA UNIVERSITY, KURUKSHETRA,
—Respondent.

Civil Writ Petition No. 859 of 1989.

23rd April, 1991.

Constitution of India, 1950—Art. 226—Rules for Re-evaluation of Answer-Books—Rls. 19.3 & 19.4—Candidate appearing in examination in April, 1988—Applying for re-evaluation in one paper on 23rd July, 1988—Amendment of Rules prescribing mode of re-evaluation made on 1st June, 1988—Under unamended rules petitioner entitled to 45 marks against the original marks—Under amended rules result of candidate remains unchanged—Rules in force at time candidate took examination to be applied—Candidate to be awarded 45 marks under unamended Rules.

Held, that the respondent-University should have applied the un-amended Rule to the petitioner while re-evaluating his Mathematics Paper-II. The petitioner took the examination in April, 1988 whereas the Rules regarding re-evaluation were changed afterwards in June, 1988 and he, thus, could not possibly have any notice of the amended Rules.

(Paras 5 & 6)

Held further, that the University being an autonomous body has every right to change the requisite rules concerning the conduct of examinations including the qualifying marks for any examination and also the rules relating to re-evaluation but it must be done well in advance of the examinations to which they are sought to be made applicable and the candidates appearing therein are going to be effected. When a candidate appears in any examination, he will be governed only by the rules which are operative at that time and not any subsequently amended rule. This principle will, in my opinion, apply equally to the rules governing re-evaluation as well. It is a matter of common knowledge that after the declaration of results, Rules and Regulations of a University or other Institutions sometimes provide for re-evaluation of a paper for which candidates are required to apply within a specified time from the date of the declaration of the result and therefore even in the case of re-evaluation, the rules in force at the time of the examination would govern the candidates who sat in the said examination.

(Para 4)

Writ Petition under Articles 226/227 of the Constitution of India praying that:—

- (i) a writ in the nature of Certiorari be issued quashing the latest instructions (Annexure P-2) issued by Respondent-University along with Rule 19.4;

- (ii) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also kindly be issued;*
- (iii) *issuance of advance notice to the respondent be dispensed with;*
- (iv) *filing of certified copy of Annexure P-1 & P-2 may kindly be dispensed with;*
- (v) *the writ petition be allowed with costs.*

Mr. Anil Khetrapal, Advocate, for the petitioner.

Mr. Subhash Ahuja, Advocate, for the respondent.

JUDGMENT

N. K. Sodhi, J.

(1) The petitioner Sanjay Kumar Gupta appeared in the B.Sc. Final (Electronics) Examination conducted by the Kurukshetra University in April, 1988 and secured 240 marks out of a total of 450. In Mathematics Paper-II, he obtained 33 marks, out of 75 which were awarded to him by the original examiner to whom the answer book had been sent for evaluation. Not satisfied with these marks, the petitioner applied on 23rd July, 1988 for re-evaluation of his Mathematics Paper-II which had to be done in terms of Clause 19.4 of the Rules for Re-evaluation of Answer Books (hereinafter called the Rules). The result of a candidate, according to this clause, could be revised on the basis of re-evaluation score in terms of clause 19.3 of the Rules only if the character of the result was changed. Character of the result means 'fail to compartment', 'fail to pass', 'compartment to pass' or 'vice versa' 'change in division' or where on re-evaluation, the score increases or decreases by 5 per cent or more of the maximum marks allotted to the concerned paper. Clause 19.3 of the Rules as it stood in April, 1988, when the petitioner took the examination reads as under:—

“19.3 Re-evaluation will be done by two independent Examiners. The final result after re-evaluation shall be the average of the two higher awards out of the three awards including the original examiner's award. Fractional mark, if any, shall be rounded upto a full mark.”

Sanjay Kumar Gupta v. The Kurukshetra University, Kurukshetra
(N. K. Sodhi, J.)

As per this rule, the paper of a candidate was to be re-evaluated by two independent examiners and the final result after re-evaluation had to be the average of the two higher awards out of the three awards including the original examiner's award. This rule was amended with effect from 1st June, 1988 and the amended rule 19.3 which is relevant for our purposes is reproduced hereunder for facility of reference:—

“19.3 If average of the awards given by the original examiner and the re-evaluator does not exceed the original score by 10 per cent of the maximum marks of the paper, the average score shall be taken as the re-evaluation score in the paper, subject to clause 19.4 of the rules for re-evaluation. If, however, the re-evaluation score happens to increase/decrease the original score by more than 10 per cent of the maximum marks, then the case will be sent to the second re-evaluator and of the three awards viz. awards given by the original examiner and the two re-evaluators, the average of the two closer awards will be taken as valuated re-evaluation score. Provided that if an award is equally closer to the other two, viz. 54, 56, 58 the result would be declared on the average of the two higher awards. Provided further that if two of the three examiners (including the two re-evaluators) award a candidate at least the pass marks and the average of the two closer awards reduces his score to less than the minimum pass marks, the candidate shall be awarded minimum pass marks in that paper:

Provided further that if a student after re-evaluation fails by marginal marks say one or two marks then either the average marks of the two re-evaluators or one re-evaluator as the case may be, will be taken into account and the student will be allowed to pass by giving the grace marks of one or two.

Fractional mark, if any, shall be rounded up to a full mark. Even if the modified result adversely affects the candidate he will have to accept it.”

The amended rule changes the manner of determining the re-evaluated score in the concerned paper. According to this amendment, if the average of the awards given by the original examiner

and the re-evaluator does not exceed the original score by 10 per cent of the maximum marks of the concerned paper, the average score shall be taken as the re-evaluation score in that paper subject to Clause 19.4 of the Rules. If, however, the re-evaluation score happens to increase or decrease the original score by more than 10 per cent of the maximum marks, then the case has to be sent to the second evaluator and out of the three awards namely, the awards given by the original examiner and the two evaluators, the average of the two closer awards will be taken as the re-evaluation score, provided that if an award is equally closer to the other two, the result would be declared on the average of the two higher awards.

(2) Petitioner having applied for the re-evaluation on 23rd July, 1988 of his Mathematics Paper-II, the respondent-University in accordance with the amended rule quoted above found that there was no change in his re-evaluated score and he was sent a communication (Annexure P-1 with the writ petition) to this effect by the Assistant Registrar (Re-evaluation). Since the amended rule had come into force by the time the petitioner applied for his re-evaluation, the University re-evaluated his answer book in the light of the amendment. It is this action of the University which has been challenged by the petitioner in this petition under Article 226 of the Constitution of India.

(3) The only contention advanced on behalf of the writ petitioner is that since he took his examination in April, 1988, all rules including those relating to re-evaluation which were in force at that time could govern him and that the amended rule would apply only to students who would appear in the examinations held after the amendment came into force. The stand of the writ petitioner is controverted by the University which seeks to justify its action on the ground that by the time the petitioner applied for re-evaluation, the amended rule had already come into force.

(4) After giving my thoughtful consideration to the rival contentions of the parties, I find force in the contention of the writ petitioner. It is true that the University being an autonomous body has every right to change the requisite rules concerning the conduct of examinations including the qualifying marks for any examination and also the rules relating to re-evaluation but it must be done well in advance of the examinations to which they are sought to be made applicable and the candidates appearing therein are going to be affected. When a candidate appears in any examination, he will be governed only by

Sanjay Kumar Gupta v. The Kurukshetra University, Kurukshetra
(N. K. Sodhi, J.)

the rules which are operative at that time and not by any subsequently amended rule. This principle will, in my opinion, apply equally to the rules governing re-evaluation as well. It is a matter of common knowledge that after the declaration of results, Rules and Regulations of a University or other Institutions sometimes provide for re-evaluation of a paper for which candidates are required to apply within a specified time from the date of the declaration of the result and therefore even in the case of re-evaluation, the rules in force at the time of the examination would govern the candidates who sat in the said examination. In the view that I have taken, I find support from a Division Bench judgment of this Court in L.P.A. No. 97 of 1967 decided on 17th July, 1968 wherein it has been held thus:—

“The University is an autonomous body and has every right in the matter of altering the requisite rules concerning the conduct of examinations and the qualifying marks necessary for a degree *provided the regulations are made well in advance to the examination which a candidate is required to take.*”

(emphasis supplied)

The view of the Division Bench that a candidate taking an examination must have enough advance notice of any change in Rules that is likely to affect him has been approved by their Lordships of the Supreme Court in *Punjab University v. Subhash Chander* (1). In the case before the Supreme Court, Subhash Chander, writ petitioner joined the M.B.B.S. Course in 1965 when rule 7.1 relating to the M.B.B.S. examination provided that a candidate who failed in one or more papers/subject and/or aggregate could be given grace marks up to 1 per cent of the total aggregate marks to his best advantage in order to be declared to have passed the examination. This Rule was amended in May, 1970 whereby grace marks could be given in the case of M.B.B.S. examination upto 1 per cent of the total of each subject and not 1 per cent of the aggregate of all subjects as was the rule prior to its amendment. The writ petitioner finally appeared for the final M.B.B.S. examination after 9 years in the year 1974 and secured 95 marks out of 200 in the theory examination when the pass marks were 100. The total marks of that paper being 400 and total aggregate marks of all the four subjects in which he appeared were 1600 marks. While rejecting the contention of Subhash Chander

(1) A.I.R. 1984 S.C. 1415.

that he was entitled to 16 grace marks on the basis of the old regulation which was in force in 1965 at the time when he joined the M.B.B.S. Course, their Lordships observed as under:—

“When Subhash Chander, respondent 1 was admitted to the M.B.B.S. Course in 1965, R. 7.1 as stood then and extracted above provided that the candidate who fails in one or more papers/subjects/or aggregate may be given grace marks up to 1 per cent of the total aggregate marks excluding for practical and internal assessment to his best advantage in order to have him declared to have passed the examination. Subhash Chander, respondent 1, who appeared for the final M.B.B.S. examination only nine year's later in 1974 had to pass in four subjects, namely Medicine, Surgery, Eye and ENT and Midwifery for each of which the aggregate was 400 marks. He secured 202, 225 and 204 marks in Medicine, Surgery and Eye and ENT respectively and was declared to have passed the examination in those subjects, Midwifery consisted of two parts, namely theory and practical for each of which the aggregate was 200 marks. Subhash Chander respondent 1, secured 106 out of 200 in the practical examination and only 95 out of 200 in the theory examination. Since the total aggregate of all the four subjects for which he appeared in 1974 was 1600 marks, under the old Regulation 25 read with R. 7.1 as it stood at the time of his admission to the course in 1965 he would be entitled to 16 grace marks and would have been declared to have passed the examination as the addition of 16 grace marks to the 95 marks actually secured by him in the (theory) examination in Midwifery would satisfy the required minimum of 50 per cent. But long before Subhash Chander appeared for the final M.B.B.S. examination in 1974 the rule relating to award of grace marks to M.B.B.S. and B.D.S. students was changed by the senate of the University in 1970 by the addition of an exception to R. 2.1 as mentioned above. It is not contended that the sanction of the Government had not been obtained for making this change. The exception says that in the case of M.B.B.S. and B.D.S. examinations however the grace marks shall be given up to 1 per cent of the total marks of each subject and not up to 1 per cent of the aggregate marks of all the subjects; in other words each subject will be, for this purpose, a separate unit and a candidate who fails in a subject by not

Sanjay Kumar Gupta v. The Kurukshetra University, Kurukshetra
(N. K. Sodhi, J.)

more than 1 per cent may be given the required number of marks in order to pass in that subject. Under this rule as amended in 1970 Subhash Chander, respondent 1, was entitled to only 4 marks as grace marks being 1 per cent of the aggregate of 400 marks for Midwifery alone. As the addition of 4 grace marks to 95 marks actually secured by him in the (theory) examination in Midwifery for which the aggregate was 200 out of that total aggregate of 400 marks for that subject makes only 99 out of 200 it was less than 50 per cent and he was declared to have failed in Midwifery and asked to reappear for that subject.

It could not be contended that Subhash Chander who appeared for the final examination in 1974 did not have sufficient notice of the change brought about in 1970 in the rule relating to award of grace marks or that he was prejudiced by the change."

(5) In the present case, the writ petitioner took the examination in April, 1988 whereas the Rules regarding re-evaluation were changed afterwards in June, 1988 and he, thus, could not possibly have any notice of the amended Rules.

(6) To conclude, I hold that the respondent-University should have applied the un-amended Rule to the petitioner while re-evaluating his Mathematics Paper-II. It is not in dispute that the original examiner had awarded 33 marks out of 75 whereas the second examiner on re-evaluation gave 51 marks out of 75 and the third examiner awarded only 38 marks out of 75. Applying the unamended Rule, the final result after re-evaluation has to be the average of the two higher awards out of the three awards including the original examiner's award. The average of the two higher awards comes to 44.5 and since the fraction has to be rounded off to a full mark, the petitioner must be taken to have secured 45 marks out of 75 and the University is directed to declare the result of the petitioner accordingly. The writ petition is allowed with no order as to costs.

J.S.T.