



\$~A-2

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

+ W.P.(C) 7466/2023

NIRMALA SINGH

..... Petitioner

Through: Mr.Sanjeev Kumar Dubey,
Sr.Advocate with Mr.Soyash Singh
and Mr.Rajat Gupta, Advocates.

versus

HIGH COURT OF DELHI THROUGH REGISTRAR GENERAL

..... Respondent

Through: Mr.Anurag Ahluwalia with
Mr.Abhigyan Siddhant, Advocates.

%

Date of Decision: 11th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present writ petition has been filed seeking a direction to the respondent to re-evaluate petitioner's answer to question 2(vii) of Paper-I of Delhi Judicial Services Mains Examination 2022 (hereinafter referred to as the "DJS Examination 2022") and to award her two marks against the same as well as to correctly record the marks awarded in question Nos.10 and 11 of Civil Law Paper II and enhance the overall score by four marks for the same and to recheck the answer of the petitioner to question No.15 of Civil Law Paper II and award her three additional marks.



2. Learned senior counsel for the petitioner states that the petitioner has been denied overall nine marks in the DJS Examination 2022. He states that the petitioner has been severely prejudiced since she has been placed at Scheduled Caste wait list No.1, when in fact she ought to have been in the merit list amongst the selected candidates in the DJS Examination 2022 result dated 24th March, 2023.

3. Learned senior counsel for the petitioner points out that in objective question 2(vii) of the Legal GK and English paper (Paper-I), the petitioner has been marked incorrectly. He states that the correct answer to the question 2(vii) of the Legal GK and English paper (Paper-I) is "False" which is evident from the plain reading of Article 21-A of the Constitution. He states that even though the petitioner answered correctly, yet she has been marked wrongly i.e., the petitioner was given no mark for the said question.

4. Learned senior counsel for the petitioner further states that in answers to question Nos. 10 and 11 of Part III of Civil Law Paper II, the petitioner was awarded 25 marks each. However, he states that in the summary table of marks, it has been wrongly mentioned as 23 instead of 25 and the petitioner has been deprived of four marks. He states that if comparison is made of numerical '3' written by the examiner on the other sheets, it would be apparent that the marks awarded to the petitioner were 25 each against question Nos.10 and 11.

5. Learned senior counsel for the petitioner also states that the first page of answer-sheet of Civil Law Paper-II reveals that initially the examiner calculated the total marks as 130 out of 200 as he inadvertently forgot the addition of 23 marks allotted to question No.15. Thereafter, the total marks were converted from 130 marks to 150 instead of 153 as it was easy to



change/overwrite 130 into 150. He states that in order to justify these 150 marks, the 23 marks in answer to question No.15 was also changed to 20 marks not only on the main tabulation page but also in the answer sheet against question No. 15.

6. *Per contra*, learned counsel for the respondent states that re-evaluation is prohibited according to sub-clause (3) of clause (D) of the Appendix to Rule 15 of Delhi Judicial Service Rules, 1970.

7. He further states that the petitioner's representation containing identical allegations was placed before the Hon'ble Examination Committee (DHJS & DJS) and the said Committee comprising seven Hon'ble Judges of this Court examined the matter in detail. The relevant extracts of the Minutes of the Meeting dated 25th May, 2023 duly approved by the Hon'ble the Chief Justice is reproduced hereinbelow:-

4.	<p><i>To consider the representation dated Nil by Ms. Nirmala Singh, a candidate of Delhi Judicial Service Examination, 2022</i></p>	<p><i>The representationist has challenged the following three decisions of the Examiner in relation to Delhi Judicial Service Mains Examination-2022:</i></p> <p><i>(i) Zero marks awarded in respect of Q. No. 2(vii) of General Legal Knowledge & Language Paper contending that her answer ("FALSE") is a correct answer to the said question.</i></p> <p><i>(ii) 23 marks awarded in Q. No. 10 and 11 of Civil Law Paper-II contending that the examiner had awarded 25 marks in each of the two questions but in the marks mentioned in tabulated form on the front sheet, had wrongly mentioned 23 marks each for both the question.</i></p> <p><i>(iii) In Civil Law Paper-II, the total</i></p>
----	--	--



		<p>marks on the front sheet were converted from 130 to 150 instead of 153 as it was easy to change/overwrite 130 into 150. In order to justify the 150 marks, the 23 marks in Q. No. 15 was also changed to 20 marks not only on main tabulation page but also inside the answer sheet against Q. No. 15.</p> <p>Considered.</p> <p>With respect to the first grievance, the Committee noted as under:</p> <p>1. Re-evaluation if expressly prohibited as per sub-clause (3) of Clause (D) of the Appendix to Rule 15 of Delhi Judicial Service Rules, 1970, which is extracted below:</p> <p>“3. There shall be no re-evaluation of answer sheets in respect of Preliminary Examination and Mains Examination (Written). No request for re-evaluation of answer sheets shall be entertained and the same shall be liable to be rejected without any notice to the candidates.”</p> <p>2. The exercise of re-evaluation in relation to specific question cannot be restricted to one person or some persons and, if done, the same would have to be done in respect of all the candidates who had appeared in the said Paper.</p> <p>3. The two selected candidates who are at SI. No. 5 and 6 in the merit list of SC category and are above the representationist, have also answered the said Question No. 2 (vii) of General Legal Knowledge and Language Paper as FALSE and,</p>
--	--	---



		<p><i>therefore, if the benefit is given, the same benefit of 02 marks as claimed by the representationist would have to be given to the said 2 selected candidates as well. Thus, there will not be any change in the order of merit of the representationist which respect to the aforesaid two selected candidates</i></p> <p><i>With respect to the second and third grievance of the representationist pertaining to over-writing, the Committee has examined the original answer sheet of Civil Law Paper-II of the representationist. The Committee noted that with respect to Q. No. 10 and 11, there is no overwriting by the Examiner and the award of 23 marks against the answers to Q. No. 10 and 11 on the respective pages is corroborated with the marks posted on the front sheet against the said questions. As regards 20 marks posted against Q. No. 15 and the total marks written in words, i.e. "one hundred and fifty only" on the front sheet, the Examiner has endorsed the corrections with the initials</i></p> <p><i>In view of the above, the Committee resolves and recommends that there is no merit in the representation and the same be rejected. The representationist be informed accordingly.</i></p>
--	--	---

8. In rejoinder, learned senior counsel for the petitioner submits that the constitutional power under Article 226 of the Constitution of India cannot be curtailed by any Rule. He further submits that this Court in exercise of its power under Article 226 can re-evaluate the answer sheet, as the candidate despite having given correct answer has been given no marks. In support of his submission, he relies upon the judgment of the Supreme Court in ***High Court of Tripura vs. Tirtha Sarathi Mukherjee & Ors., (2019) 16 SCC 663,***



wherein it has been held as under:

“20. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leave 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 the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

9. He lastly submits that the second sentence in the Delhi Judicial Service Rules, 1970 dilutes the prohibition, if any, contained in the first sentence thereof.

10. Having heard learned counsel for the parties, this Court finds that in the present instance, sub-clause (3) of Clause (D) of the Appendix to Rule 15 of Delhi Judicial Service Rules, 1970 contains an absolute prohibition against re-evaluation. The relevant portion of the said Rule is reproduced hereinbelow:-

“3. There shall be no re-evaluation of answer sheets in respect of Preliminary Examination and Mains Examination (Written). No request for re-evaluation of answer sheets shall be entertained and the same shall be liable to be rejected without any notice to the candidates.”

11. In the case of ***High Court of Tripura vs. Tirtha Sarathi Mukherjee*** (supra), there was no prohibition against re-evaluation. This distinction was noticed by the Apex Court in paragraph 3 of the said judgment itself. The relevant portion of the said paragraph is reproduced hereinbelow:-

“3. 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.....”

(emphasis supplied)

12. In fact, in *Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors.*, (2018) 2 SCC 357, the Supreme Court has observed as under:-

“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..”

(emphasis supplied)

13. Consequently, the judgment of the Apex Court in *High Court of Tripura vs. Tirtha Sarathi Mukherjee* (supra) offers no assistance to the petitioner.

14. The argument that the second sentence in the aforesaid Rule dilutes the embargo in the first sentence is not correct. This Court is of the view that the second sentence reinforces and clarifies the first sentence inasmuch as while the first sentence is a prohibition on the establishment, the second sentence is a prohibition on the candidate. In fact, the second sentence in the said Rule clarifies that even if a request for re-evaluation is made by a candidate, the same shall be rejected without any notice and without any reasons.

15. Further as the petitioner had participated in the selection process despite being fully aware about the aforesaid prohibition on re-evaluation, she cannot be permitted to seek re-evaluation contrary to the Rules.

16. Also as pointed out in the Minutes of Meeting dated 25th May, 2023, if the benefit of the incorrect answer is to be given to the petitioner, then the



same will have to be given to the two selected candidates as well, as they had answered question No.2(vii) in a similar manner. Consequently, there will be no change in the order of merit of the petitioner with respect to the aforesaid two selected candidates.

17. As regards the alleged reduction of marks to answer to question No.15 is concerned, this Court on examination of the answer sheet finds that the front page of the answer sheet of the petitioner records the marks awarded by the examiner against the said question clearly. Consequently, this Court is of the view that the examiner had no doubt with regard to the marks awarded against the said question.

18. In any event, it is open to the examiner to change and/or modify the marks awarded at first blush to an examinee. In the present instance, the revision in the marks had been done by the examiner before furnishing of the answer sheet to the examination body.

19. As regards marks awarded to the petitioner against question Nos.10 and 11 of Civil Law Paper II are concerned, this Court finds that there is no overwriting by the examiner and the award of 23 marks with respect to the answers to the said questions is corroborated by the marks recorded by the examiner on the front page of the answer sheet.

20. In fact on the last date of hearing, an answer sheet pertaining to some other candidate (who had appeared in the same DJS Examination 2022) was shown to this Court as well as to learned senior counsel who was then appearing for the petitioner, and it was found that number '23' was written by the examiner in a similar fashion in the other answer sheet.

21. It is also settled law that a Court in a writ proceeding examines the decision making process and not the decision. In the present case the



grievances raised by the petitioner had been dealt with at great length by an Administrative Committee comprising seven Hon'ble Judges of this Court and duly approved by Hon'ble the Chief Justice. Consequently, this Court is of the view that the procedure adopted by the respondent was fair and reasonable.

22. Accordingly, the present writ petition is dismissed, but with no order as to costs.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 11, 2023
KA

भारत्यमेव जयते