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

% **Date of Decision: 23.05.2016**

\+ LPA No.499/2015

MOHIT GOYAL ....Appellant
Through: Mr.Shiv Charan Garg and Mr.Imran Khan, Advocates

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND ORS. ..... Respondents
Through: Mr.Rakesh Agarwal, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present appeal is filed seeking to impugn the order of the learned Single Judge dated 19.01.2015 dismissing the writ petition of the petitioner being W.P.(C) No.8766/2014.

2. The writ petition was filed by the appellant who is a student of respondent No.1- Institute of Chartered Accountants of India. He gave the Final Examination of the respondents in November, 2013. He did not qualify. He thereafter applied for Suggestive Answers, Re-evaluation of the marks and Certified copy of his answer sheet.

3. It is the contention of the appellant that when he got the copy of the answer sheet, he found that the examiner had not properly checked the papers. It is also his contention that despite the appellant having written correct answers to the questions which also tally with the suggestive answer

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sheet, the appellant was awarded less marks for the various answers. It is the further contention of the appellant that some of the papers were checked in a completely incorrect manner and some of them were checked in a partially incorrect manner.

4. The stress in the petition is that the appellant gave right answers which tally with the suggestive answers and yet the appellant had not qualified. Reliance was also placed on Regulation 39(7) of the Chartered Accountants Regulations, 1988 which gives powers to the respondents to take necessary steps if the result of an examination has been affected by error, malpractice, fraud, improper conduct etc. The appellant hence prayed for a direction to the respondents to constitute a Board for rechecking the papers of the appellant submitted during the Final Examination in November, 2013.

5. The learned Single Judge by the impugned order dismissed the writ petition relying upon the judgments of the Supreme Court in the case of ***Himachal Pradesh Service Commission v. Mukesh Thakur, (2010) 6 SCC 759*** and ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors., AIR 2004 SC 4116*** holding that in the absence of any provisions for re-evaluation, no re-evaluation of the answer books can be carried out and directions to that effect cannot be issued by the court.

6. We have heard the learned counsel for the parties and perused the record.

7. The learned counsel for the appellant has stressed that the answers were as per the suggested answers released by the respondent Institute and hence the examiner has not correctly evaluated the answer sheets of the appellant. It was strongly urged relying upon the Regulation 39(7) of the

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Chartered Accountants Regulations, 1988 that there are enough grounds for the respondents to take appropriate steps to rectify the defects in the checking of the papers of the appellant.

8. The main contention of the learned counsel for the appellant is that the answers given by him in the answer sheets tally with the suggestive answers and hence there is a patent error in the evaluation of his answer sheets. The response of the respondents is stated in a letter dated 16.05.2014 written in reply to a representation of the appellant dated 18.04.2014. Relevant portion of the same reads as follows:

> "It is hereby informed to you that suggested answers are not the basis of evaluation of the answer books as is clearly specified on the reverse of title page of the suggested answers published by the Institute. Please also note that the evaluation of answer books of the candidates is based on their performance in the examination. You would appreciate that the result of the candidates are purely driven by their performance in the examination which are evaluated strictly in accordance with the systems in place under the provisions of the Chartered Accountants Regulations, 1988."

9. A perusal of the Suggestive Answers relied upon by the appellant would show that it contains a Disclaimer which reads as follows:

> "The Suggested Answers hosted in the website do not constitute the basis for evaluation of the students' answers in the examination. The answers are prepared by the Faculty of the Board of Studies with a view to assist the students in their education."

10. The document/responses of the respondents make it clear that the suggestive answers which have been so heavily relied upon by the appellant to buttress his case was nothing but a document prepared by the respondents

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to help and assist the candidates for the purpose of preparation of the examination. These are not the basis for evaluation of the candidates who appeared in the examination. Reliance of the appellant on these suggestive answers to contend that there is an error in the marking of the answer sheets is an erroneous contention.

11. Even otherwise, we agree with the learned Single Judge that normally it is not for this court to enter into the issue of re-evaluation of the answer books. There are a catena of decisions in this regard holding that in the absence of appropriate provision for re-evaluation of the answer sheets, no such direction can be issued by the court.

12. In this context, reference may be had to the judgment of the Supreme Court in ***Himachal Pradesh Service Commission v. Mukesh Thakur*** (supra). That was a case relating to selection to the post of a Civil Judge. The High Court was of the view that there is inconsistency in framing some of the questions and in evaluation of the answer sheet regarding some questions. The High Court passed an order sending the answer sheets to another examiner who would be of the rank of a Reader in law of Himachal Pradesh University for re-evaluation. The Supreme Court set aside the said judgment of the High Court and held as follows:

> "24. The issue of re-evaluation 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, 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

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some statutory provision. The Court held as under: (SCC pp. 39-40 & 42, paras 14 & 16)

> 14. ...It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act.....
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> *   *   *
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> 16. ...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act"

25. ……

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."

13. Similarly, in ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.***(supra) the Supreme Court held as follows:

> "7…………This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kurmarsheth and Ors., AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that

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> effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. 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."

Hence, in view of the above legal position no grounds can be made out for any direction from this court for re-evaluation of the answer sheets of the appellant.

14. The last contention of the appellant was his reliance on Regulation 39(7) of the Chartered Accountants Regulations, 1988. It was contended that the respondents have powers under the said regulations to carry out re-evaluation of the appellant's paper books in the circumstances stated hereinabove. The said Regulation 39(7) of the Chartered Accountants Regulations, 1988 reads as follows:

> "39(7) In any case where it is found that the result of an examination has been affected by error, malpractice, fraud, improper conduct or other matter, of whatever nature, the Council shall have the power to amend such result, in such manner as shall be in accordance with the true position and to make such declaration as the Council shall consider necessary in that behalf.

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> Provided that no such amendment shall be made which adversely affects a candidate, without giving him an opportunity of being heard.
> Provided further that in the event of an error not arising out of any act or default of a candidate, proceedings for amendment adversely affecting the candidate shall not be initiated after the expiry of a period of one month from the date of the declaration of result."

15. A perusal of the said regulation shows that where the result of an examination is affected by an error, malpractice, fraud, improper conduct etc., the respondents have the power to amend such result. It does not deal with re-evaluation of paper books on an individual request of a candidate. Even otherwise there is no error in the facts of this case.

16. The present appeal is without any merits. We concur with the order of the learned Single Judge. The appeal is dismissed.

JAYANT NATH, J

CHIEF JUSTICE

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