

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT INDORE**

1	<b>Case No.</b>	Writ Petition No.758/2016
2	<b>Parties Name</b>	Hemant Bakolia Vs. State of MP & Ors.
3	<b>Date of Judgment</b>	15/11/18
4	<b>Bench constituted of</b>	Hon'ble Shri Justice Prakash Shrivastava
5	<b>Judgment delivered by</b>	Hon'ble Shri Justice Prakash Shrivastava
6	<b>Whether approved for reporting</b>	<b>Yes</b>
7	<b>Name of counsels for parties.</b>	Shri Rohit Mangal, learned counsel for the petitioner. Shri Amit Singh, learned counsel for respondents.
8	<b>Law laid down</b>	Rounding off of the marks is not permissible contrary to the expressed language of the Rule containing the mandatory condition of obtaining atleast 50% marks in each paper. In a competitive examination each fraction of marks has a bearing on the result of the participating candidate and if in such a case rounding off of marks is allowed that will defeat the very principle of assessing comparative merit.  No revaluation of answer sheet can be directed in the absence of any rule, regulations, provision or legal right permitting revaluation.
9	<b>Significant paragraph numbers</b>	Revaluation : Paragraph 5 to 11. Rounding Off: Paragraph 12 to 23.

**(PRAKASH SHRIVASTAVA)**

**J u d g e**



appointment to the post of Commercial Tax Inspector and Taxation Assistant from ministerial services. In the select list dated 19/3/2010 the name of the petitioner did not figure, therefore, he made a representation with a request for revaluation of his answer sheet and on obtaining the copy of answer sheets under the RTI Act he came to know that he was awarded 25 marks in paper No.1 and 19.75 marks in paper No.2 i.e. total 44.75 marks in both the papers whereas being a reserve category candidate the cut of marks for him was 45.

[3] Learned counsel for petitioner submits that since the question No.3(5), 3(8), 6(1) and 6(4) in answer sheet of Paper No.2 were not properly evaluated, therefore, the petitioner is entitled to revaluation of the same and that even otherwise 19.75 marks given to him in paper No.2 should be rounded off to 20.

[4] As against this, learned counsel for respondents has submitted that there is no provision for revaluation or rounding of the marks.

[5] Having heard the learned counsel for parties and on perusal of the record, it is noticed that the recruitment in question is governed by the Rules namely Madhya Pradesh

Commercial Tax Department Subordinate Taxation Services(Class III – Executive) Recruitment Rules, 2007 (for short “Recruitment Rules of 2007”). The rule does not provide for any revaluation.

[6] This Court in the matter of **Raghav Patkar Vs. Registrar, DAVV & another** vide order dated 10<sup>th</sup> September, 2018 passed in WP No.17823/2018 (2018 SCC Online MP 529) taking note of the earlier judgment of the division bench in WP No.5362/2017 dated 4/10/2017 has held that in the absence of any statutory rule, regulations or provision, the revaluation is impermissible.

[7] The division bench of this Court in the matter of of **Neha Indurakhya Vs. Board of Secondary Education** **2003(3) MPLJ 368** while considering the similar issue has held that:-

15. The matter needs to be examined from yet another angle. Lacs of students appear every year in Final Examinations conducted by the respondent Board, for Classes X and XII. In addition, thousands of student appear every year in the supplementary examinations for these classes. In the above background, any direction for 'Revaluation of answer papers' of the students seeking such 'Revaluation', the number where of would certainly be in thousands and thousands, if not in lacs, will not only create practical difficulties for the Board, but also is bound to throw the entire system out of gear.

16. The Apex Court, while examining the matter, further observed in Para 27 of the judgment:--

"27..... Further it is in the public interest that the results of Public Examinations when published should have some finality attached to them. If inspection, verification in the

presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc., of the candidates, besides leading to utter confusion on account of the enormity of the labour and the time involved in the process."

17. The Apex Court while sounding a note of caution in interference in academic matters, such as the present one, observed in Para 29:--

"29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass-root problems involved in the working of the system and unmindful of the consequences which would amenate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court, while deciding the instant case."

[8] Relying upon the aforesaid division bench judgment in the case of **Neha Indurakhya (supra)** subsequently the division bench by order dated 4/10/2017 passed in WP No.5362/2017 wherein the petitioner was praying for the revaluation of the answer sheets for the examination to B.D.S Course has held:-

"On due consideration of the aforesaid so also the fact that there is no statutory Rules and Regulations for revaluation and in view of the law laid down in the

case of **Neha Indurakhya (supra)**, we cannot make any indulgence in the matter nor any writ of mandamus for directing the respondent/Board for revaluation, as prayed, is made out."

[9] The supreme court in a recent judgment in the case of **Taniya Malik Vs. Registrar General, High Court of Delhi** **2018 SCC Online SC 226** has taken note of the settled decision in law that in absence of provision, the revaluation cannot be ordered, by holding as under:-

"15. Now we take up the second submission with respect to revaluation of answerscripts. It is settled proposition of law that in the absence of provision it cannot be ordered. In *Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr.* (2010) 6 SCC 759, this Court has considered various decisions and observed:

"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 and Anr. v. Paritosh BhupeshKurmarsheth wherein this Court rejected the contention that in absence of provision for re-evaluation, 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/reevaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of 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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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 draw-backs 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. This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission, (2004) 6 SCC714 observing as under: (SCC pp. 717- 18, para 7)

“7. ....Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totaling of marks of each question and noting them correctly on the first cover page of the answerbook. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for reevaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks.”

(emphasis added)

A similar view has been reiterated in *Dr. Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State* (1984)4 SCC 24; *Board of Secondary Education v. PravasRanjan Panda* (2004) 13 SCC 383; *Board of Secondary Education v. D. Suvankar* (2007) 1 SCC 603; *W.B. Council of Higher Secondary Education v. Ayan Das* (2007)8 SCC242; and *Sahiti v. Dr. N.T.R. University of Health Sciences* (2009) 1 SCC 599.

26. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct reevaluation."

In *Mukesh Thakur* (supra) it was laid down that in the absence of provision for reevaluation it cannot be resorted to and the observations which were made in the case of *CPIL v. Registrar General of High Court of Delhi* (supra), the decision was rendered in 2016 after the examination had already been held, thus the provision for reevaluation could not have been introduced after the examination had been held. In our opinion, for examination in question in the absence of provision for reevaluation when the examination was held, it could not be resorted to."

[10] Having regard to above legal position, I am of the opinion that since no statutory rule, regulations, provision or legal right exists providing for reevaluation of the answer sheet, the prayer of the petitioner seeking a direction for reevaluation cannot be allowed and is accordingly rejected.

[11] Counsel for petitioner has placed reliance upon the division bench judgment of this court in the matter of **Priyanka**

**Pandey Vs. Secretary, Board of Secondary Education, MP**

**and Anr. AIR 2007 MP 235**, but since no gross negligence of the valuer is found in the present case, therefore, he is not entitled to the benefit of the said judgment.

[12] The next issue is if any legal right exists in favour of the petitioner to round of 19.75 marks in second paper to 20 marks.

[13] Rule 6 of the Recruitment Rules of 2007 deals with the method of recruitment and sub rule 1(c) which is relevant for this case provides for selection according to the scheme specified in Schedule V. The Schedule V relates to the Scheme for appointment to the post of (Commercial Tax Inspector and Taxation Assistant) from ministerial service through limited competitive examination. Rule 4 of Schedule V provides as under:-

"4.- Examination.-(a) Written examination shall be conducted by appointing authority every year, on such dates and at places as he may determine.

[b] In the written examination, there shall be two papers each of 50 marks for the period of 2 ½ hours. **At least 50% marks in each paper must have to be obtain** for being successful in the examination.

[c] Question papers shall be prepared by the appointing authority and the following subjects are included"

[14] The aforesaid rule clearly stipulates that the candidate

"must" "atleast" obtain 50% marks in each paper.

[15] The Rule also makes it clear that each paper is of 50 marks and the petitioner being a reserved category candidate was required to obtain 20 marks in each paper after relaxation.

[16] The advertisement or the Rules do not contain any provision for rounding of. The rule 4 makes it clear that "atleast" 50 marks is required. Hence, it is not permissible to round of 19.75 marks and make it 20 to hold the petitioner qualify in the examination. Permitting rounding of in such a case would be contrary to the expressed provisions contained in the Rule. In a competitive examination each fraction of mark has a bearing on the result of the participating candidate and if in such a case rounding off of marks is allowed that will defeat the very principle of assessing comparative merit.

[17] The Supreme Court in the matter of **Orissa Public Service Commission and another Vs. Rupashree Chowdhary and another (2011) 8 SCC 108** wherein almost similar rules were under consideration has held that:-

"9.- The appointment to the post of Civil Judge (JD) under the Orissa Judicial Services is guided by the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 and Rule 24 thereof specifically deals with the criteria for determining of candidates for interview. Rule 24 reads thus:

"24.- Determination of number of candidates for interview.-- The Commission shall call the candidates for interview who have secured not less than forty-five per centum of marks in aggregate and a minimum of thirty-three per centum of marks in each paper in the main written examination."

10.- A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation."

[18] The aforesaid judgment makes it clear that when the rule itself provides for obtaining the minimum marks and lays emphasis thereon, the principle of rounding off cannot be applied.

[19] Taking note of the earlier judgment on the point, the supreme court in the matter of **Registrar, Rajiv Gandhi University of Health Sciences, Bangalore Vs. G. Hemlatha and others (2012) 8 SCC 568** has reiterated that if the Rules

or regulations provided for obtaining the minimum marks and there is no provision for rounding of, then it cannot be allowed.

In this judgment it has been held that:-

"10.-After considering the Orissa Rules, this court in *Rupashree Chowdhary* case held that Rule 24 thereof made it clear that

"in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% marks in the aggregate in all the written papers in the main examination." (SCC p.111, para 10)

This court observed that when emphasis is given in the rule itself to the minimum marks to be obtained, there can be no relaxation or rounding-off. It was observed that no power was provided in the statute/rules permitting any such rounding-off or giving grace marks. It was clarified that: (SCC p.112, para 10)

"10.... The [Orissa] Rules are statutory in nature and no dilution or amendment to such rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding-off or relaxation."

11. In our opinion, the ratio of this judgment is clearly applicable to the facts of this case. The Judgment of the Full Bench of the Allahabad High Court in [Vani Pati Tripathi vs. DG, Medical Education and Training](#) (AIR 2003 All 164) and the judgment of the Full Bench of Punjab and Haryana High Court in [Kuldip Singh vs. State of Punjab](#) (1997) 117 PLR 1, were cited before us because they take the same view. However, in view of the authoritative pronouncement of this Court in Orissa Public Service Commission, it is not necessary for us to discuss the said decisions.

12. No provision of any statute or any rules framed thereunder has been shown to us, which permits rounding-off of eligibility criteria prescribed for the

qualifying examination for admission to the PG course in M.SC (Nursing). When eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that learned Single Judge was right in rounding-off of 54.71% to 55% so as to make respondent 1 eligible for admission to PG course. Such rounding-off is impermissible.

13. We make it clear that this order merely settles the question of law and shall not have any adverse impact, in any manner, on the service of respondent 1.

[20] In the matter of **West Bengal Joint Entrance Examination Board and others Vs. Sarit Chakraborty and others (2015) 13 SCC 668** in a case where there was no guideline permitting the principle of rounding of marks, the Hon.ble supreme court while setting aside the judgment of the High Court whereby rounding of was permitted, has held that:-

10. The aforementioned principle has been reiterated by this Court in the case of Rajiv Gandhi University of Health Sciences v. G. Hemlatha [JT 2012 (7) SC 571 : 2012 (8) SCC 568]. The question of law involved therein was whether by applying the principle of rounding-off the eligibility criteria prescribed for the qualifying examination for admission to the P.G. course in M.Sc. (Nursing) could be relaxed. After placing reliance on the Rupashree Chowdhary case (supra), this Court, in the Hemlatha case (supra), held as follows: (scc P.571, PARA 12)

"12. No provision of any statute or any rules framed thereunder have been shown to us, which permit rounding-off of eligibility criteria prescribed for the qualifying examination for admission to

the PG course in M.Sc (Nursing). When the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that the learned Single Judge was right in rounding-off of 54.71% to 55% so as to make Respondent No. 1 eligible for admission to the PG course. Such rounding-off is impermissible."

11. In the instant case, we have already observed that the guidelines that are framed by the Board are in consonance with the regulations framed and notified by the AICTE. The AICTE, in its regulations as noticed hereinabove, has specifically pointed out that the minimum marks that a candidate should secure, in order to be considered as eligible to appear for counseling for the purpose of admission in an Engineering college, in Physics, Chemistry and Mathematics, in aggregate, is 45% marks only. Since the guidelines that are framed by the Board are in consonance with the aforesaid AICTE regulations, in our considered opinion, the learned Judges of the High Court were not justified in ignoring the guidelines and directing the Board to round off the marks from 44.6% to 45%.

12. There are express guidelines issued by the Board for governing the process of admission in Engineering Colleges. There is no guideline for permitting the principle of rounding-off of marks in order to be made eligible to appear for counseling. In the absence of such a guideline in either the Brochure issued by the Board or in the AICTE Regulations, we are of the considered opinion that the rounding-off of marks could not be permissible. The High Court ought not to have exercised such discretion in light of the express and clear guidelines to the contrary.

13. In view of the above, we allow this appeal and set aside the impugned judgment(s) and order(s) passed by the High Court."

[21] Similar rule containing phrase "atleast" came up for

consideration before this court in the case of **Sumit Shrivastava Vs. Jiwaji University** in WP No.1239/2000 decided on 18/10/2000 wherein rejecting the prayer it has been held that:-

"But in present case rules are specific and clear and admission can be given to a candidate who has secured at least 50% marks. Thus any candidate having less than 50% marks is not eligible for admission."

[22] Counsel for petitioner has placed reliance upon the judgment of the supreme court in the matter of **State of U.P. and another Vs. Pawan Kumar Tiwari and others (2005) 2 SCC 10**, but that was a case of applicability of principle of rounding of in reservation of post and treatment of fraction of a vacancy as one, hence, the said judgment has no application in the present case.

[23] Similarly the reliance on the judgment of the supreme court in the matter of **State of Orissa and another Vs. Damodar Nayak and another (1997) 4 SCC 560** is misplaced because the counsel for petitioner could not point out that the rule under consideration in that case was similar to the one which is under consideration in the present case. He has also placed reliance upon the judgment of this court in the

matter of **Dharmendra Kumar Shrivastava Vs. Jiwaji University, Gwalior 2002(2) MPLJ 619** but in view of the judgment of the supreme court in the matter of **Rupashree Choudhary** (supra) as also **Sarda Chakraborty** (supra), the petitioner cannot be granted the benefit of the said single bench judgment of this court.

[24] Having regard to the aforesaid factual and legal position, I am of the considered view that since the petitioner has failed to obtain the minimum marks as prescribed in the Rules, therefore, his name has rightly been excluded from the select list. The petitioner is not entitled to rounding of his marks because of the expressed language of the rule requiring “atleast” 50% marks and also for the reason that the rule does not provide for rounding of. Hence, no merit is found in the writ petition which is accordingly dismissed.

**(PRAKASH SHRIVASTAVA)  
JUDGE**

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