



Exhibit A-46

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Presented on	:	12/07/1999
Registered on	:	12/07/1999
Decided on	:	13/03/2012
Duration	:	Y M D
		12 8 1

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION AT PANAJI GOA.  
(Before Smt. Shabnam Shaikh C.J.J.D Panaji, Goa)

**Regular Civil Suit No. 125/99/B/C**

Shri William Rodrigues,  
major, resident of Curca,  
Ilhas, Goa.

Plaintiff

v/s

Goa University,  
through its Registrar, having his  
office at Goa University Complex,  
Bambolim, Goa.

Defendant

Adv. Shri Valmiki Menezes present for the plaintiff at the time of arguments and also present at the time of passing judgment.

Adv. Ms. Agni present for the defendant at the time of arguments and also present at the time of passing judgment.

J U D G M E N T

(Delivered on this 13<sup>th</sup> day of the month of March of the year 2012)

By this judgment I shall dispose the suit for recovery of money.

2. **The case of the plaintiff in brief** is that he was student of the defendant, during the academic year 1990-91, studying in the course of 'Master in Arts (M.A)' in the subject of Philosophy. For the said academic year 1990-91, the plaintiff appeared for M.A. (Philosophy) Part II Examination conducted by the defendant during the month of June 1991. The said course is combined into 16 subjects, for which examinations were conducted during the month of June 1991. The plaintiff states that he answered all the said examinations and the results thereof were announced by the defendant in the month of August 1991. The plaintiff states that the defendant declared that he had passed in all the subjects excepting the subject of "Contemporary Western Philosophy", wherein the plaintiff was shown by the defendant to have secured 31% marks, i.e 9 marks less than the minimum of 40% required for passing the subject. The plaintiff states that he knew that his performance in the said subject was good and his marks declared by the defendant were less than expected. The plaintiff also applied for revaluation of his answer paper in the said subject.





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3.

By letter dated 16/8/1991, sent by the Controller of Examination of the defendant, the plaintiff was informed that his request for revaluation of the answer paper in the subject "Contemporary Western Philosophy" could not be acceded to by the defendant. The plaintiff states that he made a Representation to the defendant on 22/8/1991, that his said answer paper may be assessed by the Head of the Department of Philosophy. By another letter dated 3/9/1991, the plaintiff wrote to the Vice Chancellor of the defendant that his request for revaluation had been wrongly rejected. This letter was replied to by the Controller of Examinations of the defendant on 4/9/1992, stating, inter alia, therein that the plaintiff was not eligible for revaluation of the said paper under ordinance 5.17 of the University as the plaintiff did not fulfill the condition that he secure minimum 50% marks required for passing in the theory paper. It was contended by the defendant that the plaintiff had secured only 4 marks in the subject and hence, was not eligible for revaluation.

4.

Pursuant to the Hon'ble High Court Judgment dated 31/3/1992, the said paper was re-valuated by the defendant. By a communication from the defendant, on or about 10/6/1992, the plaintiff was informed that he had secured 17 marks out of the marks of 60 marks in the said paper and had secured a total of 44 marks in parts I and II in Contemporary Western Philosophy and hence was declared, as passed, in the said subject. The plaintiff states that the marksheet in the said subject was given by the defendant to him only on

18/7/1992. The plaintiff states that the defendant acted with gross negligence by issuing a marks sheet on 18/7/1992 which did not contain the marks allotted in the course taken up by the plaintiff even though the plaintiff had paid fees for issuance of the statement of marks. The defendant has committed an act of gross negligence by not issuing the correct declaration of the results of the said examination answered by the plaintiff, thereby causing him irreparable harm, damage and loss, which constitutes the cause of action for filing this suit.

5. Accordingly the summons for settlement of issues were sent to the defendant and after due service defendant filed his written statement which is dated 30/10/2010 at exhibit B-6.

6. **In brief the case of the defendant** is that pursuant to the decision of the High Court in Writ Petition 450/91 dated 31/3/1992 the answer books of the plaintiff were revaluated in compliance of the orders passed by the Hon'ble Court and the procedure as contemplated in University Ordinances without delay. It is denied that the defendant acted with negligence by issuing marks sheet on 18/7/1992 or that the same did not contain marks allotted to him in the course taken up by plaintiff. It is denied that the defendants have committed an act of gross negligence or that the defendant has not issued correct declaration of result of examination answered by the plaintiff or that any harm damage or loss leave alone irreparable damage loss or harm is caused to the plaintiff. It is denied that there is any cause of action





for filing the suit. It is denied that the defendant has declared the result wrongly and negligently or that the plaintiff was wrongly declared to have been failed. It is denied that the defendant caused great mental torture to the plaintiff. It is denied that plaintiff is to be compensated as alleged or that it is fair proper or just. It is denied that the plaintiff lost concentration in further studies as alleged.

7. It is stated that facility of revaluation is an additional facility provided to the student with a view to give him an opportunity for an attempt to improve his result however, while enjoying such facility no right has been reserved in favour of the student for admission to the higher class even though the student succeeds in improving his result but with the delay in completing the process of revaluation. As regards to the requirement of minimum attendance of class the Bombay High Court has already held that the same to be mandatory and being so said decision impliedly approved the said Ordinance of the University. Concerned answer book is properly verified as regards the number of pages, number of questions answered, the marks obtained the total of marks, entries on the first page by the valuer, comparison thereof with the records in the University register. This also includes verification as to whether the gracing facility is implemented or not. Dockets-sheet containing question wise marks of candidate for each subject is prepared. Making of answer book is done so that the second valuer may not know the marks which were given by the first valuer. Valuers are appointed, occasionally valuers refuse to accept the

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appointment and then search for valuers has to be carried out. Answer books are sent for revaluation. On receipt of answer book after revaluation once again the entry is reflected in the docket. Marks of both the valuation are compared and in case the difference is of ten or more marks then the marks obtained on revaluation are given and fresh mark list is prepared. In case the student is entitled for gracing facility the same is implemented by following the procedure and in case the student is entitled for such facility a fresh mark list is prepared. Result of revaluation is communicated thereupon. All the above procedure in the normal course takes 4 to 6 months. In the instant case infact it took only less than 3 months from the date the application was processed for revaluation.

8. *The revaluation neither per-supposes nor presumes that the first valuation is or was incorrect or wrong or erroneous. There is always an element of subjectivity in the matter of the evaluation of the performance of a student even though the valuers on both the occasions are of equal status, qualifications and competence. As already stated above the note under the said ordinance clearly provides that the revaluation of the answerbook shall be deemed to be an additional facility provided to the students with a view to improving upon their result at a proceeding University Examination. Hence, it being clearly laid down under the Ordinance framed by the University that the revaluation does not confer any right and particularly for admission into a higher class upon the student whose request for revaluation is*





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accepted. The plaintiff cannot claim any loss for delay, if any in issuing the result and mark list to the plaintiff. The plaintiff cannot claim any loss for delay.

9. On the pleadings of the parties, the following issues were framed.

### **ISSUES**

1. Whether the plaintiff proves that he is entitled to compensation of ₹ 50,000/- for the mental shock and torture due to any act of the defendant ?
2. Whether the plaintiff proves that he spent about ₹ 7,500/- for engaging the services of a lawyer for filing writ petition in the High Court and spent any amount on expenses such as typing and xeroxing or that he is entitled to recover the same from the defendant ?
3. Whether the plaintiff proves that he is entitled to recover damages to the tune of ₹ 36,000/- from the defendant due to any loss of employment caused to him by the defendant ?
4. Whether the plaintiff proves that the defendant had committed gross negligence by issuing the marksheet on 18/7/1992 and by not issuing the correct declaration of the results of the examination answered by the plaintiff ?
5. Whether the defendant proves that the suit is barred by time since the same has been filed after the lapse of one year and sixteen days from the date of dismissal of the case before the consumer forum ?

10. I have gone through the entire records of the case from all its facts to the best of my ability and having adverted to the legal submissions advanced by learned advocate for the plaintiff and learned advocate for the defendant i have come to the following findings:

<u>Issues</u>	<u>Findings</u>
Issue no. 1	Negative
Issue no. 2	Negative
Issue no. 3	Negative
Issue no. 4	Negative
Issue no. 5	In Affirmative
Issue no. 6	As per final order

### R E A S O N S

11. **Issue no.1, 2, 3 and 4 are taken together** : Admittedly the plaintiff was a student of the defendant during the academic year 1990-91 studying in the course of Master in Arts (M.A). The plaintiff appeared for M.A. (Philosophy) part II Examination conducted by the defendant during the month of June 1991. The said course is combined into 16 subjects for which examination were conducted during the month of June 1991. The plaintiff answered all the said examination. The plaintiff states that the defendant declared that he had passed in all the subjects accepting the subject of "Contemporary Western Philosophy", wherein the plaintiff was shown by the defendant to have secured 31% marks i.e 9 marks less than the minimum of 40% required for passing the subject. According to the plaintiff his performance in the said subject was good and his marks declared by the defendant were less than expected.

12. The plaintiff addressed a letter dated 9/8/91 to the Vice Chancellor of the defendant requesting to look into the matter and the plaintiff also applied for re-valuation of his answer paper. Pursuant to





the decision of the High Court in Writ Petition no. 450/91 dated 31/3/1992 the answer book of the plaintiffs were revaluated in compliance of the orders passed by the Hon'ble Court and the procedure as contemplated in university ordinances without delay. By letter dated 16/8/1991 sent by the controller of examination of the defendant, the plaintiff was informed that his request for re-valuation of the answer paper in the subject "Contemporary Western Philosophy" could not be acceded to by the defendant. The letter dated 16/8/1991 is at exh PW-1/15.

13. Admittedly the plaintiff then made a representation to the defendant on 22/8/1991 that his said answer paper may be assessed by the Head of the defendant of Philosophy. By another letter dated 3/9/1991 the plaintiff wrote to the Vice Chancellor of the defendant that his request for re-valuation has been wrongly rejected. The Controller of Examination of the defendant replied on 4/9/1992 stating that the plaintiff was not eligible for revaluation of the said paper under ordinance 5.17 of the University as the plaintiff did not fulfill the condition that he secure minimum 50% marks required for passing in the theory paper. The office memorandum is at exh PW-1/15 and the letter dated 4/9/91 where the controller of examination had informed the plaintiff that he is not eligible to apply for revaluation under ordinance 5.17 as he had not fulfilled the condition that a candidate should score minimum 50% marks required for passing in the theory paper at the University examination and as he had secured only 4 marks out of 60 in



the subject of "Contemporary Western Philosophy" PHC-4 at M.A. Part II Philosophy Examination conducted by the University is at exh PW-1/8. The plaintiff had addressed a letter dated 3<sup>rd</sup> October 1991 to the Vice Chancellor stating that he was denied revaluation inspite of that he failed in only one subject out of 16 papers and that too by a low margin of 9 marks. The letter is at exh PW-1/19.

14. The defendant contended that the plaintiff had secured only 4 marks in the subject and so was not eligible for revaluation. The plaintiff filed a Writ petition challenging the action of the defendant before the Hon'ble High Court of Bombay at Panaji and the Writ Petition was bearing no. 450/91. It is contended by the plaintiff that vide letter dated 10/6/92 the plaintiff was informed that he had secured 17 marks out of the marks of 60 marks in the said paper and has secured a total of 44 marks in part I and II in "Contemporary Western Philosophy"

15. Applicant relying upon answer book paper and for summoning the witnesses to produce the answer book/paper was dismissed on 18/7/11. The defendant has filed application dated 25/10/10 for leave to produce document at a later stage as it is difficult for the defendant University to trace the records/documents pertaining to the year 1999. However, it is not correct that the application dated 25/10/10 was granted. The only order passed on the application dated 25/10/10 was "file". The defendant has filed F.I.R to trace the records/documents.





16. **Donald Rodrigues DW-2** has produced the missing report lodged before the Police Inspector, Agasaim, Ilhas, Goa, and the same is at exh DW-2/39. The covering letter dated 22/12/10 at exh DW-2/40, letter dated 10/6/1992 by which plaintiff was allegedly informed that he had secured 17 marks out of 60 marks in the said paper and secured a total of 44 marks in Part I and Part II in "Contemporary Western Philosophy" is at exh PW-1/13.

17. The contention of the plaintiff that as he was informed about the re-assessment and correct marks only on or about 10/6/92 after a lapse of more than 10 months from the declaration of the result, he was forced to file Writ Petition before the Hon'ble High Court which incurred a great expense and that the defendant has caused plaintiff great mental torture and for which he should be compensated. It is further the contention of the plaintiff that the defendant by not declaring the result correctly in August 1991 he lost several opportunities of securing any employment as he was declared as "failed".

18. The plaintiff is claiming ₹ 50,000/- for the mental shock, ₹ 7,500/- for engaging the services of lawyer for filing Writ Petition in the High Court and for expenses for typing and xeroxing. The plaintiff is also claiming damages to the tune of ₹ 36,000/-. The writ petition no. 450/91 is at exh PW-1/20 and no cost was awarded by the Hon'ble High Court. The plaintiff has also not produced any document such as receipt to show that he has spend ₹ 7,500/- for filing Writ Petition.

19. It is stated by the plaintiff in the plaint that Prof. Afonso and Controller of Examination Mr. Ulhas Parab had also played foul play. However the plaintiff has not pleaded this in the plaint. Dr. Afonso and the Ex-Controller of Examination Mr. Ulhas Parab are also not added as the party to the suit. The letter to the Chairman is at exh PW-1/16.

20. The plaintiff has not substantiated his statement that he had lost the opportunity. The marksheet is at exh 13 shows that the plaintiff had not secured very good marks. There is substance in the submission of the defendant that revaluation is only of a chance given to the student and the wrong assessment could arise if there is difference of 10% marks. Only if there is bonafied error in giving the marks than the question of compensation would arise and if there is bonafide error it cannot come under the category of gross negligence. There is no bonafide error in giving marks on the part of the defendant. The plaintiff has not named the persons who are negligent. The plaintiff perhaps must have not named the persons, because no person is responsible for any negligence.

21. In the complaint filed before the Consumer Forum, the forum held that the plaintiff is the consumer and had awarded compensation of ₹ 25,000/-. The Hon'ble High Court had set aside the order of the Consumer Forum. On what basis the plaintiff is claiming such huge compensation is not established.





22. Admittedly the revaluation process consumes lot of time on account of various stages and student cannot be admitted to a higher class unless he is declared to pass the immediate lower standard. So the case of the plaintiff that he lost the opportunity stands not proved.
23. The ordinance 5:17 and 2:33 are not struck down. The plaintiff's revaluation was done within 3 months. Unless revaluation result is not declared one cannot go to the higher class as the marksheet is not complete. It is rightly argued by Adv. Agni that as the marksheet was incomplete the plaintiff case that he lost good opportunity is not correct.
24. The plaintiff has not produced any documents such as books etc to show that he has paid fees to his lawyer. On what basis the plaintiff has estimated the loss of employment to the extent of ₹ 36,000/- is not specified. The plaintiff has also not proved that he is entitled for compensation of ₹ 50,000/- for mental shock and torture.
25. Allegation of malafide are serious in nature and they are essentially raised a question of fact. It is therefore necessary for the person making such allegation to supply full particulars in the case. The plaintiff in this case has not furnished full particulars of malafide on the part of University in this case. If sufficient averments and requisite materials are not on record, the Court cannot make fishing or roving Inquiry. Mere assertion, vague averments or bold statement is not

enough to hold the action to be malafide. The plaintiff has made mere assertion. The averments made by plaintiff is vague and on basis of this I cannot hold malafide on the part of the University. I rely on **Dhampur Sugao (Kashipur) Ltd v. State of Uttarakhand and others (2007) 8 Supreme Court cases 418.**

26. The plaintiff has not made the person party to the proceeding who according to him are respondent for the act of malafide and they are not given reasonable hearing and so the case of the plaintiff that there was malafide is not accepted. I rely on **Medley Minerals India Ltd v. State of Orissa and others (2004) 12 Supreme Court Cases 390.** No doubt if cause of action is established, damages may be given for mental suffering naturally ensuing from the acts complained. The plaintiff in this case has not established that there is cause of action against the defendants. Hence the above findings

27. **Issue no. 5 :** The plaintiff in para 18 of the plaint has pleaded that the cause of action for filing the present suit arose to him in August 1991. The plaintiff filed a case before the State Consumer Forum and the petition is at exh PW-1/22. The complaint before the Consumer Dispute Redressal Forum, North Goa was filed by the plaintiff. By order dated 18/3/1997 the Consumer Forum directed the defendants to pay sum of ₹ 25,000/- to the plaintiff. The order is at exh PW-1/21. Against the order of Consumer Forum the defendant had preferred an appeal and vide order dated 1/6/1998 the State Consumers Dispute





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Redressal Commission allowed the appeal and the order of the Consumer Forum was set aside. The order of the State Commission is at exh PW-1/22. The plaintiff filed a Writ Petition no. 450/91 before the High Court which was disposed on 31/3/1992. The order of the High Court is at exh PW-1/20. Even assuming the time consumed for disposal of the complaint at Consumer Forum and appeal has to be minused or deducted even that the suit is beyond time.

28. The State Commission had pronounced order on 1/6/1998, The suit is filed on 12/7/99 after a period of one year. It is rightly argued by Adv. Agni that the suit arises out of tort and the limitation is one year and not 3 years. The date of limitation starts from the date of cause of action i.e 1992. The suit is beyond limit. Hence the above findings.



29. In view of the discussions supra i pass the following :

ORDER

The suit is dismissed with costs.

Decree to be drawn up accordingly.



*SShaikh*  
*13/3/12*

( **Smt. Shabnam Shaikh** )  
Civil Judge Junior Division 'C' Court  
at Panaji, Goa.

Sm.

*Checked*



Date on which copy applied for 15/3/12  
 Date on which application completed 17/3/12  
 Date given for taking delivery 28/3/12  
 Date on which copy was ready 28/3/12  
 Date on which copy delivered 28/3/12  
 Copying and completion of ins. etc.  
 No. 601 are attached to Government  
 to the State Bank at Panaji vide receipts  
183651 dated 17/3/12  
1549191 AK 28/3/12

601  
 182  
 181



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(Smt. Sheena Shakti)  
 Civil Judge Junior Division T. Court  
 Panaji, Goa.







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Presented on : 12/07/1999  
Registered on: 12/07/1999  
Decided on: 13/03/2012  
Duration      Y    M    D  
                  12    8    1

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, "C"  
COURT AT PANAJI GOA.**

**Regular Civil Suit No.125/99/C**

Shri. Willian Rodrigues  
major, resident of Curca  
Ilhas Goa.

..... Plaintiff

V/S

Goa University,  
through its Registrar, having his  
office at Goa University Complex  
Bambolim Goa.

..... Defendant

**DECREE**

This is a suit for Recovery of Damages filed by the Plaintiff against the defendant praying that :

(a) the defendant be directed to pay damages of Rs.93500/- to the Plaintiff with interest thereon at the rate of 18% per annum from August, 1991 till payment of the same by the defendant and

(b) for costs of the suit.

This suit coming on this day for final disposal before smt. Shabnam Shaikh, Civil Judge, Junior Division, Panaji in the presence of Advocate Shri. Valmiki Menezes for the Plaintiff at the time of arguments and at the time of passing Judgment and advocate Ms Agni present at the time of arguments and also at the time of passing Judgment. It is ordered that Suit is dismissed with costs

Decree to be drawn up accordingly

**BILL OF COSTS**

		<b>Plaintiff</b>	<b>Defendants</b>
1.	Stamps for plaint	3220.00	---
2.	Stamps for Exhibits	12.00	18.00
3.	Stamps for Power	3.00	6.00
4.	Process fee	30.00	---
5.	Advocates fee	-----	868.00
	<b>Total</b>	<b>3265=00</b>	<b>892=00</b>

Given under my hand and the seal of the Court this  
13<sup>th</sup> day of March, 2012



( Shabnam Shaikh )  
Civil Judge Junior Division, "C"  
Court Panaji

Prepared by:

*[Signature]*  
U.D.C.

Checked by:

*[Signature]*  
Superintendent/Head clerk

*[Signature]*  
Advocate for Plaintiff

*[Signature]*  
Advocate for defendant

checked with  
original  
*[Signature]*



Bill to be drawn up accordingly

BILL OF COSTS

Defendants	Plaintiff	
3220.00		
18.00	12.00	
6.00	2.00	
30.00		
608.00		
3224.00		Total



Date on which copy applied for 12/3/12  
 Date on which application completed 12/3/12  
 Date given for taking delivery 28/3/12  
 Date on which copy was ready 28/3/12  
 Date on which copy delivered 28/3/12  
 Copying and committal fees, etc.  
 Rs. 8/- are credited to Government  
 in the State Bank at Panaji vide receipt  
183657 dated 12/3/12  
184919 28/3/12

Advocate for defendant

Plaintiff

*Checked with  
original  
file*