

(1984) 03 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 367 of 1983

Ambalika Sharma

APPELLANT

Vs

H.P. University and Another

RESPONDENT

Date of Decision : 28-03-1984

Acts Referred:

Constitution of India, 1950 — Article 311
Himachal Pradesh University First Ordinance, 1973 — Ordinance 6.34, Ordinance 6.35,
Ordinance 6.41, Ordinance 6.74, Ordinance 6.75
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 14(1)

Citation : (1984) 13 ILR HP 155

Hon'ble Judges : P.D. Desai, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : Inder Singh, for the Appellant; Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Desai, C.J.—The Petitioner, who is a female student prosecuting studies in a College affiliated to the Respondent-University, has instituted the present writ petition challenging the decision of the Examination Discipline Committee of the Respondent-University, Annexure-H, where under the entire result of the April, 1982 examination, wherein she had appeared, has been ordered to be cancelled in so far as it relates to her and she is disqualified for a period of four years, that is, up to and including the annual examination to be held in April, 1986, from appearing at any University examination. Be it stated at this stage that pursuant to an interim order made by this Court in this proceeding on January 6, 1984, the question of penalty imposed upon the Petitioner under the impugned order, Annexure-H, was reviewed and consequently the Petitioner is treated as having been debarred from appearing in any of the examination held so far but she is permitted to reappear in the examination for the Pre-University class to be held in April, 1984. At the preliminary hearing of the petition it has been clarified on behalf of the Respondent-University that accordingly the Petitioner may reappear at the Pre-University class examination to be held in April, 1984 in the subject of

English only and that if she is declared successful thereat she will not be required to reappear at the examination for other subjects.

2. In order to appreciate the controversy between the parties, a few facts will have to be set out.

3. A notice dated August 23, 1982 (Annexure B) was served upon the Petitioner under the signature of the Deputy Registrar of the Respondent-University intimating her that she appeared to have tampered with her result card bearing Roll No. 6482 issued in connection with the Pre-University examination held in September, 1981 and that as a result of such tampering, she appeared to have changed 52 marks obtained by her in the examination so as to read as 72 marks and that she also appeared to have changed the result column in the said card accordingly. Though the notice does not mention that the alleged tampering was in connection with the marks obtained in the subject of English, this fact is no longer in dispute at this stage.

4. A reply to the said show cause notice was sent on August 30, 1982 (Annexure C) by the father of the Petitioner wherein he, inter alia, denied the allegation made against the Petitioner. He stated that the said communication was also endorsed at the foot by the Petitioner by appending her signature thereto.

5. The proceedings arising out of the show-cause notice (Annexure B) were held before the Examination Discipline Committee (hereinafter referred to as "the Committee") constituted by the Respondent-University. In the course of the said proceedings, an Assistant of the Examination Branch of the Respondent-University was examined as a witness. He deposed that according to the permanent record maintained by the Respondent-University (Tabulation/Result sheet) in relation to the examination held in September, 1981, the Petitioner, whose Roll Number was 6482, had obtained 52 marks in English. The Petitioner was, accordingly, declared failed in the said subject and she was required to reappear in the said subject at the next examination. He further deposed that in the result card issued to the Petitioner, 52 marks were entered in the column relating to the subject of English and that he had himself checked the same. The marks in the said column appeared to have been changed subsequently to 72 and this appeared to have been done by applying acid for the removal of the original entry and by rewriting 72 in place of 52. Besides, the total marks obtained by the Petitioner were not written in words in column No. 1 at the bottom of the marks certificate which was issued to the Petitioner because the Petitioner had failed. Instead, in column No. 3 at the bottom, it was mentioned that she had to re-appear in the subject till April, 1982. In substance, the version was that these remarks in column No. 3 appeared to have been rubbed out or erased and the total marks in column No. 1 appeared to have subsequently incorporated. The witness was duly cross-examined by the Petitioner.

6. The statement of the Petitioner was also recorded by the Committee on October 15, 1982 as well as on April 29, 1983. She inter alia denied the

allegations leveled against her. She refused to produce any witness on her behalf.

7. Having considered the material placed before it, the Committee found the Petitioner guilty of the use of unfair means under Ordinance 6.35 (r) of Chapter-VI of the First Ordinances of Himachal Pradesh University, 1973 and passed the impugned order at Annexure H which now stands partially modified.

8. At the hearing of the writ petition, the following three submissions were made on behalf of the Petitioner:

- (1) The impugned decision is without jurisdiction.
- (2) The charge leveled against the Petitioner is not established.
- (3) The proceedings have been held in violation of the rules of natural justice.

We shall deal with these submissions seriatim.

Re-submission 1

9. The submission was that having regard to the nature of the allegation leveled against the Petitioner, the proceedings for imposition of penalty could have been instituted only under Ordinance 6.75 by the Vice-Chancellor and not under Ordinance 6.35(r) by or before the Committee.

10. The relevant provisions of the Ordinances require to be noted in order to appreciate the submission. Ordinances 6.34 and 6.35 occur in Chapter VI which is entitled "Examinations" and they find place under the heading "Use of Unfair Means". Ordinance 6.34 reads as follows:

A candidate shall not use unfair means in connection with any examination.

The relevant portion of Ordinance 6.35 reads as under:

The following shall be deemed to be unfair means:

(j) Passing on or attempting to pass on, during the examination hours, a copy of a question or a part thereof or the question paper itself or a part thereof, or solution to a question or a part thereof, to any other candidate or to any other person.

xxx xxx xx xx xx xxx (m) Approaching or influencing directly or indirectly, a paper setter, examiner, evaluator, tabulator or any other person, connected with the University examinations, with the object, directly or indirectly, of inducing him to leak out the question paper or any part thereof, or to enhance marks, or to favorably evaluate, or to change the award in favour of the candidate.

(n) Undue influence, that is to say any direct or indirect interference or attempt thereof, on the part of the candidate, or of any person on his behalf, with the discharge of the duties of a member of the supervisory or inspecting staff of an examination centre before, during or after the examination:

Provided that without prejudice to the generality of the provisions of this Clause any such person as is referred to therein who-

(i) abuses, insults, intimidates, assaults any member of the supervisory or inspecting staff, or threatens to do so;

(ii) abuses, insults, intimidates, assaults any other candidate or threatens to do so;

shall be deemed to have interfered with the duties of the supervisory and the inspecting staff within the meaning of the Clause.

(r) Forging a document or using a forged document, knowing it to be forged, in any matter relating to the examination.

Ordinance 6.75, which also finds place in the same Chapter but under a different heading, namely, "Tampering with a Certificate and obtaining a Certificate on false representation" reads as under:

The Vice-Chancellor shall have the power to disqualify a person, who is found guilty of-

(i) tampering with his own certificate or diploma; or

(ii) obtaining or attempting to obtain a certificate or diploma to which he is not entitled.

The period of disqualification shall be determined by the Vice-Chancellor and the case shall be reported to the Executive Council.

11. The precise submission was that since the Petitioner is alleged to have tampered with her marks certificate, resort ought to have been had to Ordinance 6.75 which specifically dealt with tampering with a certificate and not to Ordinance 6.35(r). Besides, Ordinance 6.35, according to the Petitioner, applied to unfair means practiced at an examination and not to anything done or omitted to be done after or before the examination, even if such act or omission amounted to unfair practice.

12. Ordinance 6.75, on its true and proper interpretation is not applicable in the instant case. Undoubtedly, the substantive part of the Ordinance and the heading under which it occurs speak of tampering with and obtaining a "certificate" on false representation. However, the context and collocation suggest that the result-cum-detailed marks certificate is not comprehended within the meaning of the word "certificate" used in the said Ordinance.

13. The word "certificate" is a word of general import. More often than not it is used in conjunction with an adjectival word and, when so used, its meaning takes a colour from the word qualifying it, such as, for example, Character certificate, Medical certificate, Merit certificate, Award certificate, Degree certificate etc. In Ordinance 6.75, however, the word is used without any qualification. But apparently that cannot be taken to mean that tampering with

or obtaining any kind of certificate on false representation is intended to be dealt with by the Ordinance. In order, therefore, to ascertain the true connotation of the said word, it would be permissible not only to look at the setting of Ordinance 6.75 in the scheme of the Ordinances but also at the word or words to be found used in immediate connection with the said word. The rule of construction, *nos-cuntur a sociis*, enables the meaning of a word to be judged by the company it keeps. In other words, when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.

14. Now, Ordinance 6.75 occurs in the Chapter entitled "Examinations". The "Certificate" must, therefore, have some nexus or connection with an examination. The immediately preceding Ordinance 6.74 enacts that the duplicate copies of Marks-sheets, Certificates and Diplomas may be supplied only on payment of such fees and under such conditions as may be laid down by the Executive Council from time to time. It will be noticed immediately that the said Ordinance makes a distinction between Marks-sheets and Certificates and that a Marks-sheet by whatever name called is not treated as being covered within the meaning of the word "certificate". In Ordinance 6.75 itself, the word "certificate" is used in conjunction with the word "diploma". Diploma, as is well known, is a writing conferring some honour, privilege or recognition at the termination of a course of training. The word "certificate", when used in conjunction with such a word, must be taken to have been used in a cognate sense. It must be taken to signify a "Degree Certificate" or some such or similar thing. Result-cum-detailed marks certificate is obviously not covered by the term "Certificate" in this Ordinance especially against the background that in the immediately preceding Ordinance, a distinction is made between a Marks-sheet and Certificate. In our opinion, therefore, tempering with or fabricating a result-cum-detailed marks certificate is not a misconduct which can be dealt with under Ordinance 6.75.

15. Ordinance 6.34 and the relevant portion of Ordinance 6.35 have been extracted above. It is apparent on a bare reading of Ordinance 6.35 that it prohibits a candidate from using unfair means "in connection with" any examination. The words "in connection with" are words of wide import. They take in not only something done or omitted to be done at an examination but also something done before or after the examination, provided there is a link, connection or nexus between the act or omission and the examination. That this is the true import and purport of Ordinance 6.34 becomes clear if it is read conjointly with Ordinance 6.35. Ordinance 6.35 creates a fiction and enacts that several acts or omissions therein mentioned shall be deemed to be "unfair means". It will be seen that Clause (j) refers to something done "during the examination". Clause (m) refers to something done either before or after the examination. Clause (n) refers to something done "before, during or after" the examination. Clause (r), which is directly in picture in the present case, refers to forging of a document or using of a forged document knowing it to be forged in

any matter "relating to" the examination. On a conjoint reading of Ordinance 6.34, as well as all these Clauses of Ordinance 6.35, there is no manner of doubt that what is prohibited is the use of unfair means in connection with, that is to say, concerning or in relation to an examination. The result-cum-detailed marks-sheet is issued pursuant to the holding of an examination and it reflects the performance of a candidate in different subjects in which he is examined at the examination. Marks-sheet is, therefore, a document which has a nexus or connection with the examination in which the examinee has appeared. If the said document is forged or used knowing it to be forged for the purpose of securing admission to a higher class and for appearing at an examination for such higher class, it can be said to have been so forged or used in a matter relating to examination. The case is, therefore, squarely covered by Ordinance 6.35(r).

Re-submission 2

16. This submission, as formulated, cannot be entertained. Whether or not the charge is established is a matter which lies within the competence of the domestic tribunal to decide. The High Court exercising writ jurisdiction cannot sit as a Court of appeal over the decision of a body like the Examination Discipline Committee. It cannot set-aside the order of such Andhra Pradesh High Court body on merits. It can only interfere if such body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice or arrives at a decision which is impossible to reach or is based on no evidence. This limitation will apply with still greater vigour in the case of a student who has been dealt with for misconduct by the academic authorities (See: *Miss Damyanti Hasmukhlal Patel v. The South Gujarat University, Surat and Ors.* AIR 1979 Guj 62). The question of jurisdiction as well as of violation of principles of natural justice is dealt with separately. On merits, we have examined the material on record and we are unable to arrive at the conclusion that there was no evidence or that on the material before the Committee it was impossible to arrive at the conclusion which it has reached.

Re-submission 3

17. In two respects the principles of natural justice are stated to have been violated. First, no opportunity for effective cross-examination was afforded to the Petitioner and, secondly no opportunity was afforded to the Petitioner to make a representation as regards the quantum of penalty.

18. So far as the first grievance is concerned, it appears that the father of the Petitioner, who happens to be a legal practitioner, had made an application before the Committee during the course of the proceeding to permit him to cross-examine the witness examined on behalf of the Respondent-University. The application was rejected in view of the provision contained in Ordinance 6.41 which enacts that a person alleged to have used unfair means shall not be allowed to be accompanied or represented by another person. In the course of the order rejecting the application, it was observed, however, that the Petitioner

herself was at liberty to examine the relevant documents and to cross-examine the witness and that the Committee would provide her due assistance. Below the order passed in the aforesaid terms by the Committee, the Petitioner's father made an endorsement requesting that he may be permitted to sit and watch the proceedings and that he would not say anything or guide the Petitioner. This request was also turned down by the Committee on the ground that since under Ordinance 6.41 the candidate could not be allowed to be accompanied by any other person, the request for watching the proceedings was "without any purpose". The Committee was of the view that to grant such a request would amount to allowing the candidate to be accompanied by another person which was not permitted under the concerned Ordinance. The Committee made it clear, however, that if the father of the Petitioner wanted to brief her, he was at liberty to do so and that he had already taken permission to brief the Petitioner outside the Committee room. Permission was also granted to him to obtain a copy of the statement of the witness examined on behalf of the University.

19. We do not think this decision can be assailed before us on the facts and in the circumstances of the case. Ordinance 6.41, which is the statutory provision governing the conduct of proceedings before the Committee, provides in no uncertain terms that a person alleged to have used unfair means shall not be allowed to be accompanied or represented by any other person. The reasoned decision of the Committee is fully in consonance and accordance with the said Ordinance. So long as the Ordinance stands, the decision cannot be assailed and the Ordinance having not been challenged at the hearing, we are not required to go into its validity.

20. The relevant Ordinances prescribing the procedure do not provide for a separate opportunity being given as regards the quantum of penalty to a candidate against whom an inquiry on the charge of using unfair means is held. It is settled law that every disciplinary proceeding need not necessarily consist of two stages-inquiry and show-cause for penalty. It is only if the statute prescribes two separate stages and requires an opportunity being given at each stage that the question becomes relevant. Article 311 of the Constitution, which once provided for such two separate stages, has since been amended and it is no longer essential there under to hold the inquiry by providing a double opportunity. In *Suresh Koshy George Vs. University of Kerala and Others*, it has been observed that there seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that Article that every disciplinary proceeding must consist of two inquiries, one before issuing the show-cause notice to be followed by another inquiry there after. Such, however, is not the requirement of the principles of natural justice and law may or may not prescribe such a course. It is thus manifest that in the instant case, no separate opportunity was required to be afforded to the Petitioner to show-cause against the quantum of penalty.

21. Strong reliance was placed on behalf of the Petitioner on the decision in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, in support of the submission regarding a second opportunity being provided to the Petitioner in consonance with the rules of natural justice. The decision is clearly distinguishable. It is founded on an interpretation of the provisions of Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, which deals with cases where in a departmental proceeding penalty is proposed to be imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge. In such cases no departmental inquiry is required to be held for the proof of the charge and the summary inquiry is confined only to the nature and extent of the penalty to be imposed on the delinquent. An opportunity to be heard is required to be given in such an inquiry to the delinquent concerned, for, in the absence of such an opportunity, the inquiry would be wholly one-sided. Such is not the fact situation in the present case.

22. These were the only submissions made for our consideration and since there is no merit in any of them, the writ petition is summarily rejected.