
(2002) 04 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14394 of 2001

Amit Kumar Pandey

APPELLANT

Vs

Registrar, Deen Dayal Upadhyay Gorakhpur University and
Others

RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:

Citation : (2002) 3 UPLBEC 2077

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Pradeep Shankar Pandey, for the Appellant; Dilip Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.R. Yadav, J.—Heard the learned Counsel for the petitioner and learned Counsel representing respondent Nos. 1 and 2. Respondent No. 3 is proforma respondent and no one is appearing after due services of notice upon him.

2. Perused the averments made in the writ petition as well as in the counter affidavit filed by respondent Nos. 1 and 2. It is averred by the contesting respondents No. 1 and 2 in paragraph 4 of their counter affidavit that while the petitioner was appearing in LLB Part III Examination on 12th December, 2000, the Flying Squad recovered unauthorized material from the ground in front of the seat of the petitioner. The Centre Superintendent endorsed the aforesaid statement of the Flying Squad. The unauthorized material consists of two pages. The Head Examiner reported that the unauthorized material related to the question paper. The petitioner had also used the same while answering question No. 5. Subsequently, the show cause notice was issued to the petitioner and a copy of the same has been annexed as Annexure-5 to the writ petition. It is noticed from perusal of order sheet dated 28th February, 2002 that the case was argued before Hon'ble R.K. Agarwal, J. by learned Counsel for the petitioner. The learned Single Judge after taking into consideration the aforesaid averments

made in paragraph 4 of the counter affidavit filed on behalf of respondents No. 1 and 2 directed their Counsel Sri Dilip Gupta to file an affidavit giving details of seating arrangement of LL.B. III year examination conducted on 12th December, 2000. But no such affidavit has been filed for the reasons best known to respondent Nos. 1 and 2 up till date.

3. It is contended by the learned Counsel for the petitioner that in view of averments made in paragraph 4 of the counter affidavit, the unauthorised material on the basis of which proceedings for unfairmeans had been initiated against the petitioner was not recovered from his seat or his possession. Direction of this Court dated 28th February, 2002 to file an affidavit disclosing seating arrangement of LL.B. III year examination conducted on 12th December, 2001 is not filed by respondents No. 1 and 2.

4. The learned Counsel for the petitioner contended that the order cancelling the result of the petitioner 2000 and debarring him to appear in the examination, 2001 has been passed on suspicion. Be that as it may, the original record is produced before this Court by the learned Counsel representing respondents No. 1 and 2. A close scrutiny of the material produced before me indicates that the Examiner has given a report that the examinee petitioner has used the unauthorized material while answering question No. 5. The aforesaid report of the examiner is found to be incorrect if compared with the alleged unauthorized material, alleged to have been recovered from the ground in front of the seat of petitioner. It is true that there is a reference about "Patta" (Lease) in the unauthorized material but the petitioner while answering question No. 5 has not used that unauthorized material. Thus the report of the examiner being contrary to the original record produced before me which is foundation for debarring the petitioner to appear in subsequent examination of 2001 is liable to be rejected.

5. The next question which requires adjudication by this Court would be relating to recovery of unauthorized material from petitioner's seat or his possession. A Prescribed Form popularly known as U.M.F. was made available to the petitioner in the examination hall and the petitioner was required to fill up the aforesaid form in details. It is revealed from perusal of U.M.F. that the petitioner has denied the recovery of unauthorized material either from his seat or his possession. It is clearly stated by him in U.M.F. that he is being implicated on the basis of suspicion. It is written in the said U.M.F. to the effect by the petitioner that unauthorized material did not belong to him, therefore, the question of its use in the examination by him did not arise.

6. After denial of the allegation relating recovery and use of unauthorized material by the petitioner a show cause notice was issued to him, a copy whereof is filed and marked as Annexure-5 to the writ petition. A perusal of Annexure-5 to the writ petition revealed that in this show cause notice it is alleged that the petitioner was in position to use the unauthorized material. I have reason to believe that Committee entrusted to enquire into the unfairmeans found that unauthorized material is not used by the petitioner.

7. I have gone through the resolution of Deen Dayal Upadhyay, Gorakhpur University wherein it has been provided that if unauthorized material is recovered from possession of an examinee, his examination of that year would be cancelled. It is farther provided that if unauthorized material is found to have been used in answering any question by the examinee then he is to be debarred to appear in the subsequent corresponding year examination.

8. The learned Counsel representing respondent Nos. 1 and 2 after perusal on original record produced before this Court contended that in the facts and circumstances of the given case the Examination Committee ought to have cancelled the result of the petitioner of the year 2000 but it should not have debarred him to appeal in the subsequent examination of the year 2001.

9. The aforesaid submission of the learned Counsel for respondent Nos. 1 and 2 is not acceptable to me. From perusal of original record, I am objectively satisfied that proceedings of unfair means against the petitioner were initiated on the basis of suspicion. Suspicion howsoever strong it may be cannot be permitted to take place of evidence. Therefore, not only that debarment of the petitioner to appear in subsequent year examination 2001 as suggested by the learned Counsel for respondent Nos. 1 and 2 but cancellation of his result on LL.B Part III 2000 being ex facie illegal deserves to be quashed.

10. What has been discussed hereinabove the order impugned dated 31st March, 2001 (Annexure-7 to the writ petition) cancelling the result of the petitioner LL.B. Part III of year 2000 and debarring him from appearing in the subsequent corresponding examination, 2001 is hereby quashed and the instant writ petition is allowed with direction to the respondents to declare the result of the petitioner LL.B. Part III of year 2000 forthwith preferably within one month from the date of receipt of a certified copy of this order. Other things such as issuance of mark-sheet and degree to the petitioner etc. shall follow as usual. The Original record is returned back to the learned Counsel for the University.