
(1985) 02 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14155 of 1984

Arun Kumar Singh

APPELLANT

Vs

University of Gorakhpur

RESPONDENT

Date of Decision : 05-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) AWC 717

Hon'ble Judges : M.N. Shukla, Acting C.J.; A.P. Misra, J

Bench : Division Bench

Advocate : R.G. Padia, for the Appellant; B.D. Agarwala, for the Respondent

Final Decision : Allowed

Judgement

M.N. Shukla, A.C.J.

1. This writ petition was listed for admission before us today but since the matter is short and urgent, we proceed to dispose it of finally.

2. The Petitioner had appeared at the third Semester in M.Sc. (Physics) final year of the Gorakhpur University which was held in the month of January, 1983. It has been stated in the writ petition that in respect of Paper No. 10, namely, Group Theory Quantum Scattering and Semetry Properties of Matter, the Petitioner had learnt by rote several questions and their answers from the class notes given by his respective teachers and he had also crammed answers to many other questions from some of the books. Thereafter the fourth semester of the said examination of the Petitioner was held in the month of July, 1983. He duly appeared at that also and by that time no notice or communication of any kind was addressed to him levelling against him any charge of using unfair means. Thereafter, however the notice dated 6-8-1983 from the Respondent was served on the Petitioner alleging that according to the report of the Examiner in Paper No. 10 the Petitioner was an examinee appearing at a particular centre and all the five candidates, including the Petitioner, taking their examination at that

centre were guilty of mass copying. A show cause notice was issued to the Petitioner alongwith the examiner's report. He gave a reply to the show cause notice and denied the allegations of alleged copying. He specifically stated in his reply that since all the five candidates were being taught by the same set of teachers who had given extensive class notes and dictated answers to many important questions, which had been carefully assimilated and learnt by the examinees, this might have reflected resemblance in their answers. The explanation added that the Petitioner was supplied only the report of the Examiner and not the answers written by other candidates. Ultimately by a notice dated 20-12-1983/7-1-1984 the result of both the semester's examinations (third and fourth), i.e. for the entire session of 1982-83 were cancelled. The aforesaid order has been filed as Annexure-2 to the writ petition and it is this order which is impugned.

3. A counter affidavit was filed on behalf of the Respondent (University) in which the reasons which weighed with the Committee appointed by the Examination Committee to decide the cases of using unfair means, have been succinctly stated:

The Committee after considering the report of the Examiner, answer books, the show cause notice and the reply of the Petitioner, decided to cancel the Petitioner's result for the year 1982-83.

4. It is evident from the said excerpt that the sole basis of the action taken against the Petitioner was the report of the Examiner which was to the effect that the answers given by the five examinees to certain questions in Paper No. 10 were "word by word" identical, and this could be possible only if the answers were copied from the same book or notes or from each other. It is significant that the Examiner's report, which is the substratum of the final decision taken against the Petitioner, is itself equivocal. The report says that the similarity noticed in the answers could have derived either from consulting some book, or class notes etc. We find no difficulty in accepting the contention that similarity of answers can stem from drawing upon some ready made common answers supplied by class notes or teacher's notes. But this by itself is not very dependable, much less a conclusive factor for drawing the inference that the resemblance arose from using unfair means. On the one hand, we cannot endorse the approach sometimes adopted in such cases which puts them at par with the circumsppection which is enjoined in the appraisal of evidence in a criminal trial. On the other hand, there is also the danger of equating guilty with mere suspicion. In one decision of this Court, to which one of us was a party, similarity or resemblance of answers has been recognised as a pertinent basis for determining whether unfair means have been used. We express our concurrence with that view but hasten to add that the matter requires a deeper probe because the feature of similarity is not an absolutely untrammelled factor. Its impact may vary from proof to mere suspicion, depending upon the degree to which it is perpetrated and the subject in the context of which it manifests itself

In a pure arts subject, for instance, there is room for innovation, variety and ingenuity of expression. On the other hand, in a subject like Physics or Chemistry there is hardly any room for difference or novelty. In such subjects answers are in the natural course likely to tally. Usually in such cases the stock answer being with such phrases as "let us suppose" or "let us construct" etc. While dealing with such matters one should not be surprised at the similarity which is exhibited in the answers. Further more in the matter of resemblance also, it may be emphasised that similarity in the mistakes is more indicative of the use of unfair means than mere similarity in the correctness of answers. If the mistakes are varied in character and are repeated by a group of examinees, it may not necessarily lead to the conclusion that they were the result of use of unfair means. On the other hand, if the mistakes are of "a fantastic nature and are repeated in identical fashion by a large group of examinees, the inference of copying would be well-founded. Not only this, in a subject like Science and Mathematics there is yet another criterion which experience dictates can be of substantial use in coming to the correct conclusion. If in the answers in such subjects the intervening steps are jumped over and only the final answer is neatly set out, it would certainly justify the inference that the examinee had resorted to unfair means. On the other hand, If in such subjects as Science and Mathematics there are complete answers without omission of any step and no mistake is committed in coming to the final answer, the fact that the other examinees have also answered in exactly the same manner with similar precision and elaboration, cannot warrant the conclusion that the examinees concerned had used unfair means. Notwithstanding Bertland Russel's encomium regarding, the sublime beauty of certain equations in Mathematics, the fact remains that it is a subject which does not admit of variety of style, diversity of expression or embellishments of language.

5. So far as the instant case is concerned, it was only the similarity of answers given by the five examinees which formed the basis of the charge against them and ultimately a finding was recorded against the Petitioner. Keeping in view the nature of the subject and the questions answers and also the fact that they were all complete and correct answers, we do not think that in law relevant criteria were present which could clinch the judgment against the Petitioner. The complete absence of any mistake or the omission of any vital steps of similarity of recurring preposterous mistakes are all factors inconsistent with the proposition that the Petitioner necessarily resorted to unfair means. We have carefully scrutinized the answer books of three amongst the five candidates, which were produced before us on behalf of the Respondent. We have noticed that there was difference in the order in which the various questions were attempted by the examinees and, what is significant in respect of the same answers the examiner's marking too was different. While in respect of one answer given by one examinee to a certain question the examiner awarded certain marks, with respect to the answer to the same question attempted by another examinee he awarded different marks. The fact that marking varied with

the examiner in respect to the same question is clearly inconsistent with the imputation that the answers were identical. Learned Counsel for the Respondent argued that this Court should not interfere with the bonafide action taken by the Examination Committee and drew our attention to a Full Bench decision of this Court, namely, *Ghazanfar Rashid Vs. Secretary, Board of High School and Intermediate Education, U.P., Allahabad and Others*, and the ratio thereof:

If the Examinations Committee relying on the probabilities and circumstantial evidence and the intrinsic evidence available in the answer book of the examinee comes to the conclusion that unfair means was used it is outside the jurisdiction of the High Court to reappraise and re-assess the evidentiary value of those circumstances to, in view of these circumstances, the Examinations Committee drew an inference that the Petitioner had used unfair means in answering the said question and the Full Bench of this Court agreeing with the same dismissed the Petitioner's writ petition. Secondly, the Full Bench also maintained the dictum that the decision of the Examination Committee could be interfered with by this Court under Article 226 of the Constitution, if the decision was arbitrary or capricious. While considering the question of arbitrariness the court remarked:

It must be kept in mind that If two views are possible on the material on record and if the Examinations Committee has bonafide taken one view, it is not open to the High Court to interfere with that findings merely because a different view is possible. The High Court can interfere if the order is wholly arbitrary and so capricious that no reasonable person could come to the conclusion on the material on record.

6. The Petitioner also relied on the case of *Prabhat Kumar v. Board of High School & Intermediate Education, Uttar Pradesh*, A lid. through its Secretary 1971 ALJ 1391. The facts of that case were almost parallel to those of the instant case. The charge against the Petitioner alleged that there was unusual similarity, including mistakes in his answers which had striking similarity to the mistakes committed by another examinee also. The Examinations Committee held the Petitioner guilty of using unfair means in answering the relevant question. The Division Bench of this Court held that merely by reason of similarity in answers to the questions as recorded by the two examinees, no reasonable person could come to the conclusion that the Petitioner had used unfair means in answering the relevant question. The Full Bench of this Court in *Ghazanfar Rashid's* case (supra) had expressed the opinion that the Division Bench of the High Court had committed an error in applying to such enquiries principles of criminal trials, namely, that unless a finding of innocence was incompatible with the circumstances of the case, the Examinations Committee could not hold the examinee guilty of using unfair means on the basis of such circumstantial evidence. Thus, *Prabhat Kumar's* case (supra) was disapproved by the Full Bench on the ground that principles of appraisal of circumstantial evidence of criminal trials could not be imported into such quasi-judicial enquiries. In the instant case the position is different. Here we are disinclined to affirm the

impugned order not on the ground that the principles of appraisal of circumstantial evidence applicable to criminal trials should not be pressed into service in assessing the validity of the findings returned by the Examinations Committee. On the other hand, we proceed on the principle affirmed by the Full Bench in Ghazanfar Rashid's case (Supra) that if the decision is arbitrary and so capricious that no reasonable person would come to those findings, the order should be quashed. Since in the instant case, as we have already observed, the sole basis of the action against the Petitioner was similarity in the answers we think that to expect a negation of similarity in a subject like Physics would be unnatural. We also attach great significance to the fact that there was no omission of intermediate steps in the case before us, the answers were complete and correct nor was there similarity of mistakes. In the presence of such redeeming features it appears to us wholly arbitrary to hold that the Petitioner was guilty of use of unfair means. Such inference could not be drawn on such material by any reasonable person.

7. We, therefore, allow this writ petition and quash the order dated 20-12-1983, 7-1-1984 (Annexure 2 to the writ petition). We also issue a writ of mandamus directing the Respondent (Gorakhpur University) to declare the result of the Petitioner for the third and fourth semesters of M.Sc (Final) Physics examinations held in the year 1983. We make no order as to costs