
(2011) 05 CHH CK 0017
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 491 of 2011

Atul Kumar Goyal and Others

APPELLANT

Vs

Guru Ghasidas University and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Citation : (2011) 3 CGLJ 547

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Since W.P. (C) No. 491 and 958 of 2011 involve common facts and question of law, they are being disposed of by this common order.

2. Challenge in this petition is to the notification dated 01.01.2011 (Annexure P/ I) whereby the result of the Petitioners of B.A. Part I, Regular, (Economics) II paper, has been cancelled.

3. The brief facts, in nutshell, as projected by the Petitioners are that the Petitioners are the students of B.A. Part II pursuing their studies at Government Naveen Degree College, Gharghoda, District Raigarh. The Petitioners participated in B.A. Part I examination for the academic session March-April, 2010 and they were found successful which is evident from Marksheet of B.A. Part I (Annexure P/2). Thereafter, the Petitioners were permitted to take admission in B.A. Part II in the Respondent No. 4-College and began their studies on regular basis. The Petitioners have deposited admission fee etc. in the Respondent No. 4-College. The Respondent-University issued a show cause notice (Annexure R/I-4 and Annexure P/4, respectively) asto why examination of the subject, Economics II paper of B.A. Part I, held on 12.04.2010 may not be cancelled. Reply to the said notice was filed on 09.09.2010 (Annexure P/5 to W.P.(C) No. 958/2011) stating therein that they have prepared their answers on the basis of Ajay Mala series but there was no mass copying in the examination. Thereafter, the Petitioners

were directed to deposit the mark sheet of B.A. Part I, issued earlier. As a sequel, by notification dated 01.01.2011 (Annexure P/I), the result of the subject Economics, II paper, of B.A. Part I, was declared as cancelled. Thus, this petition.

4. Shri M.K. Sinha, learned Counsel appearing for the Petitioners would submit that once the Petitioners have been declared as "pass", the cancellation of the result of B.A. Part I, Economics, II paper, is an afterthought and the same is illegal. Secondly, if there was any mass copying, the result of the entire examination ought to have been cancelled and not of only 18 students of examination centre No. 180 including the Petitioners. There was no question of mass copying at all. Further, once the Petitioners have taken admission in B.A. Part II and started attending classes regularly, the Petitioners should not be deprived of appearance in the examination of B.A. Part II as the Petitioners would further lose one year on account of illegal action on the part of the Respondent authorities.

5. Per contra, Shri Ashish Shrivastava, learned Counsel appearing for the Respondent No. 1 to 3 would submit that the examination centre No. 68, Navin Ashashkiya Mahavidyalaya, Gharghoda was the examination centre for the students of the said college as well as for the students of examination centre No. 180. They appeared in the examination alongwith the students of examination centre No. 68. The students of examination centre No. 68 indulged into mass copying in the subject, Economics II paper of B.A. Part I for the academic session March-April, 2010. Therefore, the action of the Respondent-University to cancel the result of the subject, Economics II paper, of B.A. Part I, of the examination centre No. 68, is just and proper. The candidates appearing at Ashashkiya Naveen Degree College, Gharghoda, were found having indulged in group copying. The Examination Superintendent of Examination Centre No. 68 sent a preliminary information to the Registrar (Confidential) of the Respondent-University stating that prima facie, it appears that there was a group copying in the examination centre from Roll No. 90276 to 90302 and 987291 to 87400 vide communication dated 6.05.2010 (Annexure R/2). The said communication was forwarded to the Chairman, Board of Studies of Economics on 16.06.2010 (Annexure R/I-3). The Chairman, after examining all the papers came to the conclusion that there was a high probability of mass copying in the said paper by the above-stated candidates. Thereafter, a show cause notice was issued on 29.7.2010 to all the candidates. The candidates, including the Petitioners have submitted their reply and thereafter the matter was referred to Unfair Means Committee (UFM) to enquire into the issue of mass copying at examination centre No. 68, wherein the students of examination centre No. 180 had also appeared. The UFM committee submitted its report on 20.11.2010 (Annexure R/I-5) stating that the answer sheets of Economics II paper of B.A. Part I examination, 2010 were examined by Shri I.P. Dewangan, Assistant Professor, Economics of Government College, Katghora, Shri P.K. Dewangan, Assistant Professor, Economics, of S.N.G. College, Mungeli, who were of the opinion that the answer sheets clearly indicate that there was a group copying in the

examination centre No. 68 in the above stated subject. Thus, the UFM committee recommended for cancellation of the result under category "C of the regulation No. 11 (Annexure R/I-6). Thus, there was no infirmity, irregularity or jurisdictional error. Shri Shrivastava would further submit that the Petitioners were afforded opportunity of hearing, thereafter, the experts have examined the answer sheets and it was found that there was a group copying by taking assistance from any book, paper, notes or any other materials in answering the question papers. Shri Shrivastava would next contend that the experts opinion may not be normally interfered with, unless contrary is established.

6. Having heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto, the facts, as aforestated appears to be correct. The Petitioners and other similarly situated candidates were issued show cause notice on 29.07.2010 as is evident from Annexure R/I-4 wherein a list of candidates is annexed. Response to the show cause notice fortifies the stand of the Respondents that the Petitioners were afforded opportunity of hearing before the decision was taken by the Respondent-University.

7. The action was taken on behalf of Superintendent of Examination Centre No. 68 where the students of examination Centre No. 180 had also participated and on the basis of report submitted by Assistant Professor, Shri I.P. Dewangan to the Registrar (Confidential) of the Respondent University, the Chairman of the Board of Studies of Economics, had also examined the entire case and expressed the same opinion. Thereafter, the matter was referred to the UFM Committee which got the answer sheets examined by two experts of the subject who had unanimously and clearly opined that it was a case of group copying and the same deserves to be cancelled under the provisions of category "C of the Regulation No. 11 (Annexure R/I-6).

8. Contention of learned Counsel for the Petitioners that this was not a case of category "C, as there is no proof that the students had taken any assistance from book, paper, notices etc. in answering the question papers during the course of examination, fails, on the ground that if the answer sheets are common indicating similar sets of information, it would amount to group copying under category "C of the Regulation No. 11. Thus, cancellation of the result of subject Economics, II paper of B.A. Part I, under category "C of the Regulation No. 11, was just and proper.

9. Law on the issue with regard to interference of the Court in the opinion formed by the experts of the subject in the field, is well settled.

10. The Supreme Court, in *Neelima Misra v. Harinder Kaar Paintal* (1990) 2 SCC 746, observed as under:

32. It is not unimportant to point out that in matters of appointment in the academic field the court generally does not interfere. In the *University of Mysore v. C.D. Govinda Rao*, this Court observed that the courts should be slow to interfere with the opinion expressed by the experts in the absence of mala fide

alleged against the experts. When appointments are based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor has acted. See also the decisions in *J.P. Kulshreshtha v. Chancellor, Allahabad University*, *Raj Bhavan and Dalpat Abasaheb Solunke v. B.S. Mahajan*.

11. In *Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others*, , the Supreme Court observed as under:

7. Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any-field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extracurricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.

12. Further, in *Bihar Public Service Commission and Others Vs. Kamini and*

Others, , the Supreme Court observed as under:

8. Again, it is well settled that in the field of education, a court of law cannot act as an expert. Normally, therefore, whether or not a student/ candidate possesses requisite qualifications, should better be left to educational institutions (vide *University of Mysore v. C.D. Govinda Rao*). This particularly so when it is supported by an Expert Committee. The Expert Committee considered the matter and observed that a person can be said to be Honours in the subject if at the graduate level, he/ she studies such subject as the principal subject having eight papers and not a subsidiary, optional or side subject having two papers. Such a decision, in our judgment, cannot be termed arbitrary or otherwise objectionable. The learned Single Judge, in our opinion, was, therefore, right in dismissing the petition relying upon the report of the Committee and in upholding the objection of the Commission. The Division Bench was in error in ignoring the well-considered report of the Expert Committee and in setting aside the decision of the learned Single Judge. The Division Bench, while allowing the appeal, observed that the "litmus test" was the admission granted to the first Respondent by the Central Institute of Fisheries Education, Mumbai. According to the Division Bench, if the first Respondent did not possess Bachelor of Science degree with Zoology, the Institute would not have admitted her to the said course. The Division Bench observed that not only the first Respondent was admitted to the said course, she had passed it with "flying colours". In our opinion, the Division Bench was not right in applying "litmus test" of admission of the first Respondent by the Central Institute of Fisheries Education, Mumbai. The controversy before the Court was whether the first Respondent was eligible for the post of District Fisheries Officer, Class II. The correct test, therefore, was not admission by the Mumbai Institution. If the requirement was of Honours in B Sc with Zoology and if the first Respondent had cleared B Sc Honours with Chemistry, it could not be said that she was eligible to the post having requisite educational qualifications. By not treating her eligible, therefore, the Commission had not committed any illegality.

13. In *Om Prakash Singh Vs. Union of India (UOI) and Others*, , the Supreme Court observed as under:

20. In the instant case, the Medical Board has given unanimous opinion that the disease of the Appellant was neither attributable to nor aggravated by the military service. The findings of the Medical Board have been accepted by the Division Bench of the High Court. Thus, in our considered opinion, no interference is called for.

14. There is no allegation of malafide against the experts nor have they been impleaded as party Respondents. The Petitioners have further failed to establish that their opinion was not correct and as such, this Court refrains from interfering with the expert's opinion in the subject to the effect that there was a group copying in respect of answer sheets of the Petitioners in the subject Economics, 11 paper of B.A. Part I.

15. Applying the well settled principles of law to the facts of the cases on hand, no interference is warranted with the notification dated 01.01.2011 (Annexure P/ I) and both the petitions deserve to be and are accordingly dismissed. However, it is directed that the Petitioners may be permitted to write supplementary examination in the concerned subject on an application being made by the Petitioners, to avoid loss of year to the Petitioners.

16. There shall be no order asto costs.