

(2016) 08 P&H CK 0364
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13928 of 2005

Baldev Singh

APPELLANT

Vs

Guru Nanak Dev University, Amritsar

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Evidence Act, 1872 — Section 45, 47

Citation : (2016) AIR(Punjab) 214

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : Mr. Mohan Singh Chauhan for Mr. R.S. Bains, Advocates, for the Petitioner; Mr. Amrit Paul, Advocate, for the Respondent Nos. 1 and 2; None, for the Respondent No. 3

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.(Oral)—The petitioner challenges the communication dated 06.04.2005 (Annexure P-7) vide which he had been informed that he stood disqualified for 5 years from appearing in any examination of all the three Universities of Punjab, on account of use of unfair means in the B.Ed. Entrance Test- 2004 against Roll No.15262 at Centre No.ASR-4 as per order dated 23.02.2005 (Annexure P-6) of the Special Committee. The appellate order dated 24.05.2005 (Annexure P-9/T) is also subject matter of challenge.

2. The main argument of the counsel for the petitioner stems from the fact that the petitioner had been registered for enrolment of Ph.D. with the respondent-Panjab University in September, 2003 (Annexure P-1) and, therefore, was barred as such from giving any examination of M.A. or any other Post Graduation Course. It is submitted that the petitioner could not join the B.Ed. Course and, therefore, there was no such involvement on his part. Counsel for the petitioner has further placed reliance that there were two different opinions of the handwriting experts and, therefore, the petitioner could be given the benefit of doubt.

3. Counsel for the University on the other hand after taking the Court through the original record has submitted that proper opportunity was given to the petitioner. Initially the order was ex parte on 14.07.2004 and, thereafter, the Special Committee passed the order dated 23.02.2005 (Annexure P-6), after giving proper hearing and the reasons were contained in the said order. It is, accordingly, submitted that it was a case of fraud and even FIR No.268 under Sections 419, 420, 468, 468, 471 IPC at Police Station Sadar, District Amritsar had been lodged on the same date i.e. 26.06.2004 against the petitioner and his friend Judgebir Singh, who was alleged to be a engineering student and appeared on behalf of the petitioner for the said test.

4. A perusal of the record would go on to show that initially when the order dated 14.07.2004 (Annexure P-2) was passed, the petitioner had been presumed to have been served the show cause notice, as the Speed Post dated 07.07.2004 had not been received back as undelivered. Accordingly, on account of the presumption he was barred by adopting ex parte proceedings. Thereafter, he filed an application (Annexure P-3) that he had not filled up the form and it did not contain his signatures, the photograph was not his and spellings of the name of the village were wrong, apart from the fact that he was doing research work in Ph.D.

5. Resultantly, the petitioner was asked to appear before the Appointed Committee in February, 2005. The Committee came to the conclusion that the presence of Judgebir Singh was not required and even the petitioner had sent an application that he was ill and, therefore, could not appear. However, the Committee came to the conclusion that it could not wait for his presence and passed the impugned order dated 23.02.2005.

6. From the pleadings it transpires that Baldev Singh, the petitioner had filled up two forms for appearing in B.Ed. Entrance Test and on both the forms the photographs of Judgebir Singh were affixed. There was opinion of a Forensic Science Expert that the handwriting and the signatures were of Baldev Singh, in view of the stand taken by him in Annexure P-3. The signatures and handwriting of Baldev Singh were also got rechecked from the Director, Forensic Science Laboratory, Chandigarh and the said report was in favour of the petitioner that it did not bear his handwriting. It was further noticed that when Judgebir Singh was caught red handed by the Supervisory Staff, Baldev Singh was also called on spot and in their statement before the Security Officer both of them have admitted in their confessional statements on 26.06.2004 that Judgebir Singh appeared in the examination on behalf of the Baldev Singh at his asking. Resultantly, on the ground that the petitioner was the beneficiary of impersonation and as per Para 7.9 of the relevant prospectus of the year 2004, they were found guilty and disqualified for a period of 5 years. The said order as noticed has been upheld in appeal and is also subject matter of challenge.

7. A perusal of the original record which had been retained by this Court vide order dated 28.11.2005 would go on to show that two application forms were

filled up by one Baldev Singh, one for Roll No.15262 center for which was at ASR-4 was dated 19.06.2004, photocopy of which has been appended as Annexure R-1/1. In the said form the petitioner has given the details of his roll numbers of his Matriculation, Graduation and Post Graduation, which are pertaining to the years 1992, 1998 and 2001, respectively. The matriculation certificate is of Punjab State Education Board, whereas, the other two Graduation and Post Graduation are of Punjabi University, Patiala. The details of the roll numbers have also been mentioned along with the said subject. The percentage of the marks obtained in the said certificate are given in detail.

8. A similar application form had also been filled up on 06.06.2004 against Roll No.17992 center for which was at ASR-12 (Annexure R-1/4). The attendance against this roll number, which was at another centre was absent, as apparently the petitioner had got Judgebir Singh to appear at ASR-4, where the unfair means case were lodged.

9. The plea that the petitioner had not filled up the form is, thus, apparently incorrect, as from the record it would also transpire that his Post Graduation certificate issued by the Punjabi University also wore same Roll Number i.e 5558. Similarly, photocopy of the Matriculation certificate would go on to show that his Roll No.876938, was also filled in the form. Thus, it is apparent that the petitioner plea that he had not filled up the forms is not tenable. The details of all his earlier academic achievements had been dully filled up, to which he only was privy. The details of the same are also available for consideration in the original record.

10. On account of the said plea as noticed above after the order dated 14.07.2004 had been passed, the University had taken an opinion also from the handwriting expert Ms. Sukhpreet Kaur, who had opined against the petitioner. She had come to the conclusion that his specimen signatures were taken in the meeting held on 24.8.2004 and were of the same person, who had filled up the application forms HA-1 and HA-2.

11. Merely, because another expert's opinion is to the contrary, would not entitle the petitioner for the benefit of doubt, as now claimed. This Court has also examined the original form along with the power of attorney which has been signed by the petitioner and can safely come to the conclusion that the name Baldev has been written and signed by the same person, who has signed the power of attorney and also signed on the form.

12. The Apex Court in *Lalit Popli v. Canara Bank and others* 2003 (2) SCR 100, while keeping in the mind the provisions of Sections 45, 47 and 73 of the Evidence Act, 1872 held that the Court could satisfy itself and could compare the admitted handwriting with the disputed writing and come to its own independent conclusion. The relevant portion reads as under:-

"It is to be noted that under Sections 45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under Section 73 of the said

Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter. [See *Murari Lal v. State of Madhya Pradesh* (1980) 1 SCC 704]."

13. In such circumstances, after examining the record, this Court is of the opinion that the opinion of Ms. Sukhpreet Kaur, Handwriting Expert which is against the petitioner, is well justified and from the naked eye it is apparent that the petitioner was also a signatory of the application forms.

14. Counsel for the respondent is well justified in placing reliance upon the judgment of the Apex Court in *Controller of Examinations Etc. v. G.S. Sunder and another* J.T. 1992 (4) SC 204 to submit that in matters of discipline and malpractice of unfair means adopted by students, this Court should restraint itself from interfering as the cancer of copying which was going on had to be curtailed. The relevant paragraphs read as under as under:-

"We have given our careful consideration to the above submissions. One thing must be put beyond doubt, in matters of enforcement of discipline this Court must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by court in every case may lead to unhappy results making the system of examination a farce. For instance, we cannot but strongly condemn copying in the examination which has grown into cancer of mass copying. Such unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected. We feel that:

"the hour has come when we must clear the educational fields from poison and from fear, We must remould our standards-build them higher, And clear the air as though by cleansing fire, Weed out the damning traitors to education, Restore her to her ancient place of awe."

11. When the matter is approached from the above point of view, we find, as rightly submitted by the learned Attorney General, it is a systematic case of fraud committed by the first respondent. It cannot be a sheer coincidence that in all the semesters, namely, semesters III to VI the first respondent secured good marks and the other student K.R. Gandhi failed. There is nothing unbelievable in the first respondent admitting his mistake and giving a statement to this effect. We also find that there is no question of violation of principles of natural justice. The first respondent knew the charges fully and he had admitted his guilt. That is why we are constrained to point out the technicalities of law should not be imported to further the cause of a student who had indulged in malpractice. Even if others are in complicity with the perpetration of fraud, that does not mean the first respondent is absolved of his guilt. Thus, we are unable to agree with the findings of the High Court which are hereby set aside."

15. At the time of hearing, it also transpires that even in the FIR No.268, the petitioner stands convicted by the trial Court, though the appeal is pending. The said conviction order or the pendency of the appeal need not detain this Court, as the above said consideration of the record would go on to show that the decision taken as such is not liable to be interfered with under Article 226 of the Constitution of India. The petitioner has been given a second chance and Special Committee has validly come to the conclusion on a relevant basis.

16. Accordingly, there is no scope for interference under Article 226 of the Constitution of India and the writ petition is, accordingly, dismissed.

17. The original record has been returned to Mr. Amrit Paul, Advocate, counsel for the University.