

(1981) 12 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 830 of 1981

Bikram Hazarika

APPELLANT

Vs

University of Gauhati and Others

RESPONDENT

Date of Decision : 21-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 1 GLR 104

Hon'ble Judges : D. Pathak, Acting C.J.; K.N. Saikia, J

Bench : Division Bench

Advocate : S.N. Medhi and P. Pathak, for the Appellant; B. Sarma and A.C. Sarma, for the Respondent

Final Decision : Allowed

Judgement

D. Pathak, Actg. C.J.

1. This is an application under Article 226 of the Constitution of India by a candidate for B. Sc. examination of the Gauhati University, challenging the validity of the order passed by the Executive Council by a resolution dated 19.9.81 by which the examination of the Petitioner for the year 1980 was cancelled and also by the same resolution the Petitioner was debarred from appearing in any University Examination for the subsequent year.

2. From the brief narration of the facts, it appears that the Petitioner appeared in his B. Sc. examination of 1980 which commenced in April, 1981. He appeared as a regular student in all the subjects i.e. English, Botany, Chemistry and Zoology and also completed all the relevant, practical examinations. The result of the examination was announced on 30th July, 1981. The Petitioner received a notice dated 30th July, 1981 issued by the Controller of Examinations of the Gauhati University to show cause stating that his result "has been kept withheld on a confidential report that the answer script is doubtful. The stitching of this khata is a peculiar nature and doubtful answer in Botany Paper-I at the above

examination", and as to why appropriate action should not be taken for the above charges.

3. The Petitioner showed cause. It is contended that no opportunity was given to the Petitioner to explain the charge. It is admitted by the learned Counsel for the Respondents that the Botany Paper-I on the basis of which some doubt was entertained by the authority for using unfair means at the examination was not shown to the Petitioner. It is also found that there was some confidential report against the Petitioner regarding the aforesaid answer script. That report was also not shown to the Petitioner nor any copy of the same was given to him. Without showing the Petitioner the questioned answer script of Botany Paper-I as well as the alleged report against the Petitioner, action was taken by the Executive Council by cancelling his examination and debarring the Petitioner from appearing at any university Examination for the subsequent year. It is true that the Petitioner on receipt of the notice from the Controller of Examinations submitted certain explanation, but that explanation could not be full and complete in absence of the questioned answer script as well as the report. We have found that this is a case of flagrant violation of the principles of natural justice. In all fairness, the Petitioner should be shown the questioned answer script and the copy of the confidential report alleging adoption of unfair means in the examination by the Petitioner. As this has not been done, we find that the impugned order passed on the basis of the resolution is not sustainable in law. We have no other alternative, but to quash the impugned order contained in the memo dated 19.9.81 in respect of the Petitioner. We hasten to add that it should not be understood that it is not open to the University to take further action in the matter. With the above direction, we order that the Petitioner should be given opportunity of scrutinising the questioned answer script and to give a copy of the alleged report against the Petitioner by the last week of January, 1982. Accordingly, the petition is allowed and the Rule is made absolute. However, we pass no order as to costs.

4. Send down the records of the case along with a copy of the aforesaid judgment and order to the University immediately.