

(1965) 04 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 303 of 1965

Devinderpal Singh Sandhu	Vs	APPELLANT
K.L. Kapur and Another		RESPONDENT

Date of Decision : 08-04-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1966 P&H 91

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Advocate : B.S. Dhillon, for the Appellant; Joginder Singh Wasu, for No. 1 and D.N. Avasthy, for No. 2, for the Respondent

Final Decision : Allowed

Judgement

Gurdev Singh, J.—This is a petition under Articles 226 and 227 of the Constitution of India by Devinderpal Singh Sandhu, a student of B.A. (Part II) of the D. M. College, Moga, district Ferozepur, praying that the order of his rustication passed by the Principal of his College on 16th January, 1965, be quashed by issue of writ of certiorari.

2. The impugned order of the petitioner's rustication merely states that on the unanimous advice of the College Council the petitioner had been rusticated for the offence or drinking on 13th January 1965. The circumstances in which this order of rustication was made by the Principal are detailed in para No. 6 of the return furnished by him, in which it is stated:--

"While the Lohri festival was being celebrated by the Hostel students on the night of 13th January 1965, a verbal complaint was made to the answering respondent by the student organizers of the function that the petitioner was drunk. On receiving this complaint he sent for him, but he had escaped in the meanwhile. A little later there was a fight between two groups of students and some serious injuries were alleged to be caused to Messrs Paramjit Singh and Jasbir Singh by

Devinderpal Singh and his friends. On this a meeting of the College Council was called at once and the petitioner was found guilty of coming drunk to the College premises and on the unanimous advice of the College Council, the petitioner was rusticated for one year and due information sent to the University about that. As the petitioner and his friends wanted to avoid arrest by the police, hence the petitioner did remain absent from Moga for a few days till his arrest and release on bail afterwards. The notice was duly put up on the college notice board regarding the rustication of the petitioner."

3. In assailing this order of his rustication, the petitioner besides denying the correctness of the allegation that he was found drunk in the hostel premises on 13th January 1955, has pleaded that:--

(a) the order was made mala fide to injure his career and wreak vengeance against him because he had led an agitation for the dismissal of Shri R. C. Sood, a Lecturer on the staff of the College who had misbehaved with a girl-student of his college, and

(b) the order of his rustication was made in violation of the principles of natural justice inasmuch as it was passed without notice to him and without affording him an opportunity to be heard.

4. In the return furnished by the Principal (respondent No. 1) he has specifically admitted that on the basis of a complaint of misbehaviour towards a college girl an enquiry was held against R. C. Sood and having been found guilty of moral turpitude, he was dismissed by the college management on 22nd October 1964, though subsequently on the advice of the Vice-Chancellor the matter was reconsidered, and in view of the apology tendered by the said Prof. R. C. Sood he was reinstated on humanitarian grounds. The respondent Principal has, however, denied that the petitioner ever met him in connection with the complaint against the said Prof. R. C. Sood or that the incident in which R. C. Sood was concerned had anything to do with the passing of the impugned order of the petitioner's rustication. There is nothing on the record to rebut this statement of the Principal. In fact, the representation which the petitioner made to the University regarding his rustication leaves no doubt that the petitioner's plea that in passing the order of rustication the Principal was influenced by the conduct of the petitioner in agitating for the removal of R. C. Sood is an after-thought. In his representation to the University (copy of which is Annexure R. 2/A), the petitioner made no reference whatsoever to his alleged participation in the agitation for the removal of Professor R. C. Sood, but therein he had stated that the impugned order of his rustication was passed by the Principal because of the strike engineered by some college students on 14th and 15th January 1965 and the threats held out by the strikers that if the Principal did not take any action against the petitioner, they would malign the Principal and create disorder in the college premises. From this, it is obvious that there is no substance in the allegation that in making the impugned order the principal was influenced by the part that the petitioner is alleged to have played in connection with the removal

of Professor R. C. Sood.

5. The stand taken up by the petitioner in his representation to the University (Annexure R. 2/A), that the order of his rustication was passed by the Principal under duress because of the threats held out by some of the students who had gone on strike, however, receives support from para No. 9 (ii) of the return filed by the Principal himself, wherein he says:--

"As the petitioner had run away and could not be traced for a few days hence there was no question of giving him any hearing. There was a serious threat of strike by the supporters of students injured in that scuffle. Hence compelled by this urgency, this step against the petitioner was necessary to be taken at that moment."

6. I appreciate the frankness of the Principal, to this admission of his that he was hustled into taking action against the petitioner to pacify that section of the student community who were agitating for his rustication, leaves no doubt that the order of rustication was passed under duress, and it indicates that if the Principal had not been coerced by threat of strike he would have sent for the petitioner, heard him and then decided whether or not any action against the petitioner was necessary. In other words, it is an admission of the fact that the order of rustication was passed not on merits but because of extraneous considerations. This in itself, in my opinion, would render the impugned order mala fide having not been made on merits but on extraneous considerations.

7. In any case, the second objection raised by the petitioner is more serious. It is not disputed that no notice of the action proposed to be taken against the petitioner was ever issued or served upon him. He was never heard by the Principal or by the College Council on whose unanimous vote the Principal claims to have rusticated the petitioner. The consequences of the order of the petitioner's rustication are admittedly penal. By being rusticated for a year he has been debarred from attending the classes as well as from appearing at the two subsequent University Examinations as provided in Rule 4 of Chapter 57 of the Punjab University Calendar, Volume III (1962 Edition), which rustication is in these words:--

"Rustication whenever imposed on a college student shall always mean the loss of one academical year or missing of following two University examinations in so far as his appearance at a University examination is concerned. The period of absence from the college will, however, depend upon the time of the year when the penalty is imposed."

8. It is not disputed that before an order, of rustication entailing such serious consequence is passed against a scholar, he has a right to be acquainted with the nature of the allegations on the basis of which the order of rustication is sought to be made and also to an opportunity to be heard and to defend himself. There is no controversy before me that if these rules of natural justice are violated, the student is entitled to redress under Article 226 of the Constitution. In Ramesh

Chandra Sahu Vs. N. Padhy, Principal, Khallikote College, a Division Bench of that Court ruled that the Principal of a College is subject to the jurisdiction of the High Court under Article 226 of the Constitution in respect of any disciplinary action taken by him against a student of the college when the College of which he is the Principal is a public institution and the Principal is a public or quasi public official. It was further laid down in that case that though there is a divergence of opinion whether such an order of expulsion or rustication passed by the Head of an educational institution against an offending pupil is a quasi judicial act or purely administrative act, the majority view of the High Courts was that the student concerned should get a reasonable opportunity of showing cause against the proposed punishment, and there is authority in support of the view that even in respect of such administrative acts the rules of natural justice embodied in the maxim *audi alteram partem* should be complied with.

9. The decision of the Pepsu High Court in *Sadhu Rain v. Principal Rajindra College, Bhatinda* AIR 1954 Pep 151, is also practically to the same effect. Mehar Singh, J. (now a Judge of this Court) while dealing with a similar case held that the authority of the head of an educational institution to expel a scholar is not unfettered or uncontrolled but it is subject to the limitation *inter alia* that he is not to exercise his power of expulsion arbitrarily and on grounds that are not reasonable and that a solitary instance of misconduct would ordinarily not merit summary expulsion from the institution. Dealing with the applicability of Article 226 of the Constitution, the learned Judge after review of various authorities said:

"The petitioner had a right to continue as a scholar in the college, and he could only be expelled on reasonable grounds. Once that right of his under the law is affected by a decision of the Principal about his misconduct, there is a presumption that the authority vested in the Principal to affect such right of the petitioner must be exercised quasi-judicially."

10. The principle laid down in the above case is fully applicable to the case in hand. The only basis on which the order rusticating the petitioner was passed by the Principal is stated to be a complaint made by some students against him that on 13th January 1965 he was found under the influence of drink in the hostel premises. Admittedly the Principal never sent for him to verify the correctness of the college allegations nor was the complaint brought to the notice of the petitioner before the order of his rustication was passed. He was thus not even aware of the allegations on the basis of which the impugned order was made nor did he have an opportunity to put forward his case before the Principal or the College Council. The order of rustication made without even informing the person concerned of the allegations on which it is based cannot be sustained. I, accordingly, accept the petition and direct that proper writ shall issue quashing the order of the petitioner's rustication, dated 16th January 1965. In the circumstances of the case, I, however, consider it expedient to leave the parties to bear their own costs.