
(2012) 10 AHC CK 0236

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 13271 and 72429 of 2011

Dr. Vyom Shanker

APPELLANT

Vs

Director of Education (Higher Education) and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2012) 11 ADJ 488 : (2013) 2 ALJ 778 : (2013) 3 AWC 2896 : (2013) 137 FLR 517 : (2013) 1 UPLBEC 151

Hon'ble Judges : Sunil Ambwani, J; Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Ashok Khare and Manvendra Nath Singh, for the Appellant; H.N. Singh, Awadhesh Tiwari, Imran Ullah, Ram Sheel Sharma, Sanjay Kumar Singh and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri Ashok Khare, Senior Advocate assisted by Shri Manvendra Nath Singh, learned Counsel appearing for the petitioner. Learned Standing Counsel appears for the State respondents. Shri H.N. Singh appears for Shri Hari Shanker Upadhyay-respondent No. 11. Shri Sanjay Kumar Singh appears for Dr. Bhimrao Ambedkar University, Agra. In Writ "A" No. 13271. of 2011, the petitioner has prayed for following reliefs:

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 11.2.2011 (Annexure 7 to the writ petition) passed by respondent No. 1/Director of Education (Higher Education), U.P. Allahabad.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondent No. 1 to drop all the proceedings against the petitioner and the entire proceedings against him be quashed being illegal and against the record.

(iii) issue any order suitable writ order or direction which may deem fit and proper under the facts and circumstances of the case.

(iv) to award the cost of petition in favour of petitioner.

2. In Writ "A" No. 72429 of 2011 the petitioner has prayed for following reliefs:

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 1.12.2011 (Annexure 10 to the writ petition) passed by respondent No. 6.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondent No. 4 to prepare and send the bill for payment of salary of the petitioner before the competent authority.

(iii) issue any other suitable writ order or direction which may deem fit and proper under the facts and circumstances of the case.

(iv) to award the cost of petition in favour of petitioner.

3. The petitioner was selected by the U.P. Higher Education Service Commission, Allahabad in pursuance to the advertisement made by the Commission on 18.8.1998 on the post of Lecturer in Military Science and was allocated Shree Varshneya Mahavidyalaya, Aligarh for appointment. Prior to his selection, he was working as Lecturer in B.D. College, Orai from 1981 to 1.6.1999 and was given senior scale on 27.3.1987.

4. One Smt. Laxmi Sharma made a complaint to the Principal of the College alleging, that the mark-sheets of High School, Intermediate and B.A. are forged, and thus the petitioner's services be terminated. The Committee of Management appointed an enquiry committee. It issued notices to the petitioner for verification of his mark-sheets and the date of birth. The petitioner submitted a reply alleging, that the mark-sheets and his date of birth are correct and that the mark-sheets have been validly issued by the U.P. High School and Intermediate Board, Allahabad and Dr. Bhimrao Ambedkar University, Agra. An application was filed u/s 156(3) of Cr.P.C. by Shri Hari Shanker Upadhyay-a lecturer in the same department of the College alleging that the petitioner's mark-sheets are forged and fabricated. The police investigated the matter and submitted a final report on 18.1.2011.

5. Shri Hari Shanker Upadhyay made a complaint to the Directorate of Higher Education on 11.1.2011 through Smt. Suman Singh Tomar, a local Advocate with the same allegations with regard to false date of birth and educational certificates of the petitioner. The Director of Education (Higher Education), U.P. Allahabad constituted a Committee. The Committee in its report dated 21.7.2009 found and informed, that in the High School Examination of 1970 the petitioner had obtained 250/500 in respect of which a forged and manipulated mark-sheet was filed showing that the petitioner had secured 295/ 500, and similarly in Intermediate Examination 1974 the petitioner had obtained 231/500, whereas he produced the false mark-sheet showing 290/500 marks. He had also manipulated the date of birth and changed it from 31.1.1952 to 31.1.1956 and consequently a recommendation was made to take disciplinary action against him. The

Director of Higher Education in his order dated 11.2.2011 observed that the jurisdiction to initiate the disciplinary enquiry is with the Committee of Management but since the petitioner had committed fraud by producing the false and fabricated documents, which are likely to affect public interest, he issued directions to the Committee of Management to initiate disciplinary action against the petitioner and to recover the pay and allowance paid to him, giving rise to Writ "A" No. 13271 of 2011.

6. The Regional Higher Education Officer, Agra, by his order dated 1.12.2011 after receiving the order from the Director of Higher Education (Degree Section) Government of Uttar Pradesh, directed the Principal of the College to initiate a departmental enquiry against the petitioner and to stop the submission of the pay bills of the petitioner for making payment of salary.

7. The petitioner filed Writ "A" No. 72429 of 2011 challenging the order dated 1.12.2011 passed by the Regional Higher Education Officer, Agra directing the Principal to stop submitting the salary bills. On 2.2.2012 this Court passed following order in the writ petition:

One of the issues involved in this writ petition is, whether Dr. Vyom Shanker-the petitioner has submitted forged High School Certificate, and mark-sheets of High School, Intermediate, B.A. and M.A. Examinations, at the time of his selections as Lecturer, Military Science by U.P. Higher Education Service Commission, Allahabad, in the year 1999.

The complainant-respondent No. 11, has placed reliance upon the gazette of U.P. in which petitioner's date of birth in the High School was shown to be 30.1.1953 instead of 30.1.1954, recorded in the certificate, and further according to the verification report issued by the Registrar of the Agra University, the marks of the petitioner in B.A. examination in confidential section was of 373/800, as against marks claimed by the petitioner as 460/800.

In the counter-affidavit of Sri Hari Shanker Upadhyay private respondent No. 11 filed in Writ Petition No. 13271 of 2011, the verification of the University forwarded to the Commissioner Agra has been annexed as Annexure-CA-5, in which the University has reported that in the mark chart maintained by the Examination Department of the University, the marks of the petitioner in B.A. Examination of 1976 with Roll No. 15465 are entered as 228/400 (for First Year), and total 460/800 (1st and IInd year); whereas in the mark chart maintained by the Confidential Section of the University these marks were shown to be of 185/400 (for 1st Year) and total 373/800 (Ist and IInd Year).

The Registrar of the University in his letter No. R-237/10 dated 29.9.2010, assured the Commissioner, Agra Division, that the University will examine the matter and inform him.

A counter-affidavit of Het Singh, Office Superintendent (Legal) of Dr. B.R. Ambedkar University, Agra has been filed in writ petition No. 13271 of 2011,

verifying that the petitioner has scored 228/460 in B.A. I with Roll No. 7910, Year 1975 and total 460/800 in B.A. II with Roll No. 15465, Year 1976.

The petitioner relies upon the mark-sheet maintained by the Examination Department of the University, in which his marks are shown to be 460/800 (total) in B.A. Examination (Ist and IInd Year)

The complainant-respondent No. 11 states that records have been tampered, as in the Confidential Section of the University, these marks are shown to be of 373/800 in the B.A. examination.

Prima facie, we find that the University itself has doubt over correctness of the marks, as it has two sets of records, maintained in their departments.

The University is appearing through Sanjay Kumar Singh. Let the affidavit of Registrar of the University be filed clarifying the doubt, and the reply given to the Commissioner Agra Division, Agra vide letter dated 29.9.2010, as to why the University is maintaining two set of marks. The affidavit of Registrar of the University will be filed in three weeks.

List on 23.2.2012.

8. On 22.3.2012 the Court passed an order in Writ A No. 13271 of 2011 directing the University to explain as to how the University is maintaining two sets of record, one in the confidential department and another set of same record in the examination department. The order is quoted as below:

Learned Counsel for the petitioner has filed rejoinder-affidavit, which is taken on record.

Shri Sanjay Kumar Singh, learned Counsel appearing for the Vice-Chancellor and Registrar of Dr. Bhimrao Ambedkar University, District Agra has filed an affidavit of Shri Prabhat Ranjan, Registrar of the University stating therein that there is clear interpolation in the tabulation chart maintained in the examination department. The University maintains two sets of record, one in the confidential department and another set of same record in the examination department. The record of the confidential department is stated to be correctly maintained. The record of examination department has been tempered and interpolated. He has also brought the original records of both the examination department and confidential department.

In paragraph 5 of the affidavit of Shri Prabhat Ranjan he has stated as follows:

That since in the aforesaid case 22.3.2012 was the date fixed by this Hon'ble Court, therefore the deponent has summoned the original tabulation chart relating to marks of B.A. I and II Year Examination of the petitioner from both the departments (Examination Department and Confidential Department of the University) and find that the earlier Registrar (Shri Shatrughan Singh) in his report dated 29.9.2010 has rightly mentioned that there is discrepancies in marks of the B.A. I and II Year Examination of the petitioner.

It is relevant to mention that marks (373/800) of B.A.-II of the petitioner mentioned in the tabulation chart of Confidential Department are correct and marks (460/800) of B.A.-II Year of the petitioner mentioned in the tabulation chart of Examination Department are incorrect, because in the tabulation chart of the Examination Department, interpolation has been made without any authority and there is clear cut evidence of eraser of marks by committing subsequent tempering. The aforesaid original records shall be produced before the Hon''ble Court for perusal of the same.

We have examined the original records with the help of the learned Counsel for the University. Shri Manvendra Nath Singh, learned Counsel for the petitioner has also looked into the original records and the marksheet of both the confidential department and examination department.

Let the Registrar of the University submit a report annexing therewith copy of the tabulation chart pointing out interpolation in the marks. Affidavit alongwith the report will be filed within two weeks. List this case on 12.4.2012.

9. Shri Sanjay Kumar Singh appearing for the University has filed an affidavit of Shri Prabhash Dwivedi, Deputy Registrar of Dr. B.R. Ambedkar University, Agra. Paragraphs 3 to 6 of this affidavit are relevant for the purposes of this case and are thus quoted as below:

3. That on 10.2.2012, a two-member inquiry committee was constituted in the matter. Inspite of making repeated requests and informing the order passed by this Hon''ble Court, they did not submit a conclusive inquiry report. From the attitude of the members of the inquiry committee, it is reflected that they were not inclined to submit conclusive report. Under the circumstances, the Registrar of the University has directed the deponent (Shri Prabhash Dwivedi, Deputy Registrar of the University) to inquire into the matter and submit the inquiry report positively by 10.4.2012. In compliance, the deponent has conducted the inquiry and submitted the inquiry report dated 10.4.2012 to the Registrar of the University. In the inquiry, following conclusions have been arrived at:

(i) Earlier report dated 29.9.2010 of the Ex. Registrar Shri Shatrughan Singh, submitted to the Commissioner, Agra Division, Agra in respect of the marks of B.A. Part-IInd of the petitioner is correct and accepted.

(ii) Interpolation has been made in the marks of B.A. Part-I of Dr. Vyom Shanker (petitioner).

(iii) The total of marks of B.A. Part-I of the petitioner was 188 out of 400, which has been increased and has become 228 out of 400, meaning thereby 40 marks have been increased through interpolation.

(iv) The total of marks of B.A. Part-II of the petitioner was 185 out of 400, which has been increased and has become 232 out of 400, meaning thereby 47 marks have been increased through interpolation.

(v) The grand total of marks of B.A. of the petitioner was 373 out of 800, which has been increased and has become 460 out of 800, meaning thereby total 87 marks have been increased through interpolation.

(vi) Tempering has been made in the charts of Examination Department without any signature and proper authorization by the competent authority in respect of the petitioner.

(vii) The marks of the petitioner as mentioned in the chart of the Confidential Department are his interpolated marks and the marks of the petitioner as mentioned in the chart of the Examination Department are his interpolated marks.

(viii) Since the tabulation chart regarding the marks of the petitioner had been prepared in the year 1975 and 1976 and since then several employees were Incharge of the Confidential Department as well as Examination Department from time to time and several employees are also working in both the aforesaid departments, therefore it is very difficult to ascertain that when such tampering/ interpolation took place and by whom, but it is true that the marks of the petitioner have been increased by making erasure and interpolation.

(ix) Since the benefit of tampering goes to the petitioner, therefore his active involvement and collusion with the employees of the University involved in increasing the marks by tampering is clearly established.

(x) The deponent has also made recommendation for lodging F.I.R. against the petitioner and other persons, involved in the matter with him. Photo-stat copy of the inquiry report dated 10.4.2012 is being filed herewith and marked as Annexure-1 to this affidavit.

4. That deponent is bringing on record the photo-state copy of the tabulation chart of the Confidential Department and Examination Department in respect of marks of B.A. Part-II of the petitioner before this Hon"ble Court as Annexures 2 and 3 to this affidavit.

5. That in view of the facts of the case and material evidence on record, the services of the petitioner based on interpolated marks is not liable to be continued further.

6. That the present Vice-Chancellor took the charge of Vice-Chancellor of the University on 7.1.2011 and present Registrar took the charge of Registrar of the University on 15.11.2011 and since then both have been making sincere efforts to stream line the working of the University. Recently as soon as such kind of malpractices came to the notice of the authorities of the University, F.I.Rs have been lodged against the persons indulging in malpractices like fabrication of charts, mark-sheets, mass copying etc. Under the circumstances, it is expedient in the interest of justice to get the entire matter investigated by any independent Investigating Agency like C.B.I., or C.B.C.I.D. etc.

10. The petitioner in order to be selected as a lecturer was required to have good academic record, for which at 55% or more marks are required in the examination. Since the petitioner did not have even 50% marks, he manipulated the marks of High School, Intermediate and B.A. examinations and further taking advantage of the filing of the forged certificates he also changed the date of birth entered in the High School certificate from 31.1.1953 to 31.1.1956.

11. It is submitted by Shri Ashok Khare, that the enquiry was not made from the U.P. High School and Intermediate Board regarding the genuineness of the mark-sheets of High School and Intermediate examinations, and that the University has not explained as to how it is maintaining two sets of records in respect of which the University itself was not sure about the manipulation. The benefit of doubt, therefore, must be given to the petitioner, and that until a complete enquiry is made into the circumstances, in which the tabulation sheets are maintained by the examination section of the University, the petitioner cannot be held guilty of suppressing facts and producing false mark-sheets. Shri Ashoke Khare submits that there was a dispute regarding seniority between the respondent No. 11 and the petitioner on which the respondent No. 11 has made false complaint against the petitioner. It is also stated by him that the respondent No. 11 had challenged the appointment of Shri P.K. Singh, who was appointed in the same department. In Writ Petition No. 6403 of 1990, an interim order was passed. Shri P.K. Singh also filed a Writ Petition No. 26808 of 1992, in which this Court passed an order that Dr. Hari Shanker Upadhyay will remain on the post till the selected persons join from the U.P. Higher Education Service Commission. Shri P.K. Singh had worked in the department from 1990 to 1995. After the judgment of this Court in this writ petition on 14.12.1995, the respondent No. 11 joined on the post and is claiming to be senior to the petitioner, giving rise to the present controversy.

12. We find that the Director of Higher Education constituted a Committee, and held an enquiry into the mark-sheets produced by the petitioner. The Enquiry Committee gave several opportunities to the petitioner to explain the allegations made against him. The members of the enquiry committee obtained confirmation from U.P. High School and Intermediate Board, Allahabad and examined the gazette of U.P. from which it was confirmed that both the High School and Intermediate mark-sheets were forged. The Official Gazette of 1973, confirmed the date of birth of the petitioner as 31.1.1953 and not 31.1.1956. From this report the Director of Higher Education was satisfied that the mark-sheets of High School and Intermediate examinations were forged and that the petitioner had increased the marks to become eligible to appear in the interviews in the Commission.

13. From the affidavit of Shri Prabhask Dwivedi, Deputy Registrar of Agra University we find that large scale manipulation has been made in the tabulation sheets maintained in the examination department of the University from which the marks-sheets have been issued. Fortunately, the University is also

maintaining the tabulation sheets in the confidential section, from which it has now been established that the petitioner had scored 373 marks out of 800 in B.A. examination. These mark were increased by manipulation in the tabulation sheets maintained in the examination department, to 460 out of 800. On an enquiry made by the Agra University, it was found that the corrections do not bear signatures or counter signatures of the competent authorities of the University. The University has requested the Court to direct the State Government to cause an enquiry through CBCID or CBI to discover the entire fraud in the examination department and to catch the culprits, who are guilty of manipulating the records.

14. The facts, as they have been established on record, clearly demonstrate that the petitioner manipulated the mark-sheets of High School and Intermediate examinations including the date of birth, which was established by the Enquiry Committee constituted by the Director of Education, Higher Education on which the recommendations were made to the Committee of Management to hold a departmental enquiry against the petitioner and to lodge a first information report against him. It is also established on record, beyond any doubt, from the affidavit of Shri Prabhash Dwivedi, Deputy Registrar that the mark-sheet of B.A. examination does not tally with the tabulation sheets maintained in the confidential department. The petitioner filed manipulated marks-sheets in the Higher Education Service Commission, on which he was selected and recommended and appointed as Lecturer in the College. He was not eligible to apply as he had not secured even 50% marks in any of the examinations.

15. We record our serious concern in the manner, in which the records are maintained by Dr. B.R. Ambedkar University, Agra. It is admitted to the University, that the records of the tabulation sheets maintained in the examination department bear large scale cuttings and over-writings, which are not signed or countersigned by the competent authorities and that these records do not tally with the records maintained in the confidential section. We thus direct that in case the University approaches the State Government, the State Government will direct the CBCID to conduct a detailed enquiry into the manipulation of records of the University and fix the responsibility of the persons, who were posted and were incharge of these records, and permitted such manipulations.

16. So far as the petitioner is concerned, it is proved on record, that he not only produced forged High School and Intermediate mark-sheets with false date of birth, but also got a mark-sheet from the University on the basis of manipulated tabulation sheets maintained by the examination department of the University, which the University itself found and has admitted to be manipulated. The University has clarified by its letter dated 29.9.2010 to the Commissioner, Agra Division, Agra which has now been verified by filing an affidavit of Deputy Registrar of the University that the petitioner had secured (on the basis of tabulation of mark-sheets kept in the confidential section) 185/400 in B.A. Part-I;

185/400 in B.A. Part-II (total 373/800).

17. With the aforesaid findings recorded on the basis of enquiries conducted by the Director of Higher Education, U.P. Allahabad, and the Registrar of Dr. B.R. Ambedkar University, Agra verified through the affidavit of Shri Prabhash Dwivedi, Deputy Registrar of the University, who had himself carried out the enquiry, that the petitioner is not entitled to any relief from the Court.

18. In the special facts and circumstances of the case, we direct that the entire salary drawn by the petitioner as Lecturer in Military Science in pursuance to appointment made in Shree Varshneya Mahavidyalaya, Aligarh will be recovered from him. The selection of the petitioner as Lecturer in Military Science by the U.P. Higher Education Service Commission, his recommendation for appointment as Lecturer and his appointment obtained by playing fraud which vitiates all benefits drawn by the perpetrator of such act is declared as null and void. He will not be allowed to serve in the College and his vacancy will be requisitioned and readvertised.

19. It will be open to the Principal of the College to lodge a first information report against him on which the police will cause a fresh investigation as the Director of Education (Higher Education) U.P. and the Registrar of the University has now confirmed after enquiry and by the affidavit of Deputy Registrar that the petitioner had produced false mark-sheets to secure appointment. It will also be open to the previous employer of petitioner to cause an enquiry into the appointment in B.D. College, Orai and to find out whether he had secured appointment in that College also on the basis of false mark-sheets where he had served for 18 years. Both the writ petitions are dismissed with costs of Rs. 10,000/- in each petition totalling Rs. 20,000/- to be paid by the petitioner and deposited in the account of High Court Legal Services Committee within a month. If the costs are not deposited within a month, the same shall be recovered from the petitioner by the District Magistrate, Aligarh and deposited with the High Court Legal Services Committee, with report to Registrar General, High Court within three months.