

(2015) 05 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7585 of 2008

Gurdeep Singh

APPELLANT

Vs

The University of Rajasthan and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0017

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Lokesh Sharma, for the Appellant; Ashish Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.

1. This writ petition has been filed by the petitioner Dr. Gurdeep Singh inter alia with the prayer that the respondents be directed to produce the original attendance sheet of practical examination of Medicine and Surgery held in the March, 1991 at S.P. Medical College, Bikaner, showing the signatures of the candidates and further the respondents be directed to treat the petitioner as having passed in MBBS Final Year Examination in the year 1991 and allow him to complete his remaining two and half months internship training programme.

2. Facts of the case are that petitioner was selected through Pre-Medical Test in the year 1985 and granted admission in S.P. Medical College, Bikaner. He completed his MBBS Part I and Part II which consist of three semesters in each part. He continued his studies in MBBS Final Year, the examination of which were conducted way back in the month of January and February, 1991.

3. According to the petitioner, he was declared successful in MBBS Final Year and result whereof was declared on 26.04.1991. The petitioner got an advance/duplicate copy of mark sheet thereof and was assured that the final/original mark sheet shall be sent later. Duplicate copy of mark sheet was given so that

the petitioner may not face any difficulty in internship. According to the petitioner, he submitted advance/duplicate copy of MBBS Final Year Examination to the office of the College for the purpose of internship training which commenced from 03.05.1991. The College issued an office order dated 07.05.1991 regarding the internship that internship was for duration of 12 months which has been bifurcated in five parts and was to be completed on 02.05.1992. The petitioner joined his internship at Primary Health Centre, Napaar District Bikaner from 07.05.1991. All of sudden, the petitioner was given a copy of confidential order dated 23.05.1991 informing that earlier order issued in favour of the petitioner regarding internship training is cancelled. He immediately contacted the Principal of the College to know the reasons of cancellation. The petitioner also rushed to Jaipur on 26.05.1991 and contacted the Registrar, University of Rajasthan. The Registrar directed the petitioner to contact Controller of Examination. He deposited requisite fee for obtaining duplicate copy of mark sheet. The petitioner also submitted a representation to the Registrar and Controller of Examination for delivery of the copy of his mark sheet. The Controller of Examination replied that University is not in a position to issue any mark sheet because some enquiry is likely to be ordered as one paper of tabulation register has been separated from the same and, therefore, it would take some time to grant original/duplicate mark sheet.

4. According to the petitioner, he was elected General Secretary of S.P. Medical College Students Association on 11.03.1989. Thereafter, no elections for Students Association were held for subsequent sessions. He participated and led in various movements and agitations for welfare of the students. He also exposed the misdeeds of Principal and various other Professors. He, for that reason, became target of the then Principal, Shri H.L. Arora and other Associates Professors Dr. M.M. Bagri, Dr. A.A. Sulemani, Dr. N.N. Purohit and some other professors. One Professor, Dr. D.S. Vyas, Head of the Pharmacology was allegedly beaten by medical students and First Information Report against some students was lodged. Thereafter, one student of Second Year MBBS namely Shri Anil Kumar Singh was ultimately expelled from College for five years and agitation was launched in the University by the students association under the leadership of the petitioner owing to which, Dr. M.M. Bagri and Dr. A.A. Sulemani developed personal enmity with the petitioner. Both of them conspired and colluded to involve the petitioner in the controversy of result of final year of MBBS examination. These professors allegedly awarded zero marks in the theory papers of Medicines and Surgery in Part B Section which was assessed by these internal examiners whereas external examiners awarded 24 marks in Section A of Medicine Paper I and 25 marks in Section A of Medicine Part II. Similarly, in Section A, Surgery Paper I and Section A Surgery Paper II, 16 and 21 marks have been awarded in the answer books by external examiners. Dr. Bagri and Dr. Sulemani were also annoyed with the petitioner because in the month of December, 1989, the students boycotted the function at the call of the petitioner. Besides, the petitioner lodged some allegations against them.

5. The petitioner filed Writ Petition No. 3243/1991 before this Court narrating all the aforesaid facts in which the respondents took a strange plea that the petitioner was allowed to join compulsory internship of one year on the basis of forged mark sheet. The petitioner submitted rejoinder and denied allegation of forgery and fraud. He submitted that he was never been intimated regarding appointment of high level committee to go into such allegations. He also submitted that he was not asked to appear before such committee nor any show cause notice was issued to him regarding result of MBBS Final Year Examination. In that writ petition, the petitioner demanded original attendance sheets of practical examination showing the signature of all the persons who were present; original vouchers of remuneration bills for practical work of the internal as well as external examiners of MBBS Examination, 1990 held in 1991; Answer sheets of theory examination of the petitioner of all the subjects along with main as well as supplementary answer sheets; record showing the issue of supplementary answer sheets to the petitioner; original award list prepared by the Internal/ External Examiner; Tabulation register for the aforesaid examinations; Name of employees/officers involved in the preparation of the Tabulation register and persons responsible for safe custody of answer sheets, award list of tabulation register; counter folio of mark sheets dated 26.04.1991 and 01.05.1991 as well as name of employees and officers who were on duty on these two days and have written and checked and verified these mark sheets; report of enquiry committee and Affidavit of the persons responsible for preparation of mark sheets dated 26.04.1991 and 01.05.1991. Writ petition was dismissed by this Court vide order dated 06.02.1992 with cost.

6. Mr. Lokesh Sharma, learned counsel for the petitioner has submitted that aforesaid writ petition was dismissed in the presence of counsel for the petitioner. This Court referred to certain documents or records produced before the Court which were not placed on record of the Court, therefore, the petitioner or his counsel could not come to know about such documents or record. The petitioner filed D.B. Special Appeal before Division Bench of this Court. In the meantime, the Single Bench of this Court in Dr. Rongsanmar Long Kumar v. University of Rajasthan decided on 27.07.1995 held that by virtue of Ordinance 169-H(2) it is only Syndicate of the University which can order for necessary correction in the mark sheet/result. In that view of the matter, the petitioner did not press the appeal and appeal was dismissed as not pressed as the petitioner wanted to approach Syndicate. The petitioner approached Syndicate which constituted a committee presided by Dr. G. Pal, which after examination the representation of the petitioner as per Ordinance 169-H(2), also recommended that answer book of Section B of the petitioner of Medicine Paper I and II and Surgery Paper I and II should be got revaluated after taking permission from the Vice Chancellor. It was also made clear that a reply of the letter dated 08.02.1997 written by the University for sending the attendance sheet for medicine and surgery practical examination held in March, 1991 to the Principal, S.P. Medical College be awaited.

7. When no result came out of the direction of the aforesaid committee, the

petitioner again approached this Court by filing Writ Petition No. 75/2007. That writ petition was decided vide order dated 06.08.2007 with the direction to respondents to move an application before Additional Chief Judicial Magistrate (S.D.) No. 4, Jaipur for getting the answer books relating to the petitioner for examining the paper I and II of Medicine and Paper I and II of Surgery and after examination the same, shall prepare Tabulation and after awarding marks, record deposited by the University before the Additional Chief Judicial Magistrate (SD) No. 4, Jaipur be sent back and thereafter marks awarded to the petitioner in the aforesaid papers will be considered by the University. It was also directed that if the petitioner is declared pass, the petitioner may be awarded degree of MBBS and be allowed to complete his remaining 21/2 months internship training programme.

8. Learned counsel for the petitioner has submitted that despite specific direction of this Court, the respondents did not make compliance. The petitioner had to serve legal notice and then filed contempt petition. During pendency of contempt petition, respondents filed revised mark sheet of MBBS examination held in January, 1991 after re-evaluation. In that mark sheet, marks of Paper I and II in Medicine and Paper I and II in Surgery were shown same marks which the petitioner obtained at the first time in the mark sheet issued on 01.05.1991. Revised mark sheet issued on 19th September, 1991, the marks obtained in Part B of Paper I of Medicine shown as 02 and in Part B of Paper II of Medicine marks were shown as 00 which shows the malafide. The University in its another malafide action shown the petitioner absent in practical examination of Medicine and Surgery whereas earlier the petitioner was declared pass in practical examination which is evident from Annexure-1.

9. Mr. Lokesh Sharma, learned counsel for the petitioner has argued that the respondents have deliberately not produced the original attendance sheet showing the signatures of all persons, who were present in the practical examination. However, they have produced an attendance sheet in the earlier writ petition along with the reply in which the petitioner had been shown absent. In the aforesaid sheet, three persons were shown absent along with the petitioner. The petitioner obtained a photocopy of remuneration bill of medicine practical as well as theory in which it has been shown that two persons were absent, i.e., Miss Anju Gupta Roll No. 288 and Mr. Mahendra Kumar, Roll 326. In the aforesaid attendance sheet, the petitioner was shown present, but his presence was deliberately omitted and he was shown absent. External examiners leave the examination center soon after conducting practical and viva-voice examination and the result is prepared and sent by the internal examiners to the University sometimes within 2-3 weeks, which is evident from observation made by Deputy Registrar, Secrecy First, letter dated 19.09.2000 sent to S.M.S. Medical College, Jaipur. Learned counsel for the petitioner has cited provisions of Ordinance 152 of the Hand Book of University of Rajasthan, 1982, 1985 and 1990 which provides that leaving the examination room, before the expiry of half an hour after the commencement of the examination or leaving the examination

room without obtaining the permission of the invigilator or without handing over the answers book to the invigilator or without signing the attendance sheet would not be permissible. In Clause 4 of the said Ordinance it is provided that without signing the attendance sheet, examination in the paper concerned may be cancelled. In view of mandate provision, the respondents were duty bound to obtain signatures of the candidates. If the answer sheet is produced, it would be evident that the petitioner had appeared in the practical examination and his presence has wrongly been shown as absent. The respondents have made false averments that the petitioner was absent. The petitioner filed specific documents with affidavit saying that he appeared in the written as well as practical examinations, but the respondents failed to rebut those documents. It is, therefore, prayed that the writ petition be allowed and the relief as prayed by the petitioner hereinabove be granted.

10. Mr. Ashish Sharma and Mr. Rohit Mishra, learned counsels appearing on behalf of the University of Rajasthan and other respondents have opposed the writ petition and submitted that writ petition of the petitioner originally filed was dismissed on merits and third writ petition is not maintainable. Even then, the respondents, in compliance of the judgment passed by this Court, have again evaluated answers sheets of the petitioner in the relevant subjects. Inviting attention of the Court towards affidavit filed by Nishkam Diwakar, Registrar, University of Rajasthan, Jaipur dated 09.09.2011, learned counsel has submitted that the University only appoints the examiners to conduct practical examination and has no role in the marks given in the practical examination. University has no role in preparation of attendance sheet of the candidates appearing for practical examination. If any candidate is shown absent in the practical examination, then he will be deemed as fail. Therefore, the petitioner was declared fail in the practical examination by the University.

11. The factum of petitioner's absence is proven by the attendance sheet, which is already placed on record with the reply to writ petition. The petitioner cannot now dispute correctness of the attendance sheet prepared by S.P. Medical College, Bikaner. His allegation is that he was present in the practical examination; however, due to purported vendetta of the petitioner with the staff of the Medical College, Bikaner, he was declared absent in the attendance sheet. This Court would loath to entertain disputed questions of facts in the writ petition which can only be decided by civil court in full blown trial. Subsequent to declaration of the petitioner as "Failed", the petitioner approached S.P. Medical College, Bikaner for internship on the basis of forged/tempered mark sheet and Principal and Controller of S.P. Medical College, Bikaner, Dr. H.L. Arora vide letter dated 03.05.1991 asked the University of Rajasthan that as to how the petitioner was declared pass when vide result dated 26.04.1991 he was declared fail. In the said letter also, the Principal invited attention of the University towards the fact that the petitioner did not appear in the practical examination for the subjects of Medicine and Surgery. The Principal again vide letter dated 10.05.1991 asked the University about the discrepancy of the result.

12. In fact, the Principal in his letter mentioned that the petitioner verbally admitted before him that he was not present in the practical examinations and appeared at Medical College, Udaipur for the practical examinations. The said fact was got verified from the Principal of Udaipur Medical College, who in response to it stated that the petitioner did not appear at Udaipur Medical College for the practical examination. Declarations obtained from the examiners to this effect have been placed on record. It is argued that the University constituted a committee to find out correct facts and thereafter asked S.P. Medical College, Bikaner to provide photostat copy of attendance sheet vide letter dated 02.07.1991. Thereafter, S.P. Medical College, vide letter dated 08.07.1991 provided photostat copy of attendance sheet to the University of Rajasthan, which has been placed on record.

13. Even otherwise, attendance sheets were not required by the University at the time of preparation of result and the result used to be prepared solely on the basis of award list being prepared and provided by the Medical Colleges to the University. The original award list, answer books and tabulation register are at present lying in the custody of Additional Chief Judicial Magistrate (SD) No. 4, Jaipur City, Jaipur. The petitioner has failed to produce any document on record which could prove the fact that he did appear in the practical examination for the subjects of Medicine and Surgery. Learned counsel for the University has submitted that these facts have been again reiterated by the University of Rajasthan in the subsequent Affidavit dated 10.10.2011 that attendance sheet for the practical examination was not with the University and the same was with the S.P. Medical College, Bikaner. Copy of original attendance sheet for the practical examination of medicine and surgery subjects along with necessary documents were placed on record with the said affidavit in compliance of order of this Court dated 21.09.2011. Learned counsel has, therefore, submitted that writ petition be dismissed.

14. I have given my thoughtful consideration to rival submissions and perused the material on record.

15. All the arguments, which the petitioner has raised in the present writ petition, were raised in that writ petition. As rightly argued by learned counsel for the respondents, first writ petition filed by the petitioner was dismissed on merits as far as back on 06.02.1992. Submission of the petitioner that since that writ petition was decided in absence of the petitioner's counsel, cannot help him because the petitioner filed appeal against that decision before Division Bench of this Court and did not press that appeal. Dismissal of the appeal has virtually given finality to the judgment of the Single Bench. Even if decision of second writ petition filed by the petitioner is considered, that decision has also been complied with by the respondents, who after obtaining copies of the answer sheets of relevant subjects, got the same re-evaluated and the marks obtained by the petitioner did not find any change. Third writ petition on the same subject matter cannot be maintained by the petitioner.

16. On merits also, Ordinance 152, on which heavy reliance has been placed by the petitioner, provides for the conditions or provisions with regard to disorderly conduct. It has been provided therein that leaving the examination room before the expiry of half an hour after the commencement of the examination or without obtaining the permission of the Invigilator or without handing over the answer book to the Invigilator or without signing the attendance sheet shall be construed as disorderly conduct. Sub-clause (e) of Clause 4 of Ordinance 152 provides that if a candidate leaves the examination room before the expiry of half an hour after the commencement of the examination or without obtaining the permission of the Invigilator or without handing over the answer book to the Invigilator or without signing the attendance sheet, his examination in the paper concerned may be cancelled. Practical examination has been separately mentioned in Sub-clause (f) immediately below Sub-clause (e). In any case, this issue could not have been raised any further because the respondents have been repeatedly asserting that in the attendance sheet of practical examination of the candidates, the petitioner along with two other candidates, was shown absent. Besides, criminal case has also been registered against the petitioner, which is pending trial, on the allegation of committing forgery with record of University and despite declaring the petitioner fail, producing forged mark sheet to attend the internship. All these highly disputed questions of facts cannot be gone into this writ petition, which is third in series of the same cause of action and the same cannot be entertained by this Court.

17. In view of above, there is no merit in this writ petition and the same is accordingly dismissed.