
(2015) 04 CHH CK 0001
In the Chhattisgarh High Court
Case No : WPC No. 7380 of 2010

Harjeet Singh Chawla

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (2015) 04 CHH CK 0001

Hon'ble Judges : Prashant Kumar Mishra, J.

Bench : Single Bench

Advocate : Manoj Paranjpe, for the Appellant; S. Rathore, Deputy Govt. Advocate, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Prashant Kumar Mishra, J.—The petitioner, who appeared in the LLM examination conducted by respondent No. 2 Pt. Ravishankar Shukla University, Raipur (Henceforth "the University") in 2010, has preferred this writ petition seeking quashment of second mark sheet of LLM (Part-II) (Annexure-P/2) with reduced marks; for an enquiry by an independent agency and decision after affording opportunity of hearing to the petitioner and to further direct the respondents to continue the services of the petitioner as part time teacher and permit him to appear in the Ph.D. Examination.

2. Facts of the case, briefly stated, are that after completing his LLB degree, the petitioner studied LLM course in the respondent university. He cleared LLM Examination in the year 2010 with 57.33% marks i.e. 212 out of 300 and was satisfied with his performance, as he was eligible to be registered for PhD having secured more than 55% marks. The petitioner never applied for revaluation, therefore, he was shocked to receive information that in the revaluation of answer sheets, he has secured 54.33% marks i.e. 183 out of 300. The petitioner immediately moved an application before the Vice Chancellor bringing into his notice that the petitioner never applied for revaluation and someone else has

conspired to ruin his career. The petitioner was threatened that he would not be permitted to appear in the written test scheduled to take place on 15.12.2010. In the revaluation, the marks secured by the petitioner in Tort subject i.e. 65/100 was reduced to 50/100 whereas in Tort special topic subject, his marks were reduced from 72/100 to 58/100.

3. The petitioner thereafter applied under the Right to Information Act as to how revaluation has been conducted without any application moved by him and what are the documents annexed with the application for revaluation. The University supplied copy of the receipt of revaluation fee and the application for revaluation of answer scripts purportedly signed by the petitioner. The petitioner again moved an application before the Vice Chancellor categorically stating that someone has forged his signature on the application, however, when no favourable action was taken despite meeting of the Executive Committee, the petitioner craved for opportunity of hearing before taking any action in the matter. It was disclosed by the petitioner that one CL Patel, Head of the Law Department, is having inimical relations with the petitioner because the petitioner has deposed against him in a complaint case lodged by one Rajendra Prasad Gendre, therefore, the petitioner apprehends that he has been subjected to some foul play.

4. On the basis of above factual background, Shri Paranjpe, learned counsel for the petitioner would submit that the petitioner having never applied for revaluation, second/revalued mark sheet deserves to be quashed and declared non est.

5. Shri Choubey, learned counsel for the respondent University would argue that the University has conducted revaluation because there was an application for revaluation in the name of the petitioner and the University cannot be held liable, as the University has bonafidely proceeded to get the answer sheet revalued. He would refer to the judgments in the matters of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, , Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, , H.P. Public Service Commission Vs. Mukesh Thakur and Another, , Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, .

6. The germane issue around which the fate of writ petition revolves being the issue as to whether the petitioner had at all moved any application for revaluation, this Court had passed different interim orders in this writ petition. Some of them needs mention and are referred infra.

7. On 2.8.2011, this Court directed the Secretary, Department of Higher Education, Government of Chhattisgarh to consider the disputed claims made by the parties and submit a report after affording proper opportunity of hearing to the parties. The Secretary submitted a report mentioning that looking to the

nature of controversy, the report from hand writing expert would be necessary. On 3.7.2012, this Court directed the State Examiner of questioned documents to examine the petitioner's signature on the revaluation application viz a viz his admitted signatures and submit a report. The report submitted by the State Examiner of questioned documents on 17.8.2012 established that revaluation application is not signed by the petitioner. On 6.2.2013 and 23.10.2013, this Court again directed the State Examiner to examine the handwriting available in the application form purportedly written by the petitioner. The State Examiner of questioned documents in its report dated 8.8.2014 opined that the author who has filled in revaluation form is different than the author who has written admitted handwriting. However, the expert did not accord any definite opinion.

8. The report submitted by the expert has established that the petitioner has neither signed the revaluation form nor has filled in the same. Although the petitioner has prayed for an enquiry and proper action against the person who has filled in the form, in this writ petition under Article 226 of the Constitution of India, it would be difficult to embark on an enquiry as to who else could have submitted the application forging the petitioner's signature.

9. Shri Choubey, has strenuously urged that once revaluation has been conducted, result thereof cannot be cancelled unless the revaluation itself is faulty.

10. However, the question is not about correctness of the revaluation, but the question here is - whether a student can be compelled to accept the result of revaluation for which he had never applied. It is entirely a different matter as to who conspired against the petitioner to defraud him and to ruin his career, but the fact remains that the petitioner never applied for revaluation. It is not the case of the University that on account of some complaint against the petitioner, the University on its own got the answer sheets revalued. Had it been so, the jurisdiction of the Court can well be curtailed in view of the nature of academic exercise conducted by the experts. However, when such is not the case here, I am of the considered opinion that a person cannot be compelled to swallow the adverse result of exercise for which he never applied nor consented. It is a fraud on the petitioner and it is settled law that fraud vitiates all the consequential action.

11. In the matter of Union of India (UOI) and Others Vs. Ramesh Gandhi, , the Supreme Court referred its earlier decisions in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, and held in paragraphs 25, 26 and 27 thus:-

"25. This Court on more than one occasion held that fraud vitiates everything including judicial acts. In S.P. Chengalvaraya Naidu v. Jagannath, this Court observed as follows: (SCC p. 2, para 1)

"1. "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief

Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of the law. Such a judgment/decre--by the first court or by the highest court--has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

(emphasis supplied)

26. Again in *A.V. Papayya Sastry v. Govt. of A.P.* this Court reviewed the law on this position and reiterated the principle. In paras 38 and 39 it was held as follows: (SCC pp. 236-37)

"38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the applicant plaintiff which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.

27. If a judgment obtained by playing fraud on the court is a nullity and is to be treated as non est by every court, superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the court by not disclosing the necessary facts relevant for the adjudication of the controversy before the court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest."

12. It would be apt to observe that in the original result, the petitioner had secured 57.33% marks whereas after revaluation he was shown to have secured 54.33% marks. In the field of higher education, a candidate for PhD is required to obtain minimum 55% marks. Thus, reduced marks after the subject

reevaluation would adversely affect the career prospects of the petitioner.

13. The judgments relied by learned counsel for the University never dealt with the facts situation with which this Court is faced. Thus, the judgments are not applicable on the facts of the present case.

14. For the foregoing, result of reevaluation and the subsequent revalued mark sheet with reduced marks (Annexure-P/2) is quashed.

15. The writ petition is allowed to the extent indicated above.