

(2006) 12 P&H CK 0056
In the Punjab And Haryana At Chandigarh

Harsimrat Singh and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Citation : AIR 2007 P&H 70 : (2007) 147 PLR 730 : (2007) 1 RCR(Civil) 821

Hon'ble Judges : Viney Mittal, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Viney Mittal, J.—The petitioners (14 in number) have challenged the order dated May 16, 2006, whereby the Punjab Technical University, respondent No. 2 has disqualified the petitioners from appearing in any of the examinations of the University for a period of two semesters on account of unfair means adopted by them. Addition ally, the orders dated November 8/13, 2006 (Annexure P. 8), have also been impugned by the petitioners, whereby even on an appeal filed by the petitioners, the disqualification of the petitioners has been reiterated. The petitioners have additionally sought directions against respondent-University to declare their result of the examination conducted in December 2005/ January 2006 and also permit them to appear in further examinations.

2. The petitioners are students of B. Tech (IT). B. Tech (MIC), B. Tech (E&CE) and were pursuing their studies in Amritsar College of Engineering and Technology. Amritsar, respondent No. 4. While appearing in their examinations in December 2005/January 2006, a flying squad of the University conducted a raid on the examination center, where the petitioners were appearing in their examinations. The petitioners were found in possession of a mobile phone, each, which was found to hidden in the turban of each one of the petitioners. Proceedings under Chapter XVI of the University Regulations were initiated against the petitioners. After holding the requisite enquiry, vide an order dated May 12. 2006 (passed separately against each of the petitioners), the charge of employing unfair means against each of the petitioners was held to be proved

and consequently all the petitioners were disqualified for a period of two semesters. The decision of the Committee was communicated to each of the petitioners separately, through orders Annexure P. 1, whereby It was communicated that the result of the candidate stands cancelled for all the subjects in which he had appeared in December 2005/January 2006 and that he was debarred from appearing in any subsequent examinations for a period of two regular semesters. The petitioners were also informed that they may appear in examination in December 2006, for which they were eligible in December 2005. A communication addressed to Marsimral Singh, petitioner No. 1 has been appended as Annexure P. 1. Similar communications have been addressed to other petitioners.

3. The petitioners had on an earlier occasion approached this Court through CWP No. 8080 of 2006. At that point of time, the grievance made was that the orders in question, disqualifying the petitioners had been passed on May 16, 2006 and the examinations of the next semester were due to be held on May 25, 2006. Thus, a plea was raised that even sufficient time was not available with the petitioners so that they could challenge the aforesaid orders by way of a statutory appeal. The said writ petition filed by the petitioners was disposed of by this Court vide orders dated May 23, 2006, A liberty was granted to the petitioners to file an appeal within one week of the dated the receipt of the order. In the meantime, the petitioners were permitted to appear in the next semester examination provisionally subject to the decision of the appellate authority. It appears on the record that In spite of the copy of the order being available to the petitioners, having been supplied under the signatures of Bench Secretary, the petitioners chose to file the appeal with some delay. The said appeal was consequently not entertained. In these circumstances, the petitioners approached this Court through a contempt petition being COCP No. 1112 of 2006. The said contempt petition was disposed of by this Court on October 12, 2006 noticing that the petitioners had themselves filed the appeal after some delay. However, keeping in view the interest of justice, the Contempt Court allowed the petitioners to file an appeal and directed the appellate authority to consider the appeal on merits.

4. In pursuance to the aforesaid directions issued by this Court in the aforesaid contempt petition, the matter has been reconsidered by the appellate authority. After reconsideration, vide orders dated November 8, 2006, the claim of the petitioners has been rejected. The orders passed by the Unfair Means Committee have been reiterated and the disqualification of the petitioners has been maintained.

5. In pursuance to the issuance of notice of motion in the present case, the respondent-University has put in appearance.

6. Keeping in view the urgency claimed by the petitioners on account of examination scheduled to commence from next week, the University counsel has produced before us the original record for our perusal. On the basis of the

original record, the learned Counsel appearing for the University has defended the action taken against the petitioners.

7. We have heard the learned Counsel appearing for the parties at some length and have also minutely perused the original record pertaining to each one of the petitioners. As a matter of fact, the aforesaid record has been made available for perusal to the learned Counsel appearing for the petitioners as well.

8. Shri Hemant Saini, the learned Counsel appearing for the petitioners has contended that the allegations levelled against the petitioners, qua the recovery of a mobile phone from each one of them, are wholly concocted and a made-up story. According to the learned Counsel, the petitioners have been involved in case of unfair means on account of inimical attitude of the University Authorities and for extraneous considerations. The learned Counsel has also argued that even if it be taken that the aforesaid mobile phones were recovered from the petitioners, still the possession of a mobile phone by itself could not be treated to be a misconduct or adoption of unfair means by a candidate. In this regard, the learned Counsel has referred to Regulation 9 of the Regulations providing for prevention, punishment and procedure concerning cases of misconduct and use of unfair means. Regulation 9 of the aforesaid Regulations reads asunder:

9. If during a University examination, a candidate is found having in his/her possession or accessible to him/her papers, books, notes or other material, which do not relate to the subject of the examination of the day and which could not possibly be of any assistance to him/her, no action shall be taken against him/her. The Superintendent shall nevertheless promptly report the case to the Registrar and all the papers shall be sent along with the report."

9. The learned Counsel appearing for the petitioners has also pointed that UMC Committee, while passing the orders (Annexure P. 8), had itself noticed that the members of the Flying Squad had not signed the recovery memos which could indicate that any recovery of mobile phones were recovered from the petitioners and this aspect had even been noticed by the UMC Committee. On that basis, Shri Saini has argued that the aforesaid fact itself casts a serious doubt upon the allegations levelled against the petitioners. In addition, Shri Saini has pointed out from the original record to the statements of Sourabh Dogra and Ms. Anju Viridi who were Centre Superintendent and Invigilator, respectively, at the time of conduct of the examination in question. On the basis of the aforesaid statements, the learned Counsel has argued that the aforesaid witnesses had deposed before the UMC Committee that they had signed the recovery memos later on, on the asking of the University Authorities. On the strength of the aforesaid statements, the learned Counsel maintains that the case against the petitioners was totally false and concocted and, therefore, the petitioners were liable to be exonerated from the disqualification ordered by the University.

10. On the other hand, Shri Anupam Gupta, the learned Counsel appearing for the respondent-University has brought to our notice the order dated May 12,

2006, originally passed by the Unfair Means Committee, where the petitioners were found to be involved in unfair means cases and were ordered to be disqualified. Shri Gupta has pointed out that UMC Committee comprised of a Retd. District and Sessions Judge and a Retd. Additional Director, TBRL. Shri Gupta has also maintained that the aforesaid persons, who were persons of repute, did not have personal enmity against the petitioners and had held an independent enquiry into the whole matter. According to the learned Counsel, the allegations against the University Authorities are merely an afterthought and have been levelled with a view to challenge the orders of disqualification. Shri Gupta has also maintained that the flying squad was headed by Shri Balkar Singh, Deputy Dean (Examinations) of the University and had been constituted by Dr. Siby John, Dean (Examinations) of the University. Shri Gupta has, thus, argued that the conduct of the petitioners, while appearing in the examination, had been examined by the UMC Committee twice. Earlier, on May 12, 2006, when the charge against the petitioners was proved and they were disqualified. Again, on November 8, 2006, when the matter was reconsidered, on an appeal filed by the petitioners. On both the occasions, the Committee had reached the identical conclusions and had held that the petitioners were involved in carrying of the mobile phones, which were stealthily hidden in their turbans by the petitioners. Although, it has been conceded by Shri Gupta that Shri Sourabh Dogra, Centre Superintendent and Ms. Anju Viridi, the invigilator, had not supported the recovery of the mobile phones from the petitioners, in their statements, which were recorded by the UMC Committee, in April 2006, but obviously the aforesaid person being employed with the College respondent No. 4 were supporting the College and its students.

11. We have duly considered the rival contentions of the learned Counsel for the parties.

12. We find that the various pleas raised by the petitioners in challenging the disqualification imposed upon them by the University and also in contesting the charge of UMC against them, are wholly without any basis.

13. At this stage, we may notice with advantage the observations made by the UMC Committee in its original order dated May 12, 2006.

We have carefully considered the statements of all these witnesses and we have examined the record and the various reports. It goes without saying that Sh. Sourabh Dogra, Centre Supdt. and the Invigilator have tried to disown the recovery of the mobile in their presence. They have tried to convey that every thing was done by the flying squad and they complied with the directions of the flying squad in the matter of forwarding the reports. The Centre Supdt. and the Invigilator also explain that the reports in question were completed later on after going to the University on the asking of the University Authorities.

We find that the relevant form which was sent by the Centre Supdt. regarding this case bears the signatures of Sh. Saurabh Dogra. The Centre Supdt. claimed

that at a later stage after going to the University he had completed the details on the asking of the University Authorities. The note Exhibit P-1 sent by the Centre Supdt., however, mentioned that during the physical search of the students by the members of the flying squad the mobile phones were recovered from the particular students mentioned in P 1. It is further mentioned therein that a jammer in working order" had been put in the room from which the mobiles were detected and the students had refused to sign the UMC forms. We are left with the statements of Sh. Balkar Singh, Deputy Dean. He asserts that the detection was made from this particular candidate. He had gone for detection on the basis of some precise information and the candidate admits that he had a mobile phone which had been kept on the table. If the mobile had been kept outside then there was no reason for Sh. Balkar Singh to involve this candidate falsely in this case. He has no ill-will against this candidate and there is no good reason to disbelieve him. Sh. Balkar Singh has also placed on record copy of confidential report which he had made to the University Authorities. It is mentioned that the Principal of the College had claimed that a jammer had been installed in the hall but it was found that the jammer was not working and as such the Supdt. was directed to prepare the UMCs. In the circumstances we conclude that the candidate did have in his possession a mobile which could be made use of for the purpose of getting assistance in the course of examination and as such he violated regulation 10(a). We hold him guilty accordingly. In the light of regulation 11.1 of the Regulations supra, we direct that this candidate shall remain disqualified for a period of two semesters. He be informed.

14. Statement of Shri Balkar Singh, Deputy Dean (Examinations) recorded by UMC Committee may be noticed as under:

I was called at 12.00 O'clock on 28-12-2005 by Dean (Examinations) Dr. Siby John. He gave me a list of some candidates roll numbers of ACET, Amritsar and asked me to go as a Flying Squad. He deputed Sh. S. S. Walia with me. We went to the Centre of Examination. The Dean of Examinations had also advised me that there was a complaint against particular students that they were using mobile phones which they had kept in their turbans while in the examination hall. We reached at 3.00 p. m and in the company of Centre Supdt. went to the examination hall after giving a direction to close all the gates. The candidate present today was also one of the candidates against whom there was complaint. We asked the invigilator to identify the specific roll numbers. I asked this candidate to give the mobile, which he had in his turban. The candidate denied. Then I felt the turban of the candidate and I felt that there was a mobile. I asked the candidate to take out the mobile from his turban and he stated that he would have to remove his turban and he would like to go out. This candidate then took out the mobile from his turban and gave the same to me in the corridor outside the examination hall. I gave a direction to the Centre Supdt. to prepare a UMC against this candidate after getting from the candidate his answer book and giving him a fresh answer sheet. The mobile phone was kept by me and the same was deposited with the office of the University. I also made confidential

report to the Dean of the examinations copy of which is Exhibit C-1.

15. Although, as noticed above, the Centre Superintendent Sourabh Dorga and the invigilator Anju Virdhi have in their statements disowned the recovery of mobile phones from the petitioners, but as noticed by the UMC Committee also, it is apparent that the said witnesses later on resiled from the incident and the original recoveries only with a view to support the College in which they were employed and with a view to support the petitioners, who were students of the College, respondent No. 4. As a matter of fact, the UMC Committee in its original report dated May 12, 2006 has commented upon the conduct of the said two persons as follow:

Before parting with this discussion, we feel that the Centre Supdt. and the supervisory staff have tried to disown every thing which in fact must have happened in their very presence. We feel that for some ulterior purpose they have tried to suppress the true facts which even go against their reports in writing which they claimed to have completed later on. It is difficult to believe that these witnesses would write anything in their report on the direction of the University authorities. We are not ready to accept the explanation given by the Centre Supdt. and the Invigilator.

16. At this stage, we may also take note of an argument raised by Shri Hemant Saini, the learned Counsel appearing for the petitioners with regard to the provisions of Regulation 9. Shri Saini has argued that even if it be taken that the mobile phones were recovered from the petitioners, still that by itself could not be treated to be a case of misconduct or in any case the case of unfair means.

17. We have duly considered the aforesaid Regulation 9 but find that the interpretation suggested by the learned Counsel for the petitioners cannot be accepted.

18. As a matter of fact, the reliance placed by the learned Counsel for the petitioners on Regulation 9 is wholly misplaced. As a matter of fact, the provisions of Regulation 10(a) are duly attracted to the case of the petitioners, which read as under:

10(a). Being in possession in the examination hall, of papers, books, notes or writing on any part of the candidate's clothes or any writing on his /her body or table or desk or on a foot rule and/or instruments like set squares, protractors, slide rules or any other material with notes or hints written thereon or any such material accessible to him/her which may be, or intended to be of possible help to the candidate in the examination.

19. It has already been held that the petitioners were found in possession of mobile phones while appearing in their examinations and the aforesaid phones had been kept concealed in their turbans. It is apparent that the petitioners had a mala fide intention to carry the aforesaid instruments and, therefore, it could always be taken that they were in possession of such material which was

accessible to them and which was intended to be of possible help to them in the examination. The case of the petitioner is squarely covered under the aforesaid Regulation 10(a).

20. In view of the aforesaid discussion, we find no merit in the present petition and the same is dismissed.

21. Before parting with this order, we may also like to comment that the practice of adopting unfair means by some unscrupulous institutions and candidates appearing in the examinations has reached alarming proportions. The case in hand reflects a situation where a large number of persons, studying in one College, have been charged with the aforesaid misconduct. The College staff, who were supposed to be the guardians of law for conducting fair examination, seem to have succumbed to the pressure of the College or the students. In these circumstances, the University should take up the matter to its logical end and take such appropriate action, as may be required in order to avoid recurrence of any such incident in future.

22. A copy of this order be given dasti on payment of charges for urgent copies.