
(2000) 08 AHC CK 0120
In the Allahabad High Court
Case No : Special Appeal No. 864 of 1998

Jayanti Prasad Dwivedi

APPELLANT

Vs

University of Allahabad and others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Citation : AIR 2000 All 365 : (2000) 4 AWC 2742 : (2000) 3 UPLBEC 2760

Hon'ble Judges : S.K. Sen, C.J;G.P. Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Sen, C.J.—This special appeal is directed against the judgment and order dated 17.8.1998 of a learned single Judge by which Writ Petition No. 43786 of 1997 filed by the appellant was dismissed.

2. The appellant appeared in LL.B. IInd Year examination of the year 1993, which was held in the year 1997. It is the case of the University that while appearing in the IVth paper on 9.4.1997, the appellant was caught red-handed and some printed material relating to the aforesaid paper was seized from his possession. A notice was given to the appellant and. thereafter, by the order dated 8.12.1997. the examination of LL.B. IInd year of the year 1993 in which he was appearing in 1997 was cancelled. The appellant preferred the writ petition challenging the aforesaid decision dated 8.12.1997 of the University but the same was dismissed by a learned single Judge on 17.8.1998.

3. Learned counsel for the appellant has submitted that the impugned order dated 8.12.1997 has been passed by the University without Issuing any show cause notice and without giving him any opportunity of hearing. The judgment and order of the learned single Judge does not show that this point had been urged by the appellant at the time of hearing of the writ petition. On the contrary, what was urged before the learned single Judge was that the material which is alleged to have been seized from the possession of the appellant had

not been used by him during the course of the examination. The learned single Judge was of the opinion that the use of the material would not make any difference as the mere possession of the material relating to the subject was sufficient to prove the charge of using unfairmeans and on this finding, dismissed the writ petition. However, as the question of career of a student is involved, we permitted the learned counsel to urge the contention regarding not giving of an opportunity to the appellant to show cause against the charge levelled against him.

4. The specific case pleaded in para 9 of the writ petition is that neither any charge-sheet was given nor any show cause notice was served upon the appellant and, as such, there was violation of principles of natural justice. It is stated in paras 9, 10, 13 and 14 of the counter-affidavit filed on behalf of the respondents that the appellant was given a show cause notice in the examination hall itself but as he refused to accept the same and sign in the relevant form, the same was sent to him by registered post on 6.5.1997 at his local address. It is further stated that since the appellant did not submit any reply to" the show cause notice, the University authorities took an ex-parte decision and passed the order for cancellation of the examination. The contention of the appellant is that he did not receive the registered notice as the same was not sent at his correct address. We have considered this aspect of the matter carefully. We are satisfied by the material placed before us by the learned counsel for the University that the notice was not sent to the appellant at his correct address. Since the notice was not sent at the correct address, it is not possible to hold that the show cause notice was actually served upon the appellant. Ordinance 1,3 of the Ordinances on the Use of Unfairmeans and Causing Disturbances in Examination (Chapter XXVIII) of the Ordinances of Allahabad University lays down that a candidate found using unfair means in an examination shall be served with a notice therefore in the examination hall itself and if he refuses to accept or avoids or escapes personal receipt of such notice, such notice shall be sent to him by registered post. Since the material placed before us does not show that the notice was sent to the appellant at the correct address, we have to accept the appellant's plea that the decision of the University was taken without affording him an opportunity to give a reply. The decision of the University dated 8.12.1997 cannot be sustained and has to be quashed.

5. In the result, the writ petition succeeds and is hereby allowed. The order dated 8.12.1997 passed by the respondents is quashed. The respondents are directed to declare the result of the appellant of LL.B. IInd year examination of the year 1993. which was held in the year 1997. The appellant shall appear before the respondent No. 2 on 28.8.2000.