
(2011) 03 P&H CK 0780

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13602 of 2009

Kamal Singh

APPELLANT

Vs

Maharishi Dayanand University, Rohtak and Others

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 163 PLR 471

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—This petition has been filed by the petitioner with the prayer to declare the action of the respondent University in debarring him from appearing in any University examinations for a period of three years as contrary to the provisions of the Ordinance of the University.

2. The petitioner is a student of LL.B. Final Year in a course which is of a duration of five years. He was to take the examination of the final year on 5.4.2008. His case is that on 3.4.2008 he suffered an injury in an accident as a result of which his right hand was fractured and he needed the help of a scribe to answer the question papers. The help of the scribe was given to him and on 5.4.2008. He with the assistance of the scribe answered his examination. Thereafter in the subsequent examinations which followed on 10.4.2008 onwards he did not use the assistance of the scribe and answered the question papers himself.

3. The University, on the other hand, found out that the petitioner had in fact committed a fraud as he was never injured and he forged the signatures of the Head of the Department of Laws on the photograph which was appearing on the authority letter of the scribe which was afforded to him. According to the University, the petitioner admitted his lapse and pleaded forgiveness. The University then prepared an unfair means case against the petitioner in

accordance with the terms of ordinance governing the punishment for use of unfair means and in pursuance of clause 4(k)(iii)(iv) & (m) inflicted the punishment which is contemplated in clause 8(ixii). The relevant clauses are extracted hereunder:

4. Use of unfair means shall include the following :

a) to j)....

k) Making deliberate arrangement to cheat in the examination, such as :

i) & ii)....

iii) Impersonation.

iv) Obtaining admission to the examination on a false representation.

v) Forging another Person's signature.

VI) & VI)

m) Any other act of unfair-means/misconduct not covered in these provisions.

4. Learned counsel for the petitioner while making grievance of the punishment inflicted upon the petitioner has contended that the entire action against the petitioner is borne out of mala fides. He contends that even a perusal of the ordinance does not support the case of the respondents and he has been unnecessarily victimized. He contends that the punishment awarded to him is unsustainable as it is based on no material. He further contends that the letter placed by the University on the record does not bear his signatures and is thus a concoction. Similarly, the plea of the University that the OPD record of the hospital i.e. PGIMS, Rohtak, is forged, is without any substance. He thus contends that the action of the University is arbitrary and the impugned order deserves to be set aside.

5. Learned counsel for the respondent University has referred to paragraph 5 of the written statement wherein they have stated that the information was obtained from the PGIMS, Rohtak from where it has been concluded that the petitioner was never injured in accident and his plea that he had suffered a fracture on 3.4.2008 is without any basis as he took the examination with the help of scribe only in the first paper which was held on 5.4.2008 and thereafter since 10.4.2008 he did not use the scribe in the remaining subsequent papers indicating thereby that the petitioner never suffered any fracture. They have also referred to the fact that the petitioner had admitted his lapse before the officials of the University and had pleaded forgiveness which was indicative of his complicity in the use of unfair means while attempting the examination.

6. Learned counsel for the petitioner then went on to deny the document Annexure P-5 (RI/1) which has been relied upon by the respondents as a measure of the acceptance by the petitioner.

7. I have heard the learned counsel for the parties and have perused the material on record.

8. This Court on 12.7.2010 had expressed its opinion that it was not inclined to interfere in the impugned order except to the extent that the punishment may appear to be harsh considering the nature of allegation made against the petitioner and granted time to the University to seek instructions to enable them to have instructions if the punishment imposed could be lessened in any manner. On 19.7.2010, learned counsel for the University very fairly stated that they were ready to permit the petitioner to appear in the December examination. The offer was not acceptable to the learned counsel for the petitioner, who stated that he would argue the case on merits. Accordingly, this Court proceeded to determine the case on merits.

9. Prima facie, it appears that the petitioner has used an in-genuine method to adopt unfair means in examination. He cooked up a story about meeting with an accident and suffering a fracture on the right hand. It is not conceivable that a person who suffered a fracture, would just seven days after be fit enough to take the examination by appearing without a plaster and without a scribe. Besides, the petitioner apparently has admitted to his guilt which is evident from Annexure P-5 (R-I/1). The petitioner, however, denies the existence of this document, The Court under Articles 226/227 of the Constitution of India has no means to determine as to whether such a document, which has been placed on record, is reflection of its genuineness or not. In the absence of this the Court is now left to examine as to whether the punishment awarded to the petitioner is excessive or was it in accordance with the provisions of the ordinance of the University or not. The charge against the petitioner is that he had made deliberate attempt to cheat in the examination, which is evident, as he had used the help of a scribe without there being any injury on his person. The signatures of the Chairman of the Law Department were also forged.

10. The ordinance clearly takes care of such attempts made by a candidate to cheat in the examination and even though strictly the case of the petitioner may not fall within the clause of impersonation, but it certainly falls within the ambit of "obtaining admission to the examination on a false representation" and the remaining is taken care of by clause 4(m) which refers to any act of unfair-means/misconduct not covered in the provisions. The scope of the ordinance is, therefore, wide enough to include any type of misconduct which, a candidate may indulge in to obtain undue advantage to himself. That being so, there is no infirmity in the approach of the respondents who have cancelled the examination of the petitioner and have debarred him to appear in the examination conducted by the University for three years. The Court could have considered the exceptional punishment of debarring the petitioner for a period of three years in the examination and in fact afforded the petitioner an opportunity, but unfortunately the petitioner did not accept the olive branch which was held out to him and insisted on questioning the punishment awarded to him. The tenure of

the punishment expires in April, 2011. In December, 2010 the petitioner was given an opportunity to appear in the examination which he spurned. In this view of the matter, when the petition has been answered in the month of March", 2011, even if the prayer of the petitioner debarring him for a period of three years is accepted by saying it is harsh, I am of the opinion that this prayer would now be rendered more or less infructuous as the petitioner would now be able to take the examination in April, 2011. In so far as the imposition of cancellation of the examination and the conduct of the unfair means by the petitioner is concerned, this Court finds no infirmity in the approach of the respondents and the same is also reflected in the order dated 12.7.2010. The petition is, therefore, dismissed.

11. Learned counsel appearing for the respondents has stated that the petitioner, if so desirous, can still appear in the examination to be conducted in April, 2011. In view of this statement, it is open to the petitioner to approach the University in the event of his being interested in "taking the examination in April, 2011. In case he does so, the respondent-University shall abide by its statement and permit the petitioner to take the examination.