(2010) 06 CHH CK 0021

In the Chhattisgarh High Court

Case No : Writ Petition No. 7397 of 2009

Ku. Anshu Modi	APPELLANT
Vs	
State of Chhattisgarh and Others	RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Citation : AIR 2010 Chh 85 : (2011) 1 CGLJ 62

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Judgement

Satish K. Agnihotri, J.—W. P. (C) No. 7397 of 2009 and W. P..(C) Nos. 233 & 754 of 2010 involve the same question of law, arising from the same cause of action and, as such, they are being considered and decided by this common order.

2. The, indisputable facts, in nutshell, as projected by the Petitioners, are that the Petitioners appeared in the B. Com. final examination 2009 in centre No. 66 at Korba City College, Korba. It was found that there was a mass copying, in Income Tax paper held on 2-3-2009 in Respondent No. 2/Korba City College, Korba. Accordingly, by notification dated 22-6-2009 issued by the Registrar of the Respondent Guru Ghasidas University, Bilaspur, the Income Tax paper in B. Com. final examination held on 2-3-2009 was cancelled on the ground of mass copying. Thereafter, the Petitioners were allowed to appear in the supplementary examination, which took place on 22-8-2009 wherein the Petitioner appeared and were found passed as per result published in the web site of the Respondent University i.e. www.ggu.ac.in

3. In the meantime, the Unfair Means Committee (for short "UFM Committee") was constituted. The UFM Committee in its report dated 8-9-2009 found that there was a mass copying in Income Tax final year paper in Centre No. 66 i.e. Korba City College and it was recommended to cancel the entire examination.

4. The Executive Council (for short "EC") considered the recommendation of the UFM Committee in its meeting held on 25/26-9-2009 (Annexure- D/2), filed

along with the application for taking additional submission and documents on record dated 21-6-2010, observed that the recommendation of the UFM Committee in respect of mass copying in B. Com-III examination, 2009 may be accepted and the result of the concerned paper may be cancelled. When the minutes of the EC meeting held on 25/26-9-2009 came up for confirmation on 14/15-2-2010, after a period of about 5 months, the earlier proceeding was approved with modification that B. Com.-III examination 2009 may be cancelled in its entirety. Consequently, thereupon the Examination Controller (Acting) by notification dated 7-12-2009 cancelled all the examinations of B. Com. Mains as well as supplementary examination, 2009, in the centre No. 66. Thus, these petitions.

5. Shri Tripathi, learned Counsel appearing for the Petitioners, submits that when it was found by the UFM Committee that there was a mass copying in Income Tax Paper in the main examination 2009, an action was taken by the Registrar of the Respondent University by notification dated 22-6-2009 and the Income Tax paper was cancelled. Thereafter, supplementary examination was directed to be held wherein the Petitioners appeared and were declared as successful. The Respondent authorities ought not to have taken a decision in the subsequent meeting held in the month of February, 2010 contrary to the earlier decision taken in the month of September, 2009 and cancelled the entire examination of B. Com. final as well as supplementary examination. The decision of the Respondent University is arbitrary, unreasonable and discriminatory.

6. On the other hand, Shri Shrivastava, learned Counsel appearing for the Respondent University, submits that the final authority to consider the mass copying in examinations is the EC. The EC exercising its power under clause 23(f)(i) Part-V of Ordinance No. 6 on the basis of the UFM Committee took a decision to cancel the entire examination, which was accepted by the EC and accordingly the main and supplementary examinations were cancelled. There is no illegality or irregularity in the decision taken by the EC or thereafter by issuing the notification dated 7-12-2009.

7. On the question of change of decision in the EC meeting held in the month of February, 2010, Shri Shrivastava submits that the minutes of the earlier meeting could have amended when the same came up for confirmation subsequently. Thus, there is no error in the impugned notification issued by the Respondent University. In support of his contention, Shri Shrivastava placed his reliance upon the decisions of the Supreme Court rendered in Union of India and Others Vs. Anand Kumar Pandey and Others, , Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others, , Hanuman Prasad and Others Vs. Union of India (UOI) and Another, , Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others, and Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Ors. v. Vaibhav Singh Chauhan (2009) 1 SCC 59 : AIR 2008 SC 696.

8. Shri Varun Sharma, learned Counsel appearing for the Respondent No. 2

college submits that there was no mass copying in any paper.

9. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

10. Admittedly, the UFM Committee has found mass copying in the B. Com. final year examination conducted in Centre No. 66 i.e. Korba City College, Korba. UFM Committee has not reported mass copying in all other papers, though they have recommended to cancel the entire results of B. Com final examination 2009. There is no mention about cancellation of supplementary examination result. The UFM Committee has not assigned any reason for making recommendation to cancel the entire examination when it was held that there was a mass copying in the Income Tax paper only. Before UFM Committee report was submitted, the Registrar of the Respondent University, it appears that, by order of Vice Chancellor, has already cancelled the main examination in Income Tax paper and has permitted the Petitioners to participate in the supplementary examination. In the supplementary examination, the Petitioners appeared and thereafter the result was also declared. The EC has taken its decision firstly on 25/26-9-2009 wherein it was decided in items No. 41 decided to accept the recommendation of UFM Committee in B. Com-III and cancelled the concerned subject paper i.e. Income Tax.

11. Reliance of the Respondent University on the above stated decisions of the Supreme Court are not relevant to the facts of the cases on hand, as the case of the Petitioners is not that the Petitioners ought to have been afforded an opportunity of hearing before cancellation of the entire examination or there was no mass copying. In the above cited cases, it has been held that in case where there is mass copying the principles of natural justice may be dispensed with. That is not the case in the instant petitions.

12. Admittedly there was a mass copying only in Income Tax paper in B. Com. final examination 2009 at Centre No. 66. Thereafter, the examination of Income Tax paper was cancelled and the Petitioners were permitted to appear in the supplementary examination. The Petitioners were declared pass in the supplementary examination. The decision of the EC seems to be arbitrary by canceling the entire main as well as supplementary examination. There was a mass copying in one paper and the same was cancelled by the Registrar. Thereafter the Petitioners appeared in the supplementary examination and were declared successful. It was not necessary to cancel the entire main as well as supplementary examination. The action of the Respondent University is contrary to the finding of the UFM Committee. It is made clear that the notification dated 22-6-2009 was issued by order under the signature of the Registrar. It means pursuant to the order of the Vice Chancellor, the Registrar has issued the notification.

13. In the result, the writ petitions i.e. W. P. (C) No. 7397 of 2009 and W. P. (C) Nos. 233 & 754 of 2010 are allowed. The notification dated 7-12-2009

(Annexure- P/l) issued by the Respondent University is quashed. The Petitioners are entitled to mark sheets on the basis of marks obtained by them in the supplementary examination of Income Tax paper held on 22-8-2009.

14. There shall be no order as to costs.

