

(2000) 02 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 6031 of 1999

Maharshi Dayanand University and another	APPELLANT
Vs	
Vishal Parmar and others	RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2000) 02 P&H CK 0118

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Vikas Bahl, for the Appellant; Suman Jain, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Vishal Parmar, Atul Kumar and Vinod Kumar Punia- Plaintiffs are students of 8th semester of Electrical Engineering at Vaish College of Engineering; Rohak. They were to appear at examination for 8th semester which was commencing from 9.5.1999. Roll numbers had been issued to them. Earlier, Vaish College of Engineering was affiliated with Guru Jambheshwar University, Hissar. It became affiliated to Maharshi Dayanand University, Rohtak afterwards. According to them, they had successfully passed up to 6th semester and Guru Jambheshwar University, Hissar had issued them detailed marks cards (DMC) up to this semester. They appeared in 7th semester examination. Result was declared on 15.3.1999 but in the result gazette, "UNFAIR MEANS CASE" (UMC) was shown against their names and their result was with-held. They represented to the Controller of Examination against the notification -UMC. According to them, notification-UMC concerning 7th semester was illegal, null and void, nonest and against the principles of natural justice inasmuch as no UMC case was ever registered against them during the course of examinations of 7th semester. Till date of notification and afterwards no notice in regard to "UMC" was received by them. They had not been given any opportunity of hearing or representation against the alleged use of unfair means by them. They received

some notice in regard to "unfair means cases" for 5th and 6th semesters from Guru Jambheshwar University. Proceedings against them for the use of unfair means for 5th and 6th semesters were started after the declaration of their results of 5th and 6th semester examinations. Their results for 7th semester could not have been with-held when the use of unfair means by them was not alleged in the 7th semester examination. On enquiry, they came to know that some employees of Guru Jambheshwar University, Hissar had mis-placed the original award list relating to them and substituted other award list in the office of Controller of Examination, Guru Jambheshwar University, Hissar. Instead of taking action against their employees, Guru Jambheshwar University, Hissar issued show cause notices to them on 19.2.1999 and they were directed to appear in the office of the Chairman person, Department of Environmental Science and Engineering, Guru Jambheshwar University, Hissar on 25.2.1999 and 26.2.1999. They appeared before the Standing Committee. They requested the chairman of the Standing Committee of the University to grant them sufficient time and opportunity to rebut the allegations. They also requested him to supply them copies of incriminating documents. The chairman of the Standing Committee got their signatures on reply which was already typed. They were threatened that in case they did not sign the said reply, they would be debarred from appearing at future examinations. They signed the replies due to this threat. Order was passed on 11.5.1999 debarring/disqualifying them from appearing at any examination of the University till May/June, 2002. This order was challenged by them on the ground that the University had no jurisdiction to pass this order as with effect from 15.7.1998, Vanish College of Engineering had become affiliated to Maharshi Dayanand University, Rohtak. No case of unfair means was made out against them from the show cause notice dated 19.2.1999. No opportunity of hearing was given to them before the order dated 11.5.1999 was passed debarring them from appearing at any examination till May/June, 2002. According to them, this order suffers from the vice of discrimination also inasmuch as no such order was passed in respect of Rajesh Kumar, Mahavir and Danish Kumar though there was charge of use of unfair means against them also. Plaintiffs filed suit for declaration and mandatory injunction. Alongwith the plaint, they made an application 151 CPC for the grant of temporary injunction directing the University to permit them to appear at 8th semester examination commencing on 14.5.1999.

2. Addl. Civil Judge (Sr. Division), Hissar declined their prayer to issue ad-interim mandatory injunction in their favour directing the University to permit them to appear at 8th semester examination in all its papers vide order 25.9.1999.

3. Plaintiffs went in appeal against this order of Addl. Civil Judge (Sr. Division), Hissar. Additional District Judge, Hissar passed the following order on 12.10.1999:

Present: Sh.S.K.. Gupta, Adv. for the Appellants.

Received by assignment. There are some arguable points in this appeal. Heard,

Admitted. Notice of the appeal be issued to the Respondents for 22.10.1999. Meanwhile the operation of the impugned order dated 11.5.1999 passed by Respondent No. 1 (Guru Jambheshwar University through its Controller of Examinations, Hissar) is stayed.

4. Aggrieved from this order dated 12.10.1999 passed by the Additional District Judge, Hissar, Maharshi Dayanand University and another have come up in revision to this Court.

5. Learned Counsel for the Petitioners submitted that the order could not have been passed in favour of the Respondents because the effect of the stay of operation of the order dated 11.5.1999 passed by Guru Jambheshwar University, Hissar, would be that the Respondents stand permitted to appear at 8th semester examination, when the case detected against them was that during 5th and 6th semester they had got replaced the original awards with the fake awards in the office of Guru Jambheshwar University, Hissar in connivance with the employees of the said university. They were "fail" per the original awards but were "pass" per the fake awards. There were 59 pages of the original award lists for Bachelor of engineering examination held in May, 1998 which had been replaced by fake award lists and it was found that the award lists in respect of 15 students including the three Plaintiffs had been tampered with for which two employees of the University namely Raj Mai and Surinder Punia had been placed under suspension. Two other employees of the Guru Jambheshwar University in similar cases had been arrested by the Police and a case under Sections 420/461/467 IPC was pending in the Court. It was submitted that summary of allegations was issued to them. They were given opportunity to explain their position and produce their defence. University cancelled the 5th and 6th semester examinations at which they had appeared. It was submitted that if their result for 5th and 6th semester examinations was cancelled and the result of 7th semester was with-held on account of UMC against them, how could they be permitted to appear at 8th semester examination. Show cause notice was issued to them on 19.2.1999 and they were directed to appear in the office of Chairperson, Department of Environmental Sciences and Engineering, Guru Jambheshwar University, Hissar on 25.2.1999 and 26.2.1999. They appeared before the Standing Committee in response to the said notices. They were served with summary of allegations. They were debarred/disqualified from appearing at any examination till May/June, 2002 vide order dated 11.5.1999 passed by the Guru Jambheshwar University, Hissar. Maharshi Dayanand University, Rohtak with-held the result of 8th semester on being informed by Guru Jambheshwar University regarding the registration of "unfair means case" against them with that university (Guru Jambheshwar University). It was when Maharshi Dayanand University, Rohtak received information from Guru Jambheshwar University, Hissar that they had been found guilty of use of unfair means and the Standing Committee had decided to award punishment to them that the Maharshi Dayanand University decided that the Plaintiffs were not entitled to the declaration of their result. Plaintiffs appeared at 8th semester examination as per

the interim order passed by Civil Judge (Jr. Division) Hissar in their favour but their appearance at 8th semester examination was subject to the result of the decision of their prayer under Order 39 Rules 1 and 2 read with Section 151 CPC on merits as well the suit on merits. Guru Jambheshwar University, Hissar found them guilty of using unfair means by way of changing award lists of examination of 5th and 6th semesters in conspiracy with the officials of Guru Jambheshwar University. The Standing Committee of unfair means of Guru Jambheshwar University under the ordinance cancelled 5th and 6th semesters' examination of the Plaintiffs and further debarred them from appearing at any University examinations up to May/June 2002. It was submitted by the Learned Counsel for the Petitioners that the Court should not have interfered with the order passed by the University because it is the university which has to maintain standards of education. It is the university which has to assess the level of the intellect of the students and examinations are a system devised to assess the level of the intellect of the students. It was submitted that courts should not interfere with what the Universities do within the ambit of their sphere with the object that when students pass out they serve the nation in the manner best possible.

6. It was held in *Controller of Examination etc. v. G. Sunder and Anr.* 1992 (3) RSJ 554 that the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by Court in every case may lead to unhappy results making the system of examination a farce. Technicalities of law should not be imported to further the cause of a student who had indulged in malpractice.

7. In para 10 of the report, the Hon'ble Supreme Court observed as follows:

xx xx xx After all, the authorities incharge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by court in every case may lead to unhappy results making the system of examination a farce. For instance, we cannot but strongly condemn copying in the examination which has grown into canker of mass copying. Such unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected, xxx xxx xxx xxx.

8. In this case, Plaintiffs had earlier been taken to have cleared 5th and 6th semesters' examinations. It was then when it was detected that they had actually failed at 5th and 6th semesters' examination and they had got issued DM Cs in their favour showing them pass after they had succeeded in getting the original award lists changed with the fake award lists of 5th and 6th semesters examination, that the result of 5th and 6th semesters examinations was cancelled.

9. In para 2 of the preliminary objections of its written statement, Guru Jambheshwar University had mentioned the marks originally awarded to the Plaintiffs by examiners at 5th and 6th semesters examination and the marks mentioned in the fake award lists. According to the marks originally awarded by the examiners they were "fail" where as they were pass as per the fake award lists. Guru Jambheshwar University placed on the trial Court's file the entire proceedings of the Standing Committee of the university, in which Plaintiffs had been given summary of allegations as well as opportunity of hearing. It was submitted by the Learned Counsel for the Petitioners that replacement of award lists by fake award lists is also viewed as "unfair means" by the University ordinance. For such type of "unfair means case" punishment is disqualification from appealing in the concerned examinations in full and from appearing in the next two or more examinations. As per Guru Jambheshwar University, Hissar, Plaintiffs are trailing behind three semesters namely 5th and 6th and 7th. Result of 5th and 6th semesters had been cancelled. Result of 7th semester has been with-held due to the pendency of DMC case against them.

10. It was submitted by the Learned Counsel for the Petitioners that the Court should imagine what the plight of the nation would be if young men like the Plaintiffs who are future hope of the nation are inducted into the field of electrical engineering who have scant regard for truth, fair play and interest of the nation. Learned Counsel for the Petitioners further submitted that injunction in mandatory form should not have been given to the Plaintiffs as that would have meant allowing the relief to them at the very outset which might not be allowed to them when the case reaches final decision. It was submitted by the Learned Counsel for the Petitioners that there is no equity in favour of the Plaintiffs, because they filed two suits simultaneously for the same relief one at Hissar and other at Rohtak in May. 1999 with the hope that one or the other Court may grant them injunction and thus come to their rescue. Additional Civil Judge (Sr. Division), Hissar declined them temporary injunction vide order dated 25.9.1999. Civil Judge (Jr. Division), Rohtak declined them injunction vide order dated 14.5.1999. They filed appeal at Hissar. They filed appeal at Rohtak. In the appeal at Hissar, Operation of the order passed by the University dated 11.5.1999 was stayed on 12.10.1999 . On the strength of this order, they appeared at 8th semester examination and the university was directed to declare their result of 7th semester also. University had to declare their result of 7th semester. University had also to permit them to appear at 8th semester examination because of the interim order passed by the Additional District Judge, Hissar dated 12.10.1999. After they had gained their object, they withdrew the appeal and the suit filed by them at Rohtak. Learned Counsel for the Petitioners submitted that Court should see for itself whether Plaintiffs deserve any equity at the hands of the Court when such has been their conduct.

11. Learned Counsel for the Respondents on the other hand submitted that with effect from 15.7.1998 Guru Jambheshwar University, Hissar ceased to exercise its powers over colleges and institutions of general education, technology,

engineering, pharmacy, management and medical education in the Districts of Rohtak, Jhajjar, Mohindergarh, Gur-gaon, Faridabad, Sonipat, Bhiwani and Rewari including Post Graduate Regional Centre, Rewari, Medical College, Agroha and the various courses being run in the campus of the University and exercise of the powers shifted to Maharshi Dayanand University in respect of the colleges and institutions. Learned Counsel for the Plaintiff-Respondents submitted after 15.7.1998 no order could have been passed by Guru Jambheshwar University in respect of them and if any order could be passed against them that could be passed by Maharshi Dayanand University, Rohtak.

12. Suffice is to say, Guru Jambheshwar University had conducted 5th and 6th semester examination of Engineering held in May, 1998 and February, 1999, why could not Guru Jambheshwar University take cognizance of the case of replacement of the original award lists with fake award lists against the Plaintiffs and others and it was when Guru Jambheshwar University had found the charge proved against them that they conveyed to Maharshi Dayanand University, Rohtak that the charge had been proved against them and Maharshi Dayanand University, Rohtak with-held their 7th semester examination result and refused them permission to appear at 8th semester examination and Guru Jambheshwar-University cancelled their result of 5th and 6th semesters examination. Guru Jambheshwar University could take action against the Plaintiffs in respect of 5th and 6th semesters" examination. Maharshi Dayanand University which is the successor university could also take action against them for their conduct during 5th and 6th semester examinations.

13. In Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, the Hon"ble Supreme Court held that whenever a writ petition challenging admission to Medical Courses is filed provisional admission should not be given as a matter of course on the petition being admitted unless the Court is fully satisfied that the Petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible. In order, however, to test the fact even a short notice may be given to explore as to what the other side has to say and thereafter if the Court is satisfied that there is strong prima facie case and the matter needs thorough examination, provisional admission may be given.

14. Additional District Judge should not have stayed the order dated 11.5.1999 passed by the University authorities on the mere admission of the appeal. Additional District Judge should have given notice may be of shorter duration to the Maharshi Dayanand University through its Registrar and then decide if not the appeal, the prayer of the Plaintiffs for the grant of stay.

15. For the reasons given above, this revision succeeds and is accepted and the order dated 12.10.1999 passed by the Additional District Judge, Hissar is set aside.