
(1997) 02 AHC CK 0094

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35806 of 1996

Manish Kumar Gupta

APPELLANT

Vs

University of Allahabad & Ors.

RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:

Citation : (1997) 02 AHC CK 0094

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The petitioner seeks writ of certiorari quashing the order dated 2391996 whereby the result of the petitioner of B.Com. Part III Examination 1996 was cancelled and he was further debarred from appearing in examination of 1997.

2. The petitioner appeared in B.Com Part III Examination 1996, with Roll No. 1517 as a regular candidate. The petitioner was given a show cause notice by Controller of Examination and Examination Superintendent of 17796 as to why his examination result should not be cancelled for using unfair means, the petitioner submitted a reply on 2671996 before the Controller of Examination, University of Allahabad. The matter was examined by respondent No. 3 and finally the petitioners' result of B.Com. Part III was cancelled by order dated 2391996 and he was further debarred from appearing in 1997 examination. This order has been challenged in the present writ petition.

3. On behalf of the University a counteraffidavit has been filed and today the answer book of the petitioner and the material alleged to have been used by the petitioner have been produced before me.

4. Learned Counsel for the petitioner submitted that the petitioner had not used any unfair means in the examination. The charge of the University against the petitioner is that while appearing in B.Com Part III Examination on 2261996, he used certain cheat in answering questions of Labour Law paper. Today the answer

book of Labour Law of B. Com Part III and the chit used by the petitioner (four pages handwritten on both sides) have been produced before me. I have examined the answer book and the chit which has been produced before me. From the perusal of the chit it is clear that the petitioner had used the same while answering question No. 6 of the said paper. There while answering question No. 6 of the said paper. There is no doubt about the using of the unauthorised material by the petitioner.

5. The second submission of learned Counsel for the petitioner is that the petitioner was given notice dated 17/7/1996, Annexure 1 to the writ petition, and in the said notice it was not indicated that the petitioner had used any unauthorised material while answering question No. 6 of B. Com. Part III, Labour Law. A perusal of the notice indicates that the petitioner was charged that while answering the paper on Labour Law on 22/6/1996, he used unauthorised material, four pages written on both sides. The petitioner submitted reply on 26th July, 1996 and he admitted that a Flying Squad had taken the answer book from him when he had gone to bath room and when he came back he did not find that answer book on his seat and if any unauthorised material was found on his seat, he had no concern with it. The petitioner was given showcause notice that he had used a chit, four pages written on both sides, while answering the questions on Labour Law paper. The petitioner had denied the fact that he had used any material while answering any question of Labour Law. The material placed before me is four pages written on both sides and it has been used in answering question No. 6 of Labour Law, B. Com. Part III examination. If a candidate is given show cause notice indicating that he used unauthorised material in answering a particular question papers and he denies the charges, but he is found to have used such unauthorised material, he cannot be said to have been prejudiced merely because question number of the Examination paper was not mentioned in the notice.

6. Learned Counsel for the petitioner placed reliance upon the decision, *Rajiv Kumar Sinha v. University of Allahabad & Ors.*, 1995 (2) Education and Sendee Cases, 170, wherein the Division Bench had taken the view that when a candidate is charged for having possession of unauthorised material and used the same while answering particular question and such unauthorised material has not been found to have been used in answering that question, he cannot be held to be guilty of using unfair means in the examination. In this case the Court itself examined the answer book and found that the petitioner had not used unauthorised material while answering the question mentioned in the notice. In the present case, in the notice, no specific question number has been mentioned. The notice indicates that the petitioner had used unauthorised material found from his possession in answering the questions in Labour Law paper. After examining the entire answer book it is clear that the chit has been used in answering the question paper. It cannot be held that the petitioner was not given sufficient opportunity to submit the reply to the showcause notice.

7. The last submission of learned Counsel for the petitioner is that this chit was not found from the possession of the petitioner. This version of the petitioner was not believed. The material had been used in answering the question, as stated above.

8. In the result, there is no merit in this writ petition. It is accordingly dismissed.