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**(2018) 12 P&H CK 0006**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 29645 Of 2018(O&M)**

Mehul Saini and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

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**Date of Decision : 03-12-2018**

**Acts Referred:**

**Citation : (2019) 1 SCT 476**

**Hon'ble Judges : Tejinder Singh Dhindsa, J**

**Bench : Single Bench**

**Advocate : Rohit Sud, T. P. S. Chawla, Vikrant Sharma, Sangram S. Saron**

**Final Decision : Dismissed**

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## **Judgement**

Challenge in the instant writ petition is to the orders dated 30.10.2018 at Annexure P-4 (colly) issued by the respondent-Panjab University, which are identically worded and in terms of which the petitioners who are students of B.Sc. (Agriculture) have been disqualified from appearing in University examinations for a period of one year i.e. May, 2018 and December, 2018(two examinations). Further prayer is for the issuance of a writ of mandamus directing the respondent-University to permit the petitioners to appear in the 3rd Semester examination which is to commence w.e.f. 3.12.2018.

It has been averred that the petitioners are students of the B.Sc.(Agriculture) course and are pursuing the same from respondent No.3-Guru Nanak College, Ferozepur Cantt, District Ferozepur and which in turn is affiliated to the Panjab University, Chandigarh. Examinations of B.Sc 2nd Semester were held in the month of May, 2018. On 30.05.2018 petitioners appeared in the subject examination of Fundamentals of Microbiology. On 11.09.2018

petitioners were sent show cause notices through registered post and were informed that a complaint has been received from the Evaluator/Secrecy

Branch with regard to Mass Copying in the examination of Fundamentals of Microbiology and as such action was contemplated under Regulation 7

appearing in the Punjab University Calendar Volume-II, 2007. Thereafter result of the petitioners for the 2nd Semester B.Sc.(Agriculture) course was

withheld and vide communication dated 04.10.2018 petitioners were called upon to appear before the Standing Committee dealing with the matters of

use of unfair means on 15.10.2018 so as to put forward their defence. It is pleaded that the petitioners duly appeared before the Standing Committee

and had sought information/material on the basis of which they had been issued show cause notices but to their utter shock the impugned orders dated

30.10.2018, Annexure P-4 (colly) had been issued debarring the petitioners from appearing in any University examination for a period of one year.

Learned counsel representing the petitioners has argued that the petitioners at no stage were informed about the nature of unfair means allegedly

employed by them and the impugned action has been taken without conducting any proper inquiry in the matter. It is contended that the impugned

orders dated 30.10.2018 cannot sustain as they are in violation of the principles of natural justice. It is vehemently argued by counsel that till date no

record or evidence was shown to the petitioners on the basis of which the petitioners have been found to be guilty of using unfair means and as such

debarring them from appearing in any University examination for a period of one year has worked to their grave prejudice. Counsel further contends

that the procedure envisaged under Rules 21 and 23.1 contained in the Panjab University Calendar regulating the procedure with regard to candidates

resorting to unfair means has not been adhered to. Counsel urges that the impugned action at the hands of the respondent-University is illegal as also

arbitrary and accordingly the impugned orders dated 30.10.2018, Annexure P-4(colly) be quashed and directions be issued to permit the petitioners to

participate in the 3rd Semester B.Sc.(Agriculture) course commencing w.e.f. 03.12.2018. A prayer in the alternate has also been raised with regard to

the quantum of punishment. It is submitted that debarring a student from appearing in any University examination for a period of one year is extremely

harsh and the matter be remanded back to the University to consider the issue afresh. Reliance has been placed upon a Division bench judgment

rendered by this Court in CWP No.9761 of 1995 (Ashwani Kumar and others v. Punjabi University, Patiala and another) decided on 19.10.1995.

Per contra, Mr.Vikrant Sharna, learned counsel representing the respondent-Panjab University justifies the action of debarring the petitioners and

submits that the action has been taken after following due procedure mandated by law and on the basis of recommendations of two UMC Standing

Committees (UMC Standing Committee-I and UMC Standing Committee-II). It is further submitted that procedure as laid down under the University

Regulations contained in Panjab University Calendar Volume-II, 2007 was followed and the petitioners were duly associated at every stage.

Counsel submits that the petitioners have been found guilty of resorting to unfair means i.e. Mass Copying and under such circumstances there would

be no scope of leniency.

Mr.Sangram S. Saron, Advocate has put in appearance on behalf of respondent No.3-College. He submits that the college had no role in the decision

making process which has led to the passing of the impugned orders and as such there would be no requirement to file a separate reply.

Counsel for the parties have been heard. Even the original records of the case that were requisitioned have been perused in detail.

Petitioners allege non-compliance and violation of Rule 21 as also Rule 23.1 of the Panjab University Calendar Volume-II, 2007, The afore-noticed

provisions are extracted hereunder:-

Rule 21:- A candidate found to be, or suspected to be guilty of, using unfair means in the examination shall be permitted to answer the remaining

part of the question paper, but on a separate answer-book and the answer-book in which the unfair means is suspected shall be seized by the

Superintendent, who shall send both the answer-books to the controller-of-examination(COE) with his report. This will not affect the candidate's

right to appear in the rest of examination in subsequent papers.

Rule 23.1:- The Superintendent of the examinations shall report to the Controller of the Examinations, without delay and on the day of occurrence if

possible, each case where use of unfair means in the examinations is suspected or discovered with full details of evidence and explanation of the

candidate concerned on the forms supplied by the controller of the examination or the purpose.

Perusal of the rules reproduced hereinabove clearly show that if during the course of examination the Superintendent concerned finds or suspects a

candidate using unfair means then such candidate would be permitted to answer the remaining part of the question paper but on a separate answer-

book and the answer-book in which unfair means is suspected would be seized and thereafter both the answer-books would be forwarded to the

Controller-of-Examination along with the report of the Superintendent. Under Rule 23.1, the Superintendent of the examinations is obligated to report

to the Controller-of-Examinations, without any delay each case where use of unfair means is suspected or has been discovered along with full details

of the evidence collected as also explanation tendered by the candidate concerned. In the present case the use of unfair means was not detected at

the stage of examination but at a subsequent stage when the Evaluator submitted a report to the following effect:-

“Almost, all the answers of serial No. 27094 to 27120 are similar, The matter should be inquired properly.”

The report of the Evaluator was with regard to an inquiry to be conducted in relation to 27 students including the petitioners herein who had allegedly

resorted to Mass Copying. In such a situation Rule 21 as also Rule 23.1 would have no applicability. The detection of unfair means was not during the

conduct of the examination but at a later stage of evaluation.

Rather it is Rule 7 contained in Chapter II of the Panjab University Calendar Volume-II, 2007 which would hold the field and reads as follows:-

“If an answer-book of an examination shows or it is otherwise established that he has received or attempted to receive help from any source or in

any manner or has given help or attempted to give help to another candidate in any manner, he shall be disqualified from appearing in any University

examination for two years, including that in which he is found guilty of he is a candidate for an examination held once a year, or for four examinations

including that in which he is found guilty, if he is a candidate for an examination held twice a year.”

It is in pursuance of the report submitted by the Evaluator during the course of evaluation of the answer-scripts that action was initiated by the

respondent-University and the matter ultimately came to be considered at the hands of two UMC Sanding Committees i.e.UMC Standing Committee-

I headed by Professor S.S.Bari (Retd.) Chairman and UMC Standing Committee-II headed by Professor Paramjit Singh (Retd.) Chairman.

It would be apposite to refer to the findings recorded by both the Committees.

The UMC Standing committee-I concluded in the following terms:-

“The Committee thoroughly checked and compared all the answer-sheets of the students and observed that all the students have attempted the same Question Nos. 1,2 ,4, 7 and 8 and copying has been found in all these papers. The UMC Committee scrutinized all the answer sheets with respect to Question No. 2 and 4 and found hat they have identical answers written in the answer sheets. Thus the Committee is of the unanimous opinion, based on the above facts that the mass copying at this Examination Centre did take place in this paper. This is a case of unfair means copying under Regulation 7. This case has been decided on the basis of provisions of this Regulation.”

The findings of UMC Standing Committee-II are in the following terms:-

“The candidate appeared before the UMC Committee on 15.10.2018 and was not able to write/explain/justify anything from his answer sheet. The UMC Committee scrutinized all the eight answer0 sheets and compared all the answer sheets have identical answers with very minor variations. Therefore, the Committee is unanimously of the opinion that Mass Copying did take place in the college with the negligence/or connivance of the college as well as the Supervisory Staff. Hence a case for UMC under regulation 7 is made out.”

Even though the scope of judicial scrutiny in matters of mal practices having been resorted to during the course of examinations is very limited but this

Court, by way of abundant caution, has even scanned through the answer-scripts of the petitioners which had been furnished for perusal by learned counsel representing the respondent-University.

This Court is satisfied that the findings recorded by both the UMC Standing Committees do not suffer from any perversity.

In the considered view of this Court there was sufficient material before the UMC Standing Committees to conclude that the petitioners have resorted

to Mass Copying while attempting paper of Fundamentals of Microbiology in the 2nd Semester B.Sc.(Agriculture) course held on 30.05.2018.

In Board of High School and Inter-Mediate Education, Uttar Pradesh, Allahabad

and another v. Bagleshwar Prasad and others, (1963) 3 SCR 76, 7

there was a situation of cancellation of examination results of candidates on the ground that they had adopted unfair means. An inquiry was conducted

by a sub-committee constituted for the said purpose, and it was found that students were guilty of adopting unfair means. The students having laid a

challenge to the decision to cancel the examination, the High Court set aside the impugned order on the ground that there was no direct evidence on

the basis of which a committee could have come to the conclusion that the students had adopted unfair means. The matter having travelled to the

Apex Court, decision of the High Court was reversed and it was held that the very fact that the candidates had given identical answers was sufficient

evidence of adoption of unfair means in the examination.

Adverting back to the facts of the present case, the findings recorded by Unfair Means Committees clearly show that the answers attempted by the

petitioners have been compared and it has surfaced that those were absolutely similar in nature and as such the petitioners were guilty of adopting

unfair means i.e. Mass Copying. The UMC Standing Committee-II even went a step further by calling upon the candidate concerned to write down

and to explain and justify anything that he had attempted in his answer-sheet and such candidate had miserably failed to do so. The dictum laid down

by the Apex Court in Bagleshwar Prasad's case(supra) would apply in the present case as well.

The assertion made on behalf of the petitioners that they have not been heard, no material has been shown to them and that the principles of natural

justice have been violated, is also not well founded. In the first instance, show cause notices were served upon the petitioners at the hands of the

Assistant Registrar(UMC) of the respondent-Panjab University bringing to their notice the allegation of Mass Copying in the examination pertaining to

the subject - Fundamentals of Microbiology held on 30.05.2018 as also the contemplated action under Regulation 7 of the Panjab University Calendar

Volume-II, 2007. In such show cause notices it had been made clear that the requisite material in support of the allegation would be shown to them

and that the petitioners would also be required to fill up a questionnaire. Further more, petitioners were informed that any other material that may be

submitted and relied upon by them in their defence would be placed before the

Standing Committee in due course. This Court while perusing the original record has also scanned the questionnaire that had been filled up by each one of the petitioners. Column No.3 related to the objectionable material of Mass Copying having been shown in original. It is seen that most of the petitioners did not respond to such column. However, a few of them including Sukhwant Singh son of Iqbal Singh, petitioner No.2 had responded in the affirmative. Further more under column No. 16 it was clearly stated and put to the petitioners that in case they have anything more to state in their defence then they may do so. All the petitioners without exception have written 'No' against column No. 16. The petitioners are students of B.Sc.(Agriculture). If they had not been shown the material on the basis of which the allegation of Mass Copying was being examined by the UMC Committees then they would have certainly stated so in the relevant column i.e. column No. 16. It would be safe to conclude under such circumstances that the petitioners have not only been shown and confronted with their original answer-scripts and which had been compared by the Unfair Means Committees, they had also been given due opportunity in the shape of filling up a questionnaire, to produce any material in their defence as also a personal hearing before the Unfair Means Committee concerned. The procedure adopted by the respondent-University prior to passing the impugned orders dated 30.10.2018, Annexure P-4 (colly) is found to be in consonance with the principles of natural justice. Rather this Court would be constrained to observe that the petitioners have not approached this Court with clean hands having asserted that they were not heard and shown the requisite material.

The submission raised by counsel with regard to quantum of punishment i.e. the petitioners having been debarred from appearing in any University examination for a period of one year is also without merit. In matters where it has been established after following due procedure that students while undertaking examinations have resorted to unfair means, a clear message has to ring out. The petitioners have been proceeded against under Regulation 7 of the Panjab University Calendar Volume-II, 2007. Under Regulation 7 the maximum period envisaged for which a student guilty of unfair means can be debarred is two years. The respondent-University has already taken a lenient view and has debarred the petitioners herein for a

period of one year. There would be no basis for this Court to intervene and dilute such period further. Even the reliance placed by counsel upon the

Division Bench in Ashwani Kumar's case(supra) is wholly misplaced. In the facts of such case the petitioners therein had been debarred for a

period of two years under Ordinance 14 of the Punjabi University Calendar 1987. The University concerned was justifying such action by taking a

stand that as per the language contained in Ordinance 14, once a candidate is found guilty of resorting to unfair means, it is imperative that an action of

debarring such candidate for two years is to follow. The Division Bench had intervened to the extent of remanding the matter back to the University

by holding that the word "shall" contained in Ordinance 14 cannot be construed as mandatory and it was open for the University to impose a

punishment of debarring the candidate concerned even for a lesser period. In the present case the respondent-Panjab University has already taken a

lenient view and has debarred the petitioners for a period of one year as opposed to the maximum period of two years envisaged under Regulation 7

of the Panjab University Calendar Volume-II, 2007.

In view of the discussion hereinabove, no case for interference is made out. The impugned orders dated 30.10.2018 at Annexure P-4(colly) are

upheld.

Before parting with this order one submission advanced by Mr. Rohit Sud , learned counsel needs to be noticed. Counsel submits that the petitioners

have been issued role numbers for the forthcoming 3rd Semester examination commencing w.e.f. 3.12.2018. Even if it be so, the petitioners would not

have any right to appear in the 3rd Semester examination only on account of their examination forms having been forwarded by respondent No.3-

College and the role numbers having been issued by the University in routine.

Writ petition is dismissed.