
(2003) 10 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : CIMA No. 18 of 2003

Ms. Showkat Jan	Vs	APPELLANT
University of Kashmir and Another		RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2004) 1 JKJ 563

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : I.M. Nehvi, for the Appellant; T. Khawaja, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Syed Bashir-Ud-Din, J.—Appellant filed Civil Original Suit 50/2000 as an indigent person. The Suit is on the file of Ist. Additional District

Judge, Srinagar. Appellant a regular student of B.Sc. appeared in the Kashmir University Examination for the year 1998 under Roll No. 6381 from

the Gandhi Memorial College, Srinagar. On 21.11.1998 when examination of B.Sc III year paper English-A, was being conducted,

Superintendent of the Centre, one Prof Javed, noticed that the appellant was resorting to copying and unfair means. He alongwith other

supervisory staff appeared on scene to stop her to indulge in malpractice and resort to unfair means. While doing so, the examinee in utter state of

frustration snatched two other answer scripts from one Assistant Superintendent and tore the scripts into pieces. The case was reported to the

University. The matter was examined and scrutinized by the unfair Committee of the University and petitioner was slapped notice to show cause

within a period of seven days from the date of receipt of the notice, as to why the tentatively proposed punishment of barring her to appear and pass examination in another period of 5 years be not imposed on her. This show cause notice against the proposed tentative punishment is under challenge in the suit. The reliefs prayed for are declaration that the show cause notice is devoid of any legal force and for declaring result of the examinee and for recovery of damages to the tune of Rs. 25 lacs with interest. Besides an injunction to permit the plaintiff/petitioner to appear in the examination is also prayed for.

2. Suit is contested by the respondent/ University and its officials. The University's stand is that petitioner's case is one of misconduct and use of unfair means, while appearing in the examination in the above referred paper, from the said centre in the circumstances as stated above. It is further stated that the Unfair-means Committee constituted under the University statute has examined the case of the petitioner and after following due procedure and law, has found petitioner guilty and, therefore, tentatively proposed the punishment. The plaintiff has been given opportunity to show cause against the proposed punishment which the plaintiff has not opted to avail of. The punishment has been finally imposed on the petitioner after same was finally approved by the Vice Chancellor. The suit is at evidence stage.

3. An application for ad-interim injunction was moved for the interim relief that the applicant/ plaintiff may be permitted to take the examination in B. Sc Part III examination and for the purpose University was further requested to be mandated to issue the form and process her case for said examination. The non-applicants/ respondents filed objections. The trial court of Ist. A Addl. District Judge, Srinagar after hearing the parties and on consideration of the matter rejected the prayer for injunction and dismissed the application. This order dated 8.4.2002 is under challenge in this appeal.

4. Heard. Record perused. Considered.

5. The trial judge has approached the matter from standpoint which cannot be said to be beyond para-meters of law. The cardinal principles of prima facie case, balance of convenience and irreparable loss governing the question to grant or not to grant interim injunction have been discussed and in my view correctly applied to the facts and circumstances of this case.

Record reveals that the petitioner's case of adopting unfair means and resorting to prohibited practice of copying as reported by the supervisory staff of the Centre where applicant /plaintiff appeared in the examination in question has been examined and scrutinized by the Unfair-means Committee constituted for the purpose under the University statute. The entire gambit of the case was considered by the Committee and after not hearing anything from appellant/plaintiff against proposed tentative punishment (communicated vide show cause notice Annexure to the plaint) the punishment in the form of imposition of ban for five years to appear and take examination, was made final with the approval of the action by the Vice Chancellor. Obviously, the action of the University cannot be lightly interfered with and that too in the name of misplaced sympathy for a student, University has its own statute and rules which take care of such students. Appellant had the remedy of filing appeal which she appears not to have done. This apart, it appears that the final order of punishment is not challenged in the suit, only show cause notice for the tentative punishment is under challenge. With the passing of the final order of imposition of the ban, the tentative punishment has merged with it. The show cause notice *per se* in absence of challenge to final order, cannot be *prima-facie* ground for issuance of an interim relief of the nature as prayed for in this case. The legal and factual contentions raised need to be determined on enquiry, after following due codal procedure. The trial court, of Ist. Addl. District Judge has on the material and documents available, in its discretion declined to issue interim relief, which action, is fairly supportable by record and falls within confines of application of law to the facts and circumstances of this case. The discretionary orders covering interim injunctions cannot be interfered with in appeal lightly.

6. Powers of the appellate court in the matter of exercise of discretion, including injunctions, is rather circumscribed. The appellate court would normally not be justified to interfere with exercise of discretion under appeal, so long the discretion is exercised by the trial court reasonably and in a judicial manner. Even the fact that appellate court may have taken a different view. If it had considered the matter in the first instance, cannot even justify interfere with the trial courts exercise of discretion. It is only if the discretion is not exercised in the spirit of statute or fairly or according

to the rules of reason or justice, the order passed by the trial court in such matters can be reversed/interfered with by the superior court.

(i) Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi,

(ii) Firm Ishar Das Devichand and Another Vs. R. B. Prakash Chand and Another,

(iii) Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, ,

7. In the above view of the matter, Appeal is dismissed. Inform the Court below of this order and send back record. Disposed of.