

**(2016) 01 RAJ CK 0071**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition Nos. 2792/2013 and 18347/2015

Mukesh Chandra Palsania

APPELLANT

Vs

The Rajasthan University Health Sciences and Others

RESPONDENT

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**Date of Decision :** 20-01-2016

**Acts Referred:**

**Citation :** (2016) 01 RAJ CK 0071

**Hon'ble Judges :** Alok Sharma, J.

**Bench :** Single Bench

**Advocate :** Ajatshatru Mina, for the Appellant; M.A. Khan, for the Respondent

**Final Decision :** Disposed off

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## **Judgement**

Alok Sharma, J.—1. Both the petitions are interconnected and therefore are being decided by this common order.

2. S.B. Civil Writ Petition No. 2792/2013 is taken as lead case.

3. The main issue in this petition is with regard to the cancellation of the petitioner's BPT Part III remand Examination, 2011 and the consequence thereof resulting in recall of the provisional certificate of passing BPT Part-IV Examination 2011 as also NOC for the six month rotation internship training at SMS Medical College & Hospital, Jaipur.

4. The facts relevant to the petition are that the petitioner was admitted to Bachelor of Physiotherapy Course (hereinafter "BPT") in Jubin College of Physiotherapy, Sri Ganga Nagar in the academic session 2005-06. He passed his BPT Part-I and Part-II examination and was promoted to BPT Part-III in which he could not qualify. Thereafter he appeared in all the remand papers of BPT Part-III in 2011 along with the main examination of BPT Part-IV. The petitioner was declared passed in BPT Part-IV 2011 Examination but declared failed in remand papers of BPT Part-III 2011 examination on account of allegedly being absent for two papers i.e. Surgery & Obst Gyne. and Neurology & Neurosurgery.

5. Aggrieved of having been declared failed in remand papers of BPT Part-III 2011 Examination on account of allegedly being absent in the two aforesaid papers, the petitioner submitted a representation to the respondent-University stating that he had appeared in the said papers and had wrongly been marked absent. Non-response from the respondent-University to the representation entailed SBCWP No. 275/2012. Vide order dated 13.01.2012, the respondent-University was directed by this Court to trace out the answer-sheets of the petitioner which he claimed to have written and declare his result immediately. Following the order dated 13.01.2012, the respondent-University moved an application for modification stating that the petitioner had used unfair means in respect of two papers in issue and an enquiry in respect thereof was underway. Thereupon vide order dated 25.01.2012 the respondent-University was directed to complete the enquiry expeditiously, in any event conclude it by 30.01.2012 and declare the petitioner's BPT Part III Examination result by 31.01.2012.

6. Vide order dated 28.01.2012 the respondent-University informed the petitioner that he had been declared failed in BPT Part III remand Examination 2011 and debarred from writing BPT 2012 Examination for reason of resorting to unfair means. Aggrieved the petitioner again approached this Court by SBCWP No. 1646/2012 impugning the communication dated 28.01.2012 on the ground of it being violative of the principles of natural justice as also being in the cross-hair of Ordinance 152 of the University Ordinances. Vide interim order dated 10.02.2012, the petitioner was allowed to appear in the BPT Part-III Examination (Main & Remanded) in February, 2012 on provisional basis. The result of the petitioner was not to be declared but be subject to the outcome of the writ petition. SBCWP No. 1646/2012 was thereafter allowed vide order dated 16.03.2012 with the Court holding that the impugned communication dated 28.01.2012 declaring the petitioner failed in BPT Part-III remand 2011 Examination and debarring him from BPT Examination in the year 2012 was in contravention of the principles of natural justice as also Ordinance 152 of the University Ordinances. The communication dated 28.01.2012 was quashed. However, the respondent-University was allowed the liberty to decide afresh within two months after compliance with natural justice and Ordinance 152 of the University of Rajasthan Ordinances the allegation of the petitioner having used unfair means in BPT Part-III remand 2011 Examination.

7. A show cause notice dated 03.04.2012 followed to the petitioner in terms of liberty granted by the Court. He was required to appear before "the Unfair Means Committee" on 11.04.2012, which he did and while denying the allegation of any wrongdoing or use of unfair means asserted that he had fairly and honestly written the BPT Part-III remand 2011 Examination in both the papers i.e. Surgery & Obst Gyne. and Neurology & Neurosurgery. Vide the impugned order dated 18.02.2013 the respondent-University on consideration of the petitioner's reply/defence to the show-cause notice dated 03.04.2012 found him guilty of use of unfair means in BPT Part-III remand Examination held in June, 2011 and cancelled it. He was declared failed in the said examination and also debarred

from appearing in BPT 2012 Examination.

8. It is however on record that following the interim order dated 10.02.2012 in SBCWP No. 1646/2012 whereby the petitioner was allowed to appear in BPT Part-III year Examination (Main and Remanded) in February, 2012, the petitioner appeared, was evaluated and declared passed. The petitioner having earlier passed in BPT Part-I, Part-II and Part-IV Examination in 2011 and now the remand paper in BPT Part-III examination in the year 2012, a mark-sheet was issued to him on 07.07.2012. Thereafter the respondent-University also issued a provisional certificate to the petitioner on 16.07.2012 declaring that he had passed BPT Part-IV Examination held in April, 2011. Based thereon the petitioner, applied for obtaining a NOC from his College i.e. Jubin College of Physiotherapy at Sri Ganga Nagar seeking internship at any Medical College and Hospital in India. This was issued subject to approval of the Rajasthan University of Health Sciences, Jaipur (respondent-University). The respondent-University also issued NOC recording that it had no objection in the event the petitioner were to undertake his six month rotation internship training at SMS Medical College Jaipur having passed BPT/BOT Part IV Examination held in the month of January, 2012. Consequently, the petitioner was admitted by the Principal, SMS Medical College and Hospital, Jaipur, on deposit of Rs. 25,000/-, for a six month rotational internship training programme in the Department of Physical Medicine & Rehabilitation at RRC, SMS Medical College & Hospital, Jaipur for the session 2011-12 commencing 10.09.2012 and ending 09.03.2013.

9. Then came to the impugned order dated 18.02.2013 over five months after the petitioner's admission to the six months rotational internship whereby the rotational internship training was cancelled for reason of his being found guilty of using unfair means at BPT Part-III remand 2011 Examination. Hence this petition impugning the order dated 18.02.2013 and praying that the petitioner be allowed to complete his six months rotational internship training with consequential benefits. Reply to the petition has been filed. It has been submitted that in respect of BPT Part-III Examination held in May, 2011, the respondent-University had used Bar Coding answer sheets which were stitched with the cotton threads and contains computerized Bar Codes on the cover page. It has been submitted that at the time of the petitioner's papers i.e. Surgery & Obst Gyne. and Neurology & Neurosurgery being examined, it was found that the cover of Surgery, Obst & Gynae contained the answer-sheet of Neurology & Neurosurgery and the cover of Neurology & Neurosurgery, the answer-sheet of Surgery, Obst & Gynae. It has been submitted that it was also found that while all other answer-sheets, as provided for, were bound by the cotton thread, the petitioner's answer-sheets in the two subjects aforesaid were oddly stapled. On consideration of the matter, the petitioner was found to have indulged by himself or otherwise in tampering with his answer-sheets after the submission of his answer-sheets at the examination centre. In this view of the matter, his answer-sheets were not examined, he was declared to have not written examination in the two papers in issue in the BPT Part-III remand Examination, 2011.

10. Pursuant to the order dated 13.01.2012 in SBCWP No. 275/2012 as modified vide order dated 25.01.2012, the enquiry into the petitioner's use of unfair means was completed and his BPT Part-III remand 2011 Examination cancelled vide order dated 28.01.2012. He was declared failed therein and debarred from appearing in the BPT 2012 Examination. Even though the said order dated 28.01.2012 was indeed set aside in SBCWP No. 1646/2012 on the ground of violation of principles of natural justice and the Ordinance 152 of the governed Ordinances, the respondent-University as permitted by the Court, again held an enquiry in the use of unfair means by the petitioner in BPT Part-III remand 2011 Examination after due notice. A show-cause notice dated 03.04.2012 was issued to the petitioner. Pursuant where to he submitted his representation and appeared before the Committee on 11.04.2012. The petitioner was shown the two copies of the offending answer-sheets in the paper of Surgery & Obst Gyne. and Neurology & Neurosurgery and required to answer a questionnaire containing seven queries which he did. On consideration of the matter and taking into consideration the overall facts of the case, a plausible inference was drawn on preponderance of probabilities from the evidence on record that the petitioner had used "unfair means". It has been submitted that of the 100s of answer-sheets in the two subjects in issue of BPT Part-III 2011 Examination which were found in order, the petitioner's answer-sheets alone could not have been tampered with (as found) except by him or by a third party at his instance. It has been submitted that the inference in the facts of the case of the petitioner having used unfair means within the meaning of Ordinance 152(1) of the University Ordinances cannot be said to be either perverse or unwarranted. It has been submitted that purity of the examination process is fundamental to education not only for evaluating the academic attainments of the students but also as a measure of their ethical values. It has been submitted that no doubt owing to an error the petitioner was indeed erroneously issued a certificate of passing BPT Part-IV Examination 2011 as also a NOC inter alia by the respondent-University for commencing rotational internship at SMS Medical College and Hospital, Jaipur and admitted therein. Yet this subsequent error has no relevance in the matter of the enquiry on the use of unfair means by the petitioner in the BPT Part-III 2011 Examination. It has been submitted that in the circumstances, the petitioner's BPT Part-III remand 2011 Examination having been cancelled following an enquiry compliant with the principles of natural justice on 18.02.2013, the petitioner cannot have the benefit of continuing with the six months rotational internship training or to be awarded a degree in Bachelor of Physiotherapy. It has been submitted that following the penalty for use of unfair means and the petitioner's BPT Part-III remand 2011 Examination having been cancelled and he being debarred from appearing BPT 2012 Examination, his writing and passing the two papers in issue in the BPT Part III (Main/Remand) Exam of February, 2012 under the interim order dated 10.02.2012 in SBCWP No. 1646/2012 can be of no avail. The petitioner however would be free to write his BPT Part-III remand Examination afresh.

11. Heard. Considered.

12. Purity of the examination process is non-negotiable and there can be no quarrel with this proposition. Use of unfair means in an examination, when proved, has to be visited with appropriate punishment which the University alone is competent to decide unless, the findings are perverse or the punishment ex facie shockingly disproportionate in the facts of a given case. The standard of proof required for finding of unfair means in an examination is undisputedly preponderance of probabilities. That preponderance of probabilities can be also arrived at on the basis of the facts and circumstances, on record as evidence, of a given case warranting an inference that unfair means were indeed used by a student. In *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi & Ors.* [, (1991) 2 SCC 716], the Apex Court has reiterated that the strict rules of Evidence Act do not apply to domestic enquiries and it was open for the competent authority to receive and rely on all relevant and cogent material facts, which even though if they are not proved strictly in accordance with the Evidence Act, are on record. It has been held that direct evidence in cases of use of unfair means may not be available, in some cases, and hence the conclusion of use of unfair means can be drawn from the objective facts on record, direct or circumstantial, on the basis of which a reasonable inference can be made. The Apex court also cautioned the High Courts in the exercise of its power of judicial review or superintending jurisdiction from interfering with the findings of a duly constituted committee of the University with regard to the use of unfair means by resort to fresh appreciation of evidence on record and exercise of power as if in appeal or revision. And substantial weight has to be conferred on the conclusions of the University on the issue of use of unfair means where compliance with the principles of natural justice has been made.

13. In *Suresh Kumar Bagaria Vs. University of Rajasthan* [, AIR 1981 Rajasthan 188] a learned Single Judge of this Court has held that Ordinance 152(2) of the University of Rajasthan Ordinances contemplates unfair means detected at Centre itself and procedure provided in respect thereof is based on the report of Centre Superintendent or the Centre In-charge. It has been held that where no detection was made at the time of examination, the procedure provided under Sub-clause (2) of Ordinance 152 cannot in terms apply. However, the principles of natural justice would then govern such a case of use of unfair means where such means were resorted to outside the examination centre. It was held that the minimum requirement of principles of natural justice is that the student must be first informed as to what is the precise charge or allegation against him constituting unfair means and then the material on which it is based should be made known to him and be accessible to him. Thereafter he must be allowed an opportunity to explain and defend himself against the material and while doing be free to produce any oral or documentary evidence in support of his defence. This judgment clearly negates the arguments of the counsel for the petitioner that the impugned order dated 18.02.2013 is vitiated for being non-compliant

with the procedure prescribed under Ordinance 152(2) of the University Ordinances for the reason that admittedly the unfair means attributed to the petitioner was not one which was resorted to or detected at the examination centre. It is an admitted fact that the petitioner was issued a show-cause notice dated 03.04.2012 pursuant to the liberty granted by this Court under its order dated 16.03.2012 in SBCWP No. 1646/2012. He admittedly submitted his representation thereto and appeared before the Committee on 11.04.2012. He was allowed to access to the two offending answer-sheets where cover of Surgery, Obst & Gynae was found stapled on the answer-sheet of Neurology & Neurosurgery and the cover of Neurology & Neurosurgery on the answer-sheet of Surgery, Obst & Gynae. The petitioner was also required to answer seven queries in a questionnaire which he did. The petitioner thus had all manner of opportunity to defend himself against the show-cause notice and the allegations therein that he had himself or through third party sought to tamper with the answer-sheets in respect of papers i.e. Surgery & Obst Gyne. and Neurology & Neurosurgery relating to BPT Part-III remand 2011 examination. The principles of natural justice have been complied with. From the material on record, "Unfair Means Committee" constituted of Professors came to the conclusion that in the circumstances that obtained, on preponderance of probabilities, there could be no other conclusion except that the petitioner had himself or through a third party sought to tamper with his two answer-sheets in issue in BPT Part III remand 2011 examination. The conclusion of the Committee, in my considered opinion, in the overall facts of the case cannot be said to be based on mere surmises, conjectures or speculation or perverse. The petitioner was obviously the intended beneficiary of the unfair means in issue. It is impossible to visualize that except for intervention of the petitioner himself or somebody on his behalf his answer-sheets in the two subject aforesaid would be tampered in the manner they were found. The unfair means Committee therefore recommended for cancellation of the BPT Part III remand 2011 Examination of the petitioner and debarring him from BPT 2012 Examination. Pursuant to the recommendation of the Committee, the respondent-University vide order dated 28.01.2012 cancelled the petitioner's examination.

14. It is relevant to state that no mala fides have alleged against any members of the Unfair Means Committee or any other officer of the respondent-University involved in the impugned decision.

15. In the circumstances, within the limitation of jurisdiction of a writ court exercising power of judicial review/superintending jurisdiction, I am disinclined to interfere with the impugned order dated 18.02.2013 canceling the six month rotational internship training obviously on the cancellation the petitioner's BPT Part III remand 2011 examination.

16. However, in the overall facts of the case, more particularly the fact that the petitioner was issued a provisional certificate of passing BPT Part-IV Examination and also a NOC inter alia by the respondent-University for admission to the

rotational six month internship at SMS Medical College and Hospital--to which the petitioner was subsequently admitted and had completed almost five months before the impugned order dated 18.02.2013, I would be inclined to invoke the extra ordinary equitable jurisdiction of this Court for interfering with the quantum of punishment. The petitioner has admittedly passed the two papers in issue in BPT Part III in main/remand examination held in February, 2012 under the interim order of this Court passed on 10.02.2012 in SBCWP No. 1646/2012. He has also admittedly passed BPT Part IV 2011 Examination and has completed almost five months rotational internship training. To require the petitioner to redo Part-III BPT in 2016 and put the clock back four years, would be severe hardship and constitute excessive disproportionate penalty. I would therefore reduce the punishment visited upon the petitioner only to the cancellation of the petitioner's BPT Part III remand 2011 Examination. In the circumstances, the petitioner would be entitled to avail the benefit of the BPT Part-IV mark-sheet dated 07.07.2012, the NOC dated 08.08.2012 issued by the University, the admission to the six month rotational internship training programme under order dated 01.09.2012 and continue and complete his six months rotation internship training at the SMS Medical College & Hospital, Jaipur.

17. The writ petition stands disposed of accordingly.

18. S.B. Civil Writ Petition No. 18347/2015 is allowed in terms detailed hereinabove.

19. The minutes of the Unfair Means Committee dated 11.04.2012 and the minutes of the Board of Management dated 03.05.2012 would stand modified accordingly.