
(2004) 08 P&H CK 0146
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4443 of 2003

Puja Saxena

APPELLANT

Vs

Kurukshetra University and Others

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Citation : (2004) 138 PLR 886

Hon'ble Judges : Mehtab S. Gill, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : C.B. Goel, for the Appellant; S.C. Sibal and V.S. Rana, for the Respondent

Final Decision : Allowed

Judgement

Mehtab S. Gill, J.—This is a petition for quashing letter/memo dated 28.1.2003 (Annexure P3) vide which Superintendent (Exam. III) of Kurukshetra University, Kurukshetra (for short, the University) informed the petitioner that she will be awarded Degree only at the Convocation Scheduled to be held on 4.2.2003 because some formalities are to be completed for determining the Medal/Merit Certificate. The other prayer made in the writ petition is to direct respondent Nos.1 and 2 to withdraw "Dr. Kamal Bhardwaj Medal, 2002" (hereinafter referred to as "the Medal") awarded to respondent No. 3 and confer the same on the petitioner.

2. The petitioner took admission in M.A. (Economics) Course in the University in 2000. She passed M.A. Part-I by securing 262 marks out of 400 and M.A. Part-II (Final) examination by securing 257 marks out of 400. She was declared first in M.A. (Final) Economics. Vide letter dated 20.1.2003 (Annexure PI), Deputy Registrar (Regn. & Sch.) of the University informed the petitioner that by having secured the highest marks in M.A.(Final) Economics examinations held in 2002, she has become eligible to be awarded the Medal at the Convocation. She was asked to come for rehearsal on 3.2.2003. However, just after seven days, the Superintendent (Exam. III) sent letter Annexure P3 superseding memo Annexure

PI and informed the petitioner that she will be awarded Degree only at the Convocation. On receipt of Annexure P3, the petitioner addressed representation dated 31.1.2003 (Annexure P4) to the Vice Chancellor and Controller of Examinations of the University, but failed to evoke any response from the latter. In the Convocation held on 4.2.2003, the Medal was awarded to respondent No. 3-Smt. Rekha Gupta by treating her the most meritorious student.

3. The petitioner has challenged the award of the Medal to respondent no. 3 on the ground of violation of the provisions contained in Ordinance No. XVII of University Calendar, Volume-I (1997 Edition) and mala fides. She has averred that even though, in terms of the relevant statutory provisions of the University Calendar, respondent No. 3 was not eligible, she succeeded in manipulating the award of the Medal with the help of her father-Shri O. P Gupta (respondent No. 4), who was then Chairman of the Unfair Means Committee of the University.

4. Respondent Nos. 1 and 2 defended the award of the Medal to respondent no. 3 by asserting that she had secured highest marks in M.A. Final (Economics) Examination, 2002. In the written statement filed on their behalf, it has been averred that the Medal was awarded to respondent No. 3 in accordance with the relevant regulations because she had obtained 524 marks out of 800 in M.A. (Economics) Examination, 2002 as against 519 marks secured by the petitioner. It has been further averred that even though, the petitioner was informed vide letter Annexure PI that she would be awarded the Medal on receipt of representation made by respondent no. 3, the matter was got examined and she was found entitled to be awarded the Medal.

5. Respondent Nos.3 and 4 have been duly served, but neither of them has filed written statement to controvert the averments contained in the writ petition.

6. Shri C.B.Goel, learned counsel for the petitioner argued that the action of the University authorities to award the Medal to respondent No. 3 is not only violative of Clauses 2 and 13 of the Ordinance No.XVII of the University Calendar, Volume-I, but is also tainted by mala fides. He pointed out that respondent No. 3 had not appeared in Paper-I of M.A. Part-I (Economics) and had taken supplementary examination in December, 2001 as a re-appear candidate and submitted that in terms of the relevant Ordinance, she was not even eligible to be considered for award of the Medal. Shri Goel then argued that action of the University to award the Medal to respondent no. 3 should be nullified because she had produced bogus medical certificate to justify her nonappearance in the main examination of M.A. Part-I (Economics) held on 16.5.2001.

7. Shri S.C.Sibal, learned Senior Counsel appearing for respondent Nos. 1 and 2 argued that the decision of the University to award the Medal to respondent No. 3 cannot be termed as illegal because she had secured highest marks in M.A. (Final) Economics Examination, 2002. Shri Sibal conceded that respondent No. 3 had appeared in the supplementary examination held in December, 2001 in Paper-I of M.A. Part-I (Economics), but submitted that the competent authority

had accepted her explanation for remaining absent in the main examination and awarded the Medal keeping in view the Note appearing at page 246 of University "Calender, Volume-I. He produced the original file relating to award of Dr. Kamal Bhardwaj Medal, 2002 to substantiate his argument that respondent No. 3 was awarded the Medal by taking into consideration her merit and the representation made by her to justify her inability to appear in the main examination.

8. We have given serious thought to the respective arguments and carefully perused the record including the file produced by Shri Sibal. For determining the all important issue relating to the entitlement of the petitioner and/or respondent no. 3 to be awarded the Medal, it will be useful to notice the relevant portions of Clauses 2(2), 13 of Ordinance-XVII of the University Calender, Volume-I and the Note appearing at page 246. The same read as under:-

"2. University Merit Scholarships

(1) XX XX XX XX XX XX

(2) (a) All awards shall be made on the results of the Annual Examinations only.

No award is to be made on the Results of Bi-annual or Supplementary Examinations.

(b) xx xx xx xx xx xx xx

13. University Medals The University shall award annually Medals to all students who obtained First Class First position in the order of merit in the various University examinations held at the end of each course. For this purpose Bachelor of Science (Medical), Bachelor of Science (Non-Medical), Master of Arts (Music Vocal), -Master of Arts (Music Instrumental), Master of Philosophy (Music Vocal) and Master of Philosophy (Music Instrumental) shall be treated as different. Provided that if more than one candidate has obtained equal number of marks in an examination, on the basis of which a Medal is to be awarded the medal shall be awarded to each of them mentioning on each medal only the name of the candidate to whom the medal is actually to be awarded. The University shall also award a Medal to be candidate who secures the highest marks in the Final M.B.B.S. Professional Examination. The Medal shall be presented at the Annual Convocation of the University. It shall be made of Gold plated Silver and the year of the Award shall be inscribed on the Medal with the seal of the Kurukshetra University on its reverse side. Every medal shall be accompanied by a certificate indicating the particulars of the person to whom the medal is awarded.

xx xx xx xx xx xx xx xx xx

Note:- Notwithstanding anything contained in Ordinance XVII, no student shall be eligible for the award of any medal or prize, unless he/she has passed in the examination, including part(s) thereof, if any, in the first attempt and within the minimum duration of the course. However, absence in the Examination/Paper for

reasons beyond the control of the candidate e.g. serious illness, serious calamity like death of father or mother etc. duly supported by documentary proof shall not debar him from the award of Medal or Prize if he/she passes the examination within the minimum duration of the course. Provided that in case a student obtaining First class First position is not eligible for the award of the Medal or Prize, the same shall be awarded to the next eligible student passing the examination in First Class.

xx xx xx xx xx xx xx xx xx xx"

9. A conjoint reading of the provisions reproduced above makes it clear that performance of the candidates at the annual examinations is the sole criteria for grant of the merit scholarships and awards and the result of bi-annual or supplementary examinations cannot be taken into consideration for this purpose. To put it differently, the merit secured by the candidates in the annual examinations constitutes the core and conscience of the provision relating to award of Medal etc. However, in terms of second part of the non-obstante clause contained in the Note appearing at page 246 of University Calendar, Volume-I, a candidate, who is not able to appear in the main examination/paper due to reasons beyond his/her control, like serious illness or death of either of the parents, can also be considered for award of the Medal provided that he/she passes the examinations within the minimum duration of the course and produces documentary proof to substantiate his/ her explanation for non-appearance in the main examination.

10. In the light of the above, it is to be seen whether the University authorities were justified in entertaining the explanation given by respondent No. 3 for her non-appearance in Paper-I of M.A. Part-I (Economics) examination held in May, 2001. A perusal of the file produced by Shri Sibal shows that till the declaration of the result of M.A. (Final) Examination, 2002, respondent No. 3 neither made any representation nor submitted any document to explain her absence in Paper-I of M.A. Part-I Examination (Main). This must have been the reason why the petitioner, who had secured highest marks among the candidates passing M.A. Part-I and Part-II Main Examinations was treated eligible for conferment of the Medal. However, just after seven days of sending communication Annexure PI to the petitioner, some one of the Examination Branch of the University, who wanted to help respondent No. 3, manipulated the recording of note dated 27.1.2003, the relevant extract of which is reproduced below:-

"It is stated that as per University Rules appearing at page-246, Vol-I of the Act and Statutes, 1996, reproduced below, the said candidate is also eligible provided she submits the documentary proof of having serious illness, serious calamity like death of father OR mother etc.:-

"Notwithstanding anything contained in Ordinance-XVU no student shall be eligible for the award of any medal or prize, unless he/she has passed in the examination, including party(s) thereof, if any, in the first attempt and within the

minimum duration of the course. However, absence in the exam./paper for reasons beyond the control of the candidate e.g. serious illness, serious calamity like death of father or mother etc., duly supported by documentary proof shall not debar him from the award of Medal or Prize if he/she passes the examination within the minimum duration of the course."

In view of the position explained above, if agreed, we may ask the candidate telegraphically to intimate this office why she remained ABSENT in Paper-I of M.A. (P) Eco. Exam, in May, 2001, with solid proof/reasons and with the documentary proof.

Submitted, pl."

11. The Controller of Examinations approved the above mentioned note on that very day. However, even before the issuance of telegram, respondent No. 3 sent fax message dated 28.1.2003 in the form of representation addressed to the Controller of Examinations for consideration of her candidature forward of the Medal by claiming that she could not appear in the Paper-I of M.A. Part-I Examination due to illness. Photostat copies of medical certificate dated 28.1.2002 issued by Dr. Gulshan Nagpal, KOS Hospital, Ambala Cantt. and other dated 3.5.2001 passed by Chief Commissioner of Income Tax Haryana and Himachal Pradesh at Panchkula sanctioning leave to respondent No. 3 from 14.5.2001 to 28.5.2001 were also fixed alongwith the representation. On receipt of the representation sent by respondent No. 3, the entire machinery of the University acted with lightening speed and declared respondent No. 3 eligible for award of the Medal. This is clearly evident from the following:-

(1) On 29.1.2003, the then Vice Chancellor of the University directed the Controller of Examinations to look into the representation of respondent No. 3 and report immediately. The Controller of Examinations marked the same to the Examination Branch.

(2) On that very day, the Examination Branch prepared the note, the relevant portion of which is reproduced below:-

"After considering the documentary proof submitted by the candidate at Flag-"X" and rules quoted at NP-I at "A" if approved the medal for M.A. Economics May, 2002 examination be given to Mrs. Rekha Gupta, who secured 524/800 marks instead of Ms. Pooja Saxena, who secured 519/800 marks."

(3) The aforementioned note was approved by the Controller of Examinations on 29.1.2003.

(4) On the next day i.e. 30.1.2003, the Vice Chancellor asked the opinion of Shri C. B. Madan, Advocate.

(5) The Advocate concerned made certain queries on 31.1.2003. The Examination Branch replied to the queries of the Advocate on that very day i.e. 31.1.2003. Immediately thereafter, the Advocate concerned opined that

respondent No. 3 is eligible for award of the Medal.

(6) On 1.2.2003, the Vice Chancellor approved the proposal for award of Medal to respondent No. 3 and on 4.2.2003, the Medal was awarded to respondent No. 3.

12. In our opinion, the decision of the University to award the Medal to respondent No. 3 by invoking the Note appearing at page 246 of University Calender, Volume-I is ex facie arbitrary and illegal. The facts brought on the record of the writ petition show that respondent no. 3 did not appear in Paper-I of M.A. Part-I held on 16.5.2001. At that time, she neither made any representation expressing her inability to appear in the examination due to illness nor she produced the medical certificate. Rather, she volunteered to appear in the supplementary examination held in December, 2001 as a reappear candidate. Even after the declaration of the result of M.A. Part-I examination including the supplementary examination and M.A. Part-II (Final) examination, she did not make any representation to justify her absence in the examination held on 16.5.2001. She became active only after the University decided to award Medal to the petitioner. Some one in the University came to her help in a big way. The Examination Branch manipulated note dated 27.1.2003, which was approved by the Controller of Examinations. She sent representation through fax even before the telegram could be dispatched by the concerned authority of the University. Thereafter, every body in the University became anxious to help respondent No. 3 and the exercise undertaken by them led to the change of heart and mind in the matter of award of the Medal. Respondent no. 3 has not explained as to why she did not submit application to justify her absence in the examination held on 16.5.2001. Likewise, respondent Nos. 1 and 2 have not explained as to why the Examination Branch suo-motu decided to send telegram to respondent No. 3 to explain her absence in the examination held on 16.5.2001 and why she was prompted to make application for availing the benefit of the Note appearing at age 246 of the University Calender, Volume-1 despite the fact that she had voluntarily taken supplementary examination held in December, 2001. It is also quite intriguing as to how respondent No. 3 came to know about note date 27.1.2003 even before the dispatch of telegram requiring her to produce documents to explain her absence in the examination held on 16.5.2001. All this lends substantial creditability to the assertion of the petitioner that re- respondent No. 3 had manipulated crucial note dated 27.1.2003 with the help of her father (respondent No. 4), who was then holding an important position in the University. Therefore, we have no hesitation to hold that the exercise undertaken by the University authorities for award of the Medal to respondent No. 3 is tainted by arbitrariness and mala fides.

13. We are further of the view that the medical certificate allegedly issued by Dr. Gulshan Nagpal on 28.1.2002 in favour of respondent No. 3 could not have been relied upon by the University authorities for invoking the Note appearing at page 246 be- cause.-

(a) no explanation is forthcoming as to why respondent No. 3 had not produced the certificate during the examination of M.A. Part-I held in May, 2001 or immediately thereafter or till her appearance in the supplementary examination in December, 2001;

(b) respondent No. 3, who was then posted as Deputy Commissioner of Income Tax, Panchkula has not explained as to why she had gone to take treatment from a doctor at Ambala and why the doctor for Ambala came to treat her for minor ailment;

(c) The certificate issued by Dr. Gulshan Nagpal, which does not bear any dispatch number, is quite intriguing. While certifying that respondent No. 3 was under his treatment, the doctor concerned also declared that she was allowed to appear in her examination after 18.5.2001. This is clearly borne out from the language of the certificate which is reproduced below:-

"Certified that Mrs. Rekha Shukla w/o Shri I.D.Shukla was under my treatment for Enteric Fever & Acute Bronchitis. For the same, she had consulted Dr. C.K.Mittal, M.D. (Chest & T.B.) She was advised rest for a period of 7 days w.e.f. 11.5.2001 to 18.5.2001. She was allowed to appear in her examination after 18.5.2001. During this period, I had attended on her at her house."

14. It is, thus, clear that the medical certificate produced by respondent No. 3 was bogus and the same could not have been made basis for awarding the Medal to her. More- so because there is nothing in the certificate to show that the petitioner was so seriously ill that she could not take the examination held on 16.5.2001. In para 5(ii) of the fax message sent to the Controller of Examination, she stated that "my intention to appear in Paper-I on 16.5.2001 is testified by the order sanctioning my earned leave." If respondent No. 3 was really ill and was not fit to appear in the examination, she would have taken medical leave. However, the fact of the matter is that she had applied for earned leave. Therefore, it must be held that the Note appearing at page 246 of University Calender, Volume-I could not have been invoked for awarding Medal to respondent No. 3.

15. In the result, the writ petition is allowed. The action of the University to award Dr. Kamal Bhardwaj Medal, 2002 to respondent No. 3 is quashed. The University is directed to confer the said Medal upon the petitioner. The needful be done within one month from the date of receipt/submission of a copy of this order after issuing a public notice to that effect.