

(2010) 03 GAU CK 0070
In the Gauhati High Court
Case No : Writ Petition (C) No. 2234 of 2004

Purnima Rajbongshi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Citation : (2006) 1 GLT 933

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.M. Mazumdar, A. Choudhury, D.R. Deka, K.K. Hazarika and S. Islam, for the Appellant; Sk. Mukhtar, for the Respondent

Judgement

Amitava Roy, J.—The cancellation of the B.A. Part-II Examination, 2002 of the Petitioner and her debarment from appearing in any University examination for five years as per the decision of the Executive Council of the Gauhati University (for short, hereafter referred to as the "University") form the subject matter of challenge in the instant petition.

2. I have heard Mr. A.M. Mazumdar, learned senior counsel for the Petitioner and Mr. Sk. Mukhtar, learned Counsel for the University.

3. The recorded version of the Petitioner is that, after a temporary disruption of her studies in her early years following her marriage, she resumed her academic pursuit and after passing the Higher Secondary Examination in 1998, took admission in the B.A. Three Years Degree Course of the University in Nalbari College with Major in Assamese. She passed Part-I Examination in 2001 with 1st Class in the Major subject. For personal reasons, she changed her centre and being permitted, she was allowed to take the B.A. Part-II Examination from Paschim Guwahati Mahavidyalaya. She duly sat in the B.A. Part-II Examination and secured 1st Class in Major thereat.

4. It was thereafter that, she received a letter dated 7.9.2002 from the Controller of Examinations of the University alleging unfair means against her in

the B.A. Part-II Examination held in the year 2002 and she was thereby asked to show cause as to why appropriate action would not be taken against her. She was, thereafter, by office order dated 30.11.2002 required to appear before the Scrutiny Committee of the University together with all necessary evidence in support of her defence. According to the Petitioner, though she appeared before the said committee, it did not disclose to her the basis of the action initiated. On repeated queries, she was only told that in her answer scripts of Paper IV, VIII and IX (Major), loose sheets with SI. Nos. of Nalbari College had been located and that a complaint to the effect has also been received. The Petitioner has stated that neither her answer scripts nor the loose papers nor the complaint was shown to her despite her requests. Before the Committee, the Petitioner categorically stated that the answer scripts and the loose sheets had been provided to her by the invigilator of the Paschim Guwahati Mahavidyalaya signed by him/her on the dates of the examination and that as those contained the seal of the said college, the allegations were baseless. She was thereafter served with the impugned order dated 12.6.2003 passed by the Controller of Examinations, Gauhati University cancelling her B.A. Part-II Examination, 2002 and also debarring her from appearing in any University examination for the next five years.

5. The University, in its counter filed through the Respondent Nos. 3 to 6, while asserting that under Clause-62 of the Revised Examination Rules, 1992 (for short, hereafter referred to as the "Rules"), it has the right to cancel the examination of any candidate at any time/stage for sufficient reason, if any unfair means is detected or established against him/her, has insisted that the Petitioner's case was processed as per the procedure and therefore, the impugned decision is justified. While admitting that till the declaration of her results, the unfair means adopted by her could not been detected, the answering Respondents have asserted that not only all the documents evidencing unfair means of the Petitioner had been shown to her, her statement was duly recorded and that therefore, the impugned action cannot be condemned as unfair, as alleged. According to the University, two of the answer scripts and loose sheets used by the Petitioner were not supplied to her at Paschim Guwahati Mahavidyalaya from where she had appeared in the B.A. Part-II Examination and in fact, had been issued by the University to Nalbari College. Further, the signatures of the invigilators on the corresponding dates of the examination also did not tally with those appearing on the said answer scripts/loose sheets used by the Petitioner.

6. In the additional pleadings exchanged by the parties, the Petitioner has brought a complaint against denial of opportunity to her to cross examine the person or persons who had alleged unfair means against her in the enquiry. The University, while contending that cross examination by her was not essential and that the answer scripts bearing Nos. 068425 (VIIIth paper) and 068424 (IXth paper) had been issued to her, has averred that inspite of repeated questions being put to her, she refused to make any statement in connection therewith.

The University also referred to the statement made by the Assistant Zonal Officers, TDC Part-II (Major) Arts Zone-C, 2002, Nalbari College and that of the Principal, Paschim Guwahati Mahavidyalaya affirming that the aforementioned answer scripts were supplied by the University to Nalbari College for TDC Part-I and Part-II Examination, 2002 and that the same were not of the college from which the Petitioner had appeared in the examination and also that the signatures thereon did not tally with those of the invigilators of the said institution detained for duty on the corresponding dates of the examination.

7. Mr. Mazimdar has argued that the alleged anomalies and/or the unfair means not having been detected in course of the examination, the belated action on the basis of a confidential report not disclosed to the Petitioner is patently illegal and unsustainable in law. Not only the allegation is unfounded, the Petitioner having been denied a reasonable opportunity of representing against the same, the impugned decision apart from being non est in law is also vitiated for violation of the principle of natural justice. According to the learned senior counsel, the answer scripts and the loose sheets of the examination involved had been duly provided by the invigilators in the hall and therefore, the allegation of unfair means has no factual basis as at all.

8. Mr. Mukhtar in reply has argued with reference to Clause-62 of the Rules that having regard to the power engrafted therein, the plea that the Petitioner had been permitted to take the examination and that her results had been disclosed, cannot be construed to be a bar for the action taken on the established charge of unfair means adopted by her. While dismissing the Petitioner's contention of unfairness in action, the learned Counsel has argued that as the contemporaneous records would demonstrate in unequivocal terms her complicity in the anomalies detected, the impugned action cannot be faulted with, he urged. He has asserted that though there is no prescribed procedure for the enquiry of the kind undertaken by the University in the case in hand, the Petitioner had been afforded all reasonable opportunities and that therefore, there is no room for her to be aggrieved on this count.

9. The rival pleadings and the arguments advanced have received the due consideration of this Court. Admittedly, the Petitioner had duly appeared in her B.A. Part-II Examination and was declared to have passed the same securing a 1st class. The exercise culminating in the order impugned seems to have been initiated on the basis of complaints lodged with the Controller of Examinations, Gauhati University in which the involvement of the Petitioner had been mentioned in specific terms. Discrepancies in her answer scripts in Paper-IV, VIII and IX in Assamese (Major) having been detected, show cause notice was issued to her. The records produced by the University clearly disclose the complaints on which the exercise was initiated against the Petitioner. Further, the same reveal that the show cause notice dated 7.9.2002 was issued by the Controller of Examination on a scrutiny of her answer scripts of Paper-IV, VIII and IX (Major) in Assamese in the BA Part-II Examination, 2002 discrepancies therein having

been noticed. The Petitioner submitted her reply thereto denying the charge of having adopted unfair means. She thereafter appeared before the Scrutiny Committee of the University in course of which her statement was also recorded.

The records disclose inter alia that the statements of the Principal, Paschim Guwahati Mahavidyalaya, Principal, Nalbari College and the officials of the TDC Part-II (Major), Arts, Zone-C, 2002, Nalbari College were also recorded. Whereas, the Principal, Paschim Guwahati Mahavidyalaya disowned the two answer scripts with the above serial numbers as well as the seals thereon to be of his institution and further also stated that the signatures appearing thereon were not those of the invigilators of his college, the Principal, Nalbari College admitted that the said two answer scripts were within the range of the scripts supplied by the University to his institution for TDC B.A. Part-II Examination, 2002. He also stated that the signatures on the said answer scripts were not of the invigilators engaged in the TDC Part-II Examination, 2002 of his centre. The testimony of the Principal of the Nalbari College was endorsed by the officials of the TDC Part-II (Major), Arts Zone-C, 2002, Nalbari College. Evidently, these witnesses were not shown to have been cross examined by the Petitioner. She, in her statement claimed to have duly complied with all rules and procedure for the examination and expressed ignorance of the alleged anomalies. On the basis of the overall materials as well as the recommendations of the Scrutiny Committee in terms thereof, the Executive Council of the University on 12.5.2003, resolved to cancel the Petitioner's examination of B.A. Part-II Examination, 2002 and also to debar her from appearing in any University examination for the next five years.

10. A bare perusal of Clause-62 of the Regulations demonstrates conferment of right in the Executive Council for any reason which may appear to it to be sufficient to cancel the admission of any candidate to any Examination, whether before, during or after the examination. The said clause also authorizes the Executive Council to forebear a candidate from appearing in any subsequent University Examination or Examinations. In view of the categorical authorization of the Executive Council in absolute terms as above, the plea of delay in taking the impugned action therefore is neither convincing nor acceptable. The records disclose that on the dates of the two examinations, corresponding to two answer scripts, one Smti. Archana Borah and Smti. Namita Devi had been the invigilators. Their attested signatures are also available. The statement of the Principal of the Paschim Guwahati Maha vidyalaya who is otherwise acquainted with the signatures of these two invigilators to the effect that those appearing on the answer scripts Nos. AC 068424 and AC 068425 were not theirs", not only is admissible in evidence in law, the same, in absence of any over whelming materials to the contrary cannot be brushed aside to be incredible or untrustworthy lacking in probative worth. The evidence of the witnesses examined by the Scrutiny Committee established that these two answer scripts had been allotted by the University to the Nalbari College for the same examination and therefore, could not have been in normal course at the disposal of the Paschim Guwahati Mahavi dyalaya to be distributed to the candidates

appearing from their centre on the same dates. The report of the Principal of the Paschim Guwahati Mahavidyalaya incorporating SI. Nos. of the answer scripts issued to his institution by the University did not include the two aforementioned answer scripts used by the Petitioner. The report of the Principal of the Nalbari College submitted with the Joint Controller of Examinations, Gauhati University to the effect that these answer scripts are unavailable from amongst others unused and kept in the store room and only reinforces the fact that the same had been allotted to that college by the University for the same examination but had gone missing without being accounted for. The order of the Joint Controller of Examinations, Gauhati University pursuant to the resolution of the Executive Council withdrawing Zonal Office from Nalbari College for three years is also available on records and is of considerable significance.

11. Having regard to the process undertaken to probe into the charge, the grievance of violation of the principles of natural justice, does not appeal to this Court. Evidently, the University had issued the show cause notice to the Petitioner disclosing the allegation against her affording an opportunity to respond thereto. She was also permitted to appear before the Scrutiny Committee with all evidence at her disposal to dismiss the imputations levelled. Her statement was also recorded. The evidence of the other witnesses is wholly based on contemporaneous records. The testimony of the Principal of the Paschim Guwahati Mahavidyalaya that the two answer scripts had not been provided to the institution and that the signatures thereon were not of the invigilators detailed in the centre and the disclosure that these two answer scripts in fact, were allotted by the University to the Nalbari College taken as a whole, proclaim unfair means in the examination relatable to the Petitioner. Had there been other similar cases, the possibility of mistake in the actual dispatch of the answer scripts meant for Nalbari College, but supplied to the Paschim Guwahati Mahavidyalaya could have been inferred. That being not so and as direct or indirect involvement of any other person has not surfaced in course of the enquiry, the action taken by the University cannot be denounced as either uncalled for or unauthorized. The charge being serious, in the interest of discipline and probity of the academic institution involved, the impugned action cannot be termed as unnecessary as well. No allegation of mala fide has been made by the Petitioner and proved against any of the persons involved in the enquiry. The view taken by the University being a plausible one, viewed in the context of the contemporaneous records, in the exercise of power of judicial review, this Court is not inclined to interfere.

12. In the above view of the matter, on a totality of the considerations narrated hereinabove, the challenge lacks in substance and is hereby negated. The writ petition is accordingly dismissed. No costs.