
(2013) 10 AHC CK 0159

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50639 of 2013

Raj Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 9 ADJ 762 : (2013) 4 UPLBEC 3019

Hon'ble Judges : Sunita Agarwal, J

Bench : Single Bench

Advocate : Amitabh Tripathi and Himanshu Tripathi, for the Appellant; A.B.L. Gaur, A.K. Saxena and Ram Gopal Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Sunita Agarwal, J.—Heard Shri Amitabh Tripathi, learned counsel for the petitioner and Shri A.B.L. Gaur, Learned senior advocate assisted by Shri Saurabh Gaur, learned counsel for the respondent-University namely respondent No. 2 and 3.

The writ petition has been filed challenging communication dated 21.8.2013 issued by the Controller of Examination informing the petitioner that he had used unfair means and was caught by Flying Squad with Two chits, which were used in answering the question No. 2 from page No. 1 to 5 of the answer book of Economics.

It was further stated that the observation of the Unfair Means Committee is that the unauthorised material recovered from the possession of the petitioner is in his own hand writing and has been used. As such, as per Clause 1.6B(i), the Committee resolved for cancellation of the result of the candidate of the examination for the year 2012-13 and debarment from the corresponding (and any other) Examination 2013-14.

2. By order dated 18.9.2013, this Court directed the learned counsel for the respondent-University to produce the entire original records relating to use of

unfair means by the petitioner. Today, record has been produced before the Court.

3. A perusal of the record indicates that there is a form signed by the petitioner, invigilator and Central Superintendent of the Examination Centre which shows that the petitioner was caught by Flying Squad. A charge-sheet was issued to the petitioner on 11.5.2013. The petitioner submitted reply dated 18.5.2013. Thereafter, a show-cause notice dated 28.6.2013 was issued informing the petitioner as to why action be not taken against him for use of unfair means. The record further indicates that a communication letter No. 06/1412/2013 dated 21.8.2013 was sent to the petitioner through registered post signed by three persons, the letter does not contain even the designation of persons who had signed the same.

4. Most striking part of the record produced by the University is that another letter No. 06/1412/2013 dated 21.8.2013 was issued under the signature of Controller of Examination of University addressed to the petitioner. It may be noted that contents of both the letters are one and the same. This fact shows that only communication was sent to the petitioner about the punishment inflicted upon him.

5. Learned counsel for the respondent-University has failed to show from the record that there is any resolution of the Unfair Means Committee which is authorised to take decision under the Unfair Means (Ordinances) of the University. A perusal of the ordinances indicates that Clause 1.4, as contained in Chapter XXVIII of the Ordinance provides that punishment prescribed in the Ordinances shall be awarded by a Committee, not less than five teachers appointed by the Examination Committee or by the Vice Chancellor acting on behalf of the Examination Committee. The Quorum of this Committee shall be three members.

6. Further, Clause 1.5 provides that the Committee as mentioned in Clause 1.4 shall consider the report of the invigilator and Central Superintendent, the reply submitted by the candidate, the report of the examiner and any other material, placed before it.

Clause 1.6 further provides that the Committee referred to in Clause 1.4 shall award the punishment as provided under sub clauses A, B and C of Clause 1.6.

7. From the original records produced before this Court, it is apparent that the matter has not been placed before the Unfair Means Committee as provided under Clause 1.4 of the Ordinances as contained in Chapter XXVIII of the Unfair Means (Ordinances).

8. Learned Senior Counsel appearing for the respondent-University vehemently submits that the communication dated 21.8.2013 contains the observation and the decision taken by the Unfair Means Committee. He further submits that from the record it is clear that the unauthorised material that is two hand written pages were used the by the petitioner in answering the question No. 2 and he

was caught by Flying Squad. He further submits that in view of the said fact that the petitioner has used the unauthorised material, the punishment has been rightly inflicted upon him strictly in accordance with the provisions of Clause 1.6B(i) by the Unfair Means Ordinances. There cannot be two views in the matter.

9. Be that as it may, the Court finds that there is flaw in the decision making process and the procedure provided under the Ordinances has not been followed by the University before issuing show-cause notice dated 28.6.2013 and passing the order dated 21.8.2013. There is no resolution of the Unfair Means Committee on record to indicate that the Committee had considered the material and applied its own independent mind before coming to the conclusion which was communicated to the petitioner by letter dated 21.8.2013. Moreover the contents of two letter mentioned above of same number and same date are sufficient to conclude that the matter was never placed before the Unfair Means Committee, which is the sole authority to take decision under the Ordinances. In view of the above discussion, this Court is of the considered view that the matter be remanded back to the Unfair Means Committee appointed by the Vice Chancellor of the University in accordance with the Clause 1.4 of the Ordinances. The Unfair Means Committee shall consider the case of the petitioner on the basis of material on record strictly in accordance with the procedure provided under Clause 1.5 as contained in the Chapter XXVIII of the Unfair Means Ordinances. The said exercise is to be completed within the period of 3 weeks from today.

The impugned communication sent by the Controller of Examination on 21.8.2013 is hereby quashed.

With the observations made above, the writ petition is allowed.