
(1995) 08 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9491 of 1994

Ran Pal Singh

APPELLANT

Vs

Board of School Education

RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Board of School Education Regulations — Regulation 13

Citation : (1996) 112 PLR 270

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : R.S. Kundu, for the Appellant; Nirmaljit Kaur, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This petition has been filed to quash order (Annexure P-1) passed by the Board of School Education, Haryana (for short, the Board) declaring the petitioner ineligible to appear in the examination to be held by the Board and for grant of consequential reliefs.

2. The petitioner appeared in 10+2 examination held by the Board in the year 1994. He took his examination at Government Vocational Education Institute, Tarawari. After the examinations were over, the petitioner received a notice dated 7.6.1994 issued under Regulation 19 of the Regulations of Board of School Education, Haryana, and he was asked to appear before the Unfairmeans Committee on 15.6.1994. Allegation levelled against the petitioner was that his handwriting in Hindi paper was different. In response to the notice, the petitioner appeared before the Unfair Means Committee and during the course of proceedings held by it, the Unfair Means Committee gave another notice to him under Regulation 13 and asked him to explain the allegation of having copied the answers from the script of the answer-book of another candidate. The petitioner denied the allegation and thereafter the Board passed the impugned order.

3. The petitioner says that action taken by the Board is arbitrary and unfair and is vitiated due to violation of principles of natural justice. The petitioner further says that no proper notice or opportunity of hearing was afforded to him and no evidence was produced to substantiate the allegation levelled against him.

4. The Board has replied by alleging that the petitioner has been punished on having been found guilty of having copied from the answer-book of another candidate named Jatinder, who had appeared in the examination under Roll No. 21105. The respondent-Board has pleaded that by mistake the notice was given to the petitioner under Regulation 19, but as soon as the mistake was discovered, notice under Regulation 13 was given and after giving him reasonable opportunity of hearing, the impugned order was passed. The respondent-Board says that the action was taken against the petitioner on the basis of Examiner's report (Annexure R-2).

5. In his replication, the petitioner has rebutted the allegation of having copied from the answer-book of Jatinder and has pleaded that mere similarity of answers of two candidates cannot be treated as copying or use of unfair means. The petitioner has also pleaded that there was no possibility of his having copied from the answer-book of Jatinder.

6. During the course of hearing, learned counsel for the respondent placed before me record relating to the proceedings held against the petitioner as well as Jatinder Singh, who had appeared in the examination under Roll No. 21105 and also the action taken against the petitioner who appeared under Roll No. 21106. This record shows that in response to the notice issued to him by the respondent-Board, the petitioner denied the allegation that his answers were in different handwriting. He pointed out that notice given to him was under Regulation 19 and now he was being charged under Regulation 13. He also denied the allegation of having copied from the answer-book of Jatinder. This record also contains a report of Sub-examiner Balwan Singh, who has written that petitioner (Roll No. 21106) has copied the answer of question No.7 from the candidate appearing with Roll No. 21105.

7. The only argument advanced by Shri Kundu is that the impugned punishment awarded to the petitioner suffers from patent illegality because no reasonable opportunity of hearing was afforded to the petitioner. Shri Kundu argued that the first notice given to the petitioner was under Regulation 19 and when the so-called mistake was detected by the Unfair Means Committee, second notice was given to the petitioner on 15.6.1994 and on that very day the Unfair Means Committee completed its proceedings without affording any opportunity of defence to the petitioner. Shri Kundu argued that neither the Sub-examiner who had given report regarding copying was examined nor any member of invigilation staff was produced to show that the petitioner has copied the answer of question No. 7 from the answer-book of the candidate, who had appeared with Roll No. 21105. Learned counsel appearing for the Board admitted that the notice under Regulation 13 was given to the petitioner on 15.6.1994 but argued that the

action taken by the Board is based on the report of the Sub-examiner and there is no reason to doubt the correctness of the report submitted by the Sub-examiner against whom no mala fide has been alleged by the petitioner.

8. The law on the subject of punishment awarded to the students found guilty of unfair means in the examination is well settled. The Courts do not readily interfere with the decision taken by the educational institutions on various matters, including the matters relating to discipline amongst the students and use of unfair means during the examinations. Courts are reluctant to substitute their own decision in place of the decisions of the academic bodies. However, there is no total bar against the Courts intervention in such matters. In cases involving gross violation of principles of natural justice and patent arbitrariness, the Courts not only can but are duty bound to interfere in order to protect the rights of the citizens and there is nothing like immunity to the action of academic bodies of educational institutions.

9. Keeping in view the above-noted principles of law, if the facts of this case are examined, it becomes evident that the respondent did not give even a semblance of hearing to the petitioner. First notice given to the petitioner was for taking action against him under Regulation 19. That notice was issued on 7.6.1994 and some time was given to the petitioner to meet with the allegation. However, the Board authorities subsequently realised that the petitioner could not be charged with the allegation under Regulation 19 and, therefore, notice was given to the petitioner on 15.6.1994 for taking action under Regulation 13 which relates to copying. This notice was given to the petitioner during the course of hearing before the Unfair Means Committee and on that very day, the Unfair Means Committee finalised the proceedings. It is, therefore, apparent that no real notice was given to the petitioner against the proposed action and no opportunity of defence was provided to him. Thus, the action taken by the respondent-Board cannot but be treated as contrary to the principles of natural justice.

10. Another equally serious infirmity in the action taken by the Board is that no evidence was produced by the Board before the Unfair Means Committee to prove the allegation against the petitioner. Neither the Sub-examiner, Balwan Singh, who had submitted report showing that the petitioner had copied answer of question No. 7 from the answer-book of Jatinder appeared before the Unfair Means Committee to prove his report nor any member of the invigilation staff or the supervisor of the Centre has been produced to show that the petitioner had in fact copied from the answer book of Jatinder. In the absence of any substantial evidence to show that the petitioner had copied from the answer-book of Jatinder, the decision taken by the Board has to be held as a decision based on pure conjecture and Assumption. Mere similarity in the answers of two candidates cannot necessarily lead to an inference that one candidate had copied from the answer-book of the other candidate and in any case before the petitioner could be punished for having copied the answer of question No. 7, the respondent-Board was duty bound to give an opportunity to the petitioner to

cross-examine the Sub-examiner, who had submitted report against the petitioner. In the absence of such an opportunity, report of the Sub-examiner was nothing more than a piece of paper which could not be treated as a piece of evidence sufficient to hold the petitioner guilty.

11. In Board of High School Education U.P. v. Ghanshyam,¹ (1962) 64 P.L.R. 575, their Lordships of the Supreme Court have categorically held that before a student can be punished on the allegation of unfair means, the Board is duty bound to comply with the principles of natural justice. This decision, in my opinion, is fully applicable to the facts of this case.

12. For the reasons mentioned above, it is held that the respondent-Board has acted in violation of the principles of natural justice and has condemned the petitioner without giving him a reasonable opportunity of defending himself.

13. Argument of the learned counsel for the respondent-Board that the petitioner should be non-suited on account of his failure to avail an alternative remedy of appeal, deserves to be rejected. When the action taken by the Board against the petitioner has been found to be contrary to the principles of natural justice, availability of alternative remedy cannot be a bar to the entertaining of this writ petition. This principle of law has been laid down by the Supreme Court in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, .

14. In view of the above discussion, the writ petition is allowed. The punishment imposed on the petitioner vide Annexure P-I is declared illegal and void and is quashed. The respondent-Board is directed to give all consequential benefits to the petitioner.

15. Parties are left to bear their own costs.