

(2020) 02 P&H CK 0250

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 35978 Of 2019 (O&M)

Rohan Jain

APPELLANT

Vs

I.K. Gujral Punjab Technical University Jalandhar And Others

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Citation : (2020) 02 P&H CK 0250

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : Prateek Pandit, Tribhawan Singla, Jyoti Fangat

Final Decision : Allowed

Judgement

Sudhir Mittal, J

1. The petitioner took admission in respondent No. 3 - Institute in B.Tech. (Computer Science and Engineering) during the academic Session 2018- 19.

He successfully completed the first semester and took the examination in November 2018. The second semester examination was held in May 2019

and on 24.05.2019 the petitioner was taking the physics examination of second semester. The Supervisor of the row of the petitioner found him using

unfair means and, thus, a form for reporting cases of use of unfair means dated 24.05.2019 was filled up. The unfair means being used mentioned

therein is that 'He has smart watch on his hand, he was continuously cheating, the whole book was captured by that smart watch'. The same was

endorsed by the Centre Superintendent and statement of the petitioner was recorded as 'I am guilty for my actions. I admit my mistake.' The answer

sheet was confiscated and the petitioner was asked to appear for a hearing before the Unfair Means Committee on 12.06.2019. The Committee

conveyed its decision vide communication dated 08.07.2019 which was to disqualify the petitioner from appearing in any examination of the University for a period of two semesters. The petitioner challenged this order by way of appeal and the hearing was held on 13.09.2019. However, the same was dismissed vide order dated 25.09.2019. This order was challenged by the petitioner by way of CWP No. 31824 of 2019. The same was allowed and order dated 25.09.2019 was set aside on the technical ground that it had been passed by an authority not competent to decide the appeal. The petitioner then approached the competent authority vide representation dated 26.11.2019 and enclosed therewith the order dated 21.11.2019 passed by the High Court. The appeal was, however, dismissed on the same day vide order of even date.

2. Meanwhile, pursuant to a demand made by one Vikas (Clerk of the University) the petitioner had deposited the charger of his Apple watch on 28.08.2019. On 17.09.2019, respondent No. 3 - College issued an office circular that the name of the petitioner had been struck off from the rolls of the Institute. Thus, the present writ petition has been filed.

3. In paras 8 and 9 of the writ petition, it has been averred that the Supervisor suspected that the petitioner was using unfair means and she checked his pockets and table. Finding nothing incriminating, she asked the petitioner to remove his watch to see if something was concealed under the strap.

The watch was removed and nothing was found and thereafter she told the petitioner that possession of an Apple watch in itself was an offence and,

thus, the answer sheet of the petitioner was taken away. This resulted in an argument and on the asking of the Superintendent, the petitioner submitted

an apology for having argued with the Supervisor. He was not using unfair means and that he has been punished on the basis of false allegations. In

para 12 of the writ petition, it has been averred that the material relied upon in support of the charge sheet was never supplied to the petitioner and

adequate opportunity of hearing was not granted to him.

4. A detailed written statement has been filed on behalf of the respondent-University in which the allegations of false implication have been denied. It

has been averred that the petitioner was found wearing an Apple watch and using unfair means and the full text book was available in the watch

through cloud connectivity. It has further been averred that the petitioner

admitted his mistake by way of his statement dated 24.05.2019. Regarding supply of material relied upon by the Unfair Means Committee, it has been stated that the same was supplied on 21.10.2019, when information was sought by the petitioner under the Right to Information Act, 2005 (hereinafter referred to as 'the Act'). Regarding order passed in appeal, it has been stated that the Appellate Authority personally examined the record of the case and found that the decision of the Unfair Means Committee was proper.

5. No written statement has been filed on behalf of respondent No. 3 â?" Institute.

6. Learned counsel for the petitioner has contended that the order of the Unfair Means Committee as well as that passed by the Appellate Authority

deserve to be set aside on the ground that principles of natural justice were not complied with. The case against the petitioner is that the text book was

available in his Apple watch but the said watch was not examined by the Unfair Means Committee or the Appellate Authority. The petitioner was

never confronted with the alleged text book available in the watch nor was he shown the CCTV footage relied upon. Further, Apple watch can

communicate only if it is connected with a mobile phone in the surroundings. No mobile phone has been recovered nor the Apple watch has been

examined for any such communication. There is also no finding that the Apple watch was communicating through a mobile phone. Adequate

opportunity of hearing has also not been granted and, thus, the orders passed by the Unfair Means Committee as well as the Appellate Authority are

vitiated. The order dated 17.09.2019 striking off name of the petitioner from the rolls of petitioner No. 3 â?" Institute has been passed without issuance

of any show cause notice or grant of opportunity of hearing. The Ordinance of the University governing use of unfair means does not prescribe

punishment of removal from the rolls of the College and, thus, the order dated 17.09.2019 is vitiated on account of violation of principles of natural

justice and being without jurisdiction.

7. Learned counsel representing respondent â?" University submits that the perusal of the statement dated 24.05.2019 of the petitioner clearly shows

that the petitioner had admitted his guilt. He had admitted his guilt even before the Unfair Means Committee and under the circumstances non supply

of material relied upon by the Unfair Means Committee is not relevant nor does it affect legality of the impugned orders. Adequate opportunity of

hearing was granted and, thus, no interference is called for.

8. A copy of the Ordinance governing prevention, punishment and procedure, concerning cases of misconduct and use of unfair means in/or in relation

to examination has been placed on record as Annexure P-8. Regulations 3.1, 3.2 and 3.3 thereof are being reproduced below as they are relevant to

the present controversy :-

3.1 The Board of Governors shall annually appoint a Standing Committee consisting of four persons, one of whom shall be Registrar of the

University or his nominee not below the rank of a Deputy Registrar to deal with the cases of alleged use of unfair means and/or misconduct in relation

to an examination. Two members shall form the quorum.

3.2 The Registrar, or an officer authorized by him in this behalf, shall call upon the candidate alleged to have employed unfair means in the

examination or obtaining admission to an examination on a false representation to appear before the Standing Committee to represent his case

personally at his own expense on the date fixed for his appearance before the said Committee. If inspite of service of notice, the candidate fails to do

so, he/she will be proceeded against ex-parte. 3.3 Where a candidate wishes to produce any evidence and/or witness before the Committee, he/she

may be allowed to do so by the Committee at his/her own expense. The Committee may also, on its own motion and for arriving at a just conclusion

based on the principles of natural justice, direct the members of the supervisory staff of any other person to appear before it.

9. Regulation 10 of the Ordinance enlists various acts and omissions which may constitute the offence of using unfair means. Sub-clause (z) pertains

to carriage of mobile and other means of electronic communication. This sub-clause is also reproduced :-

(z) i) Carriage of mobile or other means of electronics communication inside the examination hall (even in off condition).

ii) Communicating or trying to communicate, by any means whatsoever, through electronic media or otherwise with any other person in a manner that

is indicative of help being sought/given in an examination.

10. Regulation 11.1 prescribes the punishment of various offences and the same

is also being reproduced :-

I. For offences under clauses (c), (k) and Disqualification for a period that may (r) extend to two semesters but be not less than one semester

II. For offences under clauses (a), (d), Disqualification for a period of not less (e), (g), (h), (i), (j), (l), (v), (x) and (z) than two semesters

III. For offences under clauses (m) and Disqualification for a period of not less (t) than three semesters

IV. For offences under clauses (n) and Disqualification for a period of not less (o) than four semesters

V. For offences under clauses (s) and Disqualification for a period of not less (u) than five semesters

VI. For offences under clause (p) Disqualification for a period that may be extend of five semesters

VII. For offences under clause (y) Disqualification for a period that may extend to five semesters, but be not less than two semesters.

11. From the above it is evident that a student involved in a case of unfair means must be given notice to appear before the Unfair Means Committee

and to represent his case. It is also permissible to lead evidence before the Committee. Further, the carriage of mobile phone or other means of

electronic communication is punishable by disqualification for a period of not less than two semesters.

12. Admittedly, the material relied upon by the Unfair Means Committee such as the Apple watch, the complaint made against the petitioner,

statement of the complainant and the CCTV footage have not been shown to the petitioner on the ground that he had admitted his guilt. Although, the

case of the petitioner is that he never admitted his guilt but only apologized for his action of arguing with the Supervisor. Assuming the same to be

correct, it is not permissible for the authorities to give a go bye to the principles of natural justice incorporated in the aforementioned Ordinance. As

per Regulation 3.3 (supra) a student and the Unfair Means Committee have right to lead evidence. In this case, the petitioner could not have produced

any evidence from his side. He could only have made submissions on examination of the evidence being relied against him. This opportunity has not

been given to the petitioner and, thus, principles of natural justice have been violated. The Appellate Authority has passed its order on the day

representation dated 26.11.2019 was received by it and from the same it can be inferred that it too did not grant an adequate opportunity to the petitioner.

13. There is another aspect of the matter. The allegation against the petitioner is that the entire text book had been down loaded by him in his Apple

watch. However, on perusal of order dated 08.07.2019 passed by the Unfair Means Committee it transpired that it does not record any finding in this

regard. Although, the order need not have recorded detailed reasons for disqualifying the petitioner, atleast finding regarding the availability of the text

book in the Apple watch should have been given. Infact, the petitioner should have been confronted with this evidence. The Unfair Means Committee

has presumed the presence of the text book in the Apple watch of the petitioner on the basis of the complaint of the Supervisor alone. It should have

atleast satisfied itself regarding this crucial fact before proceeding to pass any order against the petitioner.

14. Mere possession of an Apple watch would not justify punishment of the petitioner for using unfair means unless and until there is evidence on the

record to show that the same was being misused. No such evidence is available on the record. Apple watches are being used very commonly now a

days especially by young people and a student can not be punished for possession of such a device unless it has been positively established that the

same was being used as an aid for using unfair means.

15. Regulation 11.1 (supra) provides the punishment for adoption of unfair means listed in Regulation 10(z). The punishment is of disqualification and

not of removal from the rolls. Thus, order dated 17.09.2019 striking the name of the petitioner from the rolls of respondent No. 3 â?" College is

patently without jurisdiction apart from being violative of the principles of natural justice.

16. The petitioner has not been able to attend College since 18.09.2019. A period of five months has elapsed since then which has resulted in loss of

one semester. Assuming the petitioner is found guilty of using unfair means on a fresh decision being taken after complying with the principles of

natural justice, punishment of disqualification for one semester is adequate. This is also an assumption as the charge can never be proved now as the

Apple watch has since been returned to the petitioner. Thus, I do not deem it

appropriate to direct a fresh decision to be taken after complying with the principles of natural justice.

17. Accordingly, the writ petition is allowed. Impugned orders dated 08.07.2019, 17.09.2019 and 26.11.2019 are quashed. There shall, however, be no order as to costs.