

(1995) 09 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2237 of 1995 and Civil Miscellaneous No's. 3939 and 7934 of 1995

Shiv Charan Singh Gill

APPELLANT

Vs

Punjab University, Chandigarh and others

RESPONDENT

Date of Decision : 05-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 P&H 88 : (1996) 2 RCR(Civil) 52 : (1996) 1 RCR(Civil) 417

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : P.S. Patwalia and H.S. Sethi, for the Appellant; Anuppm Gupta, for the Respondent

Judgement

1. On July 25, 1994, the Committee appointed by the Punjab University to examine the cases of students accused of adopting unfair means during the examinations, ordered that the petitioner "be disqualified from appearing in any University examination for a period of two years including the examination in question". This order was conveyed to the petitioner vide letter dated Nov. 9, 1994 after the lapse of 3 1/2 months approximately. He filed an appeal Co the Vice-Chancellor. It was rejected vide letter dated December 20, 1994. Aggrieved by the action of the University, the petitioner has approached this Court through the present writ petition. A few facts may be noticed.

2. The petitioner lays claim to a good academic record. He passed the Matriculation Examination in the year 1990 with a score of 71% marks. Thereafter, he qualified the + 2 examination with 59% marks. The petitioner's score in the subject of Punjabi in these two examinations was 65% and 76% respectively. In the year 1994, the petitioner appeared in B. A. Part I examination. On May 7, 1994, he appeared in the examination in subject of Punjabi "B" (Elective). On May 11 and 18, 1994 he appeared in Punjabi papers "A" and "B" (General). The petitioner avers that on May 7, 1994, when he was

attempting the last question, an officer asked him "to stand-up pointing to certain papers lying in the passage on the right side and asked the petitioner that if those papers belonged to him". The petitioner answered in the negative. In spite of this, a case alleging the use of unfair means was registered and the petitioner was called upon to give a statement. A copy of the report submitted by the supervisory staff has been produced as Annexure P-1 with the writ petition. According to it, 17 printed papers were recovered from "his hand" at 11.30 a.m. According to the statement made by the petitioner, the papers had been thrown in front of him by some one. Vide letter dated July 4, 1994, the petitioner was called upon to appear before the Assistant Registrar (UM /c) to show cause as to why action be not taken against him under Regulation 5 (which makes the possession of the papers punishable) of the Punjab University Calendar, 1988, Vol. II. The petitioner appeared on the stipulated date to answer the question are given to him. He was thereafter asked to appear on July 25, 1994 before the committee constituted by the University for dealing with the cases of use of unfair means during the examinations. The petitioner appeared before the Committee. The decision to disqualify the petitioner for two years was conveyed to him vide letter dated Nov. 9, 1994.

3 . The petitioner states that he is a sportsman and plays hockey. He was awarded a Sports Certificate by the Punjab Education Department indicating that the petitioner had played in the Inter-District Games which were held at Ludhiana from November 6 to November 10, 1992. He also mentions that he participated in the Science Fair held at Government Girls Senior Secondary School, Moga from Oct. 24, 1989 to Oct. 25 1989 and was placed first. He was also awarded a certificate of "National Service" by the Directorate of Youth Services, Punjab for his participation in the Inter School N.S.S. Camp organised by the Department. The petitioner has also pointed out that his father, Mr. Gurcharan Singh Gill is the Principal of Bhupindra Khalsa Senior Secondary School, Moga. He was given the State award in Education in the year 1983. In 1991, the petitioner's father was given the National Award by the President of India. The petitioner suggests that his father being a strict disciplinarian, a number of false complaints had been made against him on different occasions. He challenges the action of the University on the ground that "no opportunity of hearing was afforded" so as to enable him "to explain/present his case properly". He further states that according to the unofficial information received by him, he had secured 72% marks in the other papers in the subject of Punjab. According to the petitioner, the impugned orders deserve to be quashed on the ground that these are violative of the principles of natural justice.

4. The writ petition had initially come up for preliminary hearing on Feb. 17, 1995. The respondents had put in appearance through counsel on May 16, 1995. They were given time to file the written statement by May 29, 1995. None having been filed, the case was adjourned to July 31, 1995. It appears that even on this date of hearing, no written statement was filed. Accordingly, the writ petition was admitted. On August 8, 1995, the petitioner filed a Civil Misc. Application No.

7934 of 1995 with a prayer that he may be allowed to take the Pujabi paper "B" of B.A. Part I in the Supplementary examination to be held in Sept. 1995 at his own risk and responsibility. Notice of this application was given to the learned counsel for the respondents for August 14, 1995. On that date, the case was adjourned to August 29, 1995. It came up for hearing before me on August 31, 1995. At the request of the counsel for the parties and keeping in view the circumstances of the case, it was considered more appropriate to hear and decide the main writ petition. Accordingly, arguments were heard on August 31, 1995. Mr. Anupam, Gupta, learned counsel for the respondents produced the original file before me.

5. Besides the writ petition and the other documents, I have perused the original file. The order of disqualification was passed by the Committee on July 25, 1994. It was merely communicated by the Controller of examinations to the petitioner vide letter dated Nov. 9, 1994. Primarily, the legality of the order dated July 25, 1994 passed by the Committee has to be examined. After noticing the pleas, the committee has disposed of the matter with the following observations:--

"The report of the Zonal in charge is clear cut and unambiguous and says that seventeen printed papers were recovered from the candidate's hand. Two senior Members of the Central Supervisory staff have corroborated the report of the Zonal in charge. In the absence of any enmity or ill will or any other good reason, the Committee has to rely upon the report of the Zonal in charge duly corroborated by the Central Supervisory staff and accordingly finds the candidate guilty under Regulation 5 appearing at page 12 of P.U. Cal. Vol. II, 1988 and directs that the candidate be disqualified from appearing in any University Examination for a period of two years, including the examination in question.

6. There were two versions before the Committee. The Zonal in charge had observed that the papers were recovered from the petitioner's hand. The petitioner had denied it. The committee had to determine as to who was right. The committee has accepted the report of the Zonal in charge as it has been "corroborated" by the two senior members of the "Central Supervisory Staff. In fact, this appears to have weighed heavily with the committee as even in the opening paragraph of the other, it had observed that "the recovery has been duly corroborated by the Deputy Superintendent and the Central Superintendent". Is it so?

7. I have examined the file which was produced by Mr. Anupam Gupta, learned counsel for the respondents. The original report "of alleged use of unfair means held in April 1994" is on the file. The officer has certified that "incriminating material in this case was detected/recovered by me as mentioned in B(3) above during the course of examination on 7-5-1994 at 11.30 a.m." At the back of this report is the statement of the candidate which was recorded by a lecturer who was presumably posted as Assistant Superintendent. Thereafter, the Central Superintendent and Deputy Superintendent have merely signed the printed pro forma without even specifying as to who had detected or

reported the case. They have not suggested that the incriminating material had been recovered in their presence. No member of the supervisory staff has even remotely endorsed the report of the Zonal in charge. In the report, there is not the least evidence of any corroboration whatsoever.

8. In fact, there is a separate report by the Superintendent of the Examination Centre by which he had forwarded the documents to the University. In this, the number of pages of the incriminating material has been described as 37 to 80 while according to the Zonal in charge, it was 47 to 80. There is, thus, a difference of 10 pages. In this view of the matter, it clearly appears that the committee erred in taking the view that the report of the Zonal in charge was corroborated by the two senior members of the supervisory staff. On the contrary, there appears to be a clear contradiction.

9. The use of unfair means during the University examination is rampant. Strict measures are, therefore, necessary. It is in view of this situation that the courts are even reluctant to interfere with the orders passed by the appropriate authorities in such cases. In fact, time appears to have come when this social evil needs to be curbed by adoption of strict measures. In certain quarters, the desirability of declaring that the use of unfair means during an examination shall be regarded as a cognizable offence has been considered. While there can be no dispute with the view that the evil needs to be curbed, it is equally important to ensure that the educational careers of innocent students are not marred without proper consideration of the evidence on record by the concerned authorities.

10. In the present case, the committee had considered it appropriate to look for some corroboration of the report submitted by the Zonal in charge. It held that the report was duly corroborated. This finding was wrong. That being so, the order suffers from an apparent error.

11. It is true that proceedings under Article 226 of the Constitution are not in the nature of an appeal from the order of a Tribunal. The scope of courts' jurisdiction is limited. However, irrespective of the technicalities, the primary effort of all courts is to reach the truth. Moral satisfaction normally determines the final result. With this object in view and leaving aside the fact that the petitioner's claim of a good academic record was not totally without basis, I have examined the petitioner's answer book which is on the file. I have also glanced through the incriminating material. An examination of the answer book reveals that the petitioner has a neat hand-writing. He is methodical in answering the questions. He had already written his answers to four questions Nos. 1, III, IV and V and had started with the answer to the Vth and the last question which was No. II in the Question Paper when he was checked by the Zonal in charge. It is true that the incriminating material alleged to have been recovered from the petitioner could be of help to the petitioner in answering this question. However, the four lines that he had written immediately before he had used the incriminating material. If the petitioner had actually carried the incriminating material and if he was holding it in his hand as has been made out by the Zonal in charge, it could

only be so with the object of using it during the examination. In that case, it is unlikely that the petitioner would have waited till the end for answering the question with regard to which he could have derived some help from this material. Still further, if there had been some similarity between what he wrote and what appeared in the incriminating pages, an inference of guilt would have been the normal consequence. However, it is not so. It is true that the petitioner was not accused of using the material during the course of examination. However, even for considering the question as to whether or not he was actually in possession of the material, the fact that he had started attempting the relevant question at the end and that it bears no similarity to what was written in the incriminating material, indicates that the possibility of his version being true, cannot be ruled out. Still further, in order to satisfy myself, I questioned the petitioner, he was very forthright in his behaviour. His demeanour was really impressive. It was consistent with his innocence.

12. It is not surprising that even in his representation to the Vice Chancellor, the petitioner had categorically stated that if his papers are thoroughly checked and "compared with the printed matter, which is being falsely linked with me, not a word much less a line or any paragraph will be found in my answer book from the alleged printed matter." He had further submitted that if his paper was assessed, he would be amongst the first 2, 3 students not only in the subject of Punjabi but even if the overall result. The petitioner pleaded that 60% or more marks are never obtained by the students who copy. The bold stance taken by the petitioner was an evidence of his honesty and not of any guilt. In fact, at one stage, learned counsel for the petitioner had submitted that the punishment awarded to the petitioner was excessive. The prayer was that it should be reduced so that one academic year of the petitioner's educational career was saved. In my view, in a case where the charge of use of any unfair means during the course of an examination is established, the student must suffer the prescribed punishment. However, if he is innocent, the Courts cannot be "dumb and mute". In the present case, I am satisfied that the petitioner was innocent. He has suffered a punishment which he did not deserve.

13. In view of the above, the writ petition is allowed. The order passed by the committee on July 25, 1994 by which the petitioner was disqualified from appearing in any University examination for a period of two years, is set aside. Resultantly, even the letter dated November 9, 1994 by which this order was conveyed to the petitioner more than three months after its passing by the Controller of Examinations is also set aside. The basic order of disqualification having been set aside, even the order passed by the Vice Chancellor by which the petitioner's appeal was rejected cannot be sustained and is, accordingly, quashed. The respondents are directed to declare the petitioner's result of the B.A. Part 1 Examination held in April-May, 1994 within one week.

14. It is a fit case for the award of compensatory costs. However, I resist from awarding the costs only because the respondent is an Educational Institution.

The fact that the petitioner has been able to vindicate his innocence and get rid of the stigma should be some consolation to him.

15. Order accordingly.