

(2003) 03 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 789 of 2003

Shiv Sevak Pandey

APPELLANT

Vs

Vice-Chancellor, Allahabad University and Another

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Allahabad University Ordinances — Ordinance 1.2

Citation : (2003) 3 AWC 2145

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Prabha Shanker Pandey and Neeraj Kumar, for the Appellant; A.B.L. Gaur and Ram Gopal Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard counsel for the petitioner and Sri A. B. L. Gaur learned counsel appearing for the respondents.

2. Sri A. B. L. Gaur learned counsel appearing for the respondents has produced the original record pertaining to allegation of unfair means against the petitioner and cancellation of his examination and debarment.

3. Both the counsel have agreed that the writ petition be finally disposed of.

4. By this writ petition, the petitioner has prayed for quashing the order, Annexure-3 to the writ petition, by which the petitioner's result of B.A. II of 2002 has been cancelled and he has been debarred from subsequent examination of 2003.

5. Petitioner while appearing in B.A. II examination on 22nd April, 2002 was intercepted by dying squad on the basis of certain writing in pencil in his answer sheet. The petitioner was asked to fill up unfair means form in the examination hall which was filled up and signed. The petitioner denied the allegation of unfair means. A show cause notice was issued to the petitioners on 8th May, 2002 in

which unauthorised material was referred as writing in pencil in the last page of answer-sheet. The petitioner replied to the show cause notice on 28th May, 2002. The petitioner in his reply stated that the writing in pencil was only rough work which was on the basis of memory of the petitioner. He submitted that said writing in pencil was only outline for giving the answers correctly. He said that doing rough work in the copy is not against the rules of examination.

6. Learned counsel appearing for the petitioner submitted that petitioner did not commit any unfair means in the examination and the order against the petitioner cancelling his examination and debarring him from 2003 examination is erroneous. He contended that the said rough work was done by the petitioner in last page of his copy which was only outlines of answers to be given by the petitioner.

7. Sri A. B. L. Gaur learned counsel appearing for the University submitted that said writing in pencil on the last page is an unauthorised material and since the said unauthorised material was used while answering the question Nos. 1 and 7, the petitioner's examination has rightly been cancelled and he has been debarred from 2003 examinations. Sri Gaur has referred to definition of unauthorised material in Chapter XXVIII of the ordinances of the University : "Ordinances on the use of unfairmeans and causing disturbance in examination".

8. I have considered the submissions and perused the record. The main issue in the writ petition is as to whether writing in pencil in last page of the answer-sheet can be treated to an authorised material enabling the University authorities to cancel the examination of the petitioner. In Ordinance 1.2 unfairmeans, possession of unauthorised material and unauthorised material has been defined. Ordinances 1.2 (A), 1.2 (B) and 1.2 (C) are quoted as below ;

"(A) Unfairmeans--A candidate shall be deemed to have used "unfairmeans" if the candidate is in possession of unauthorised material or if he has transcribed any part, or the whole of the unauthorised material or if he intimidates or threatens or manhandles or uses violence against any invigilator or person on duty in the examination or if he leaves the examination hall without surrendering his examination script to an invigilator or if he is found communicating with other examinees or any one else inside or outside the examination hall.

(B) Possession of unauthorised material.--"Possession of unauthorised material" by a candidate shall mean having any unauthorised material on his person or desk or chair or table or at any place within reach in the examination hall and its environs or having such material on him in the urinal/toilet or the passage thereto or therefrom at any time from the commencement of the examination till its end.

(C) Unauthorised material.--"Unauthorised material" shall mean any material whatsoever, related to the subject of the examination, printed, typed, written or otherwise, on paper, cloth, wood or other material, in any language or in the form of a chart, diagram, map or drawing."

9. From the definition of unauthorised material, it is clear that any material whatsoever related to the subject of the examination, printed, typed, written or otherwise, on paper, cloth, wood, or other material, in any language or in the form of a chart, diagram, map or drawing is an unauthorised material. The answer-sheet which is given to a candidate in the examination hall cannot be treated to be unauthorised material since the said answer-sheet is provided to a candidate to give his answer. There is no charge against the petitioner that writing in pencil in last page was made by someone else or the answer-sheet was taken out of examination hall or writings were written by someone else enabling the petitioner to utilise the said writings. When an examinee does a rough work in his answer-sheet, unless it is shown that doing rough work in an answer-sheet is not permissible, merely existence of rough work by way of writing in pencil cannot be treated to an authorised material. No regulation has been shown by which doing of rough work is prohibited.

10. In the present case, in reply to the show cause notice, the petitioner has specifically submitted that said writing in pencil in the last page was outlines of answers which was to be given by the petitioner and the said writings were only rough work on the basis of knowledge and memory of the petitioner. The examination committee which has cancelled the examination has not even adverted to the aforesaid explanation and given any reason for not accepting the said explanation. The petitioner himself having done the rough work noting down the outline for answers to be given by him, the same cannot be termed as unfair means by any stretch of imagination. The invigilator who caught the petitioner himself submitted the following report in the prescribed form : "caught by University flying squad with a note written by the candidate with pencil towards the end of answer book." The report of the invigilator itself shows that the said writings were by the petitioner in the end of the answer-book. *Delhi Development Authority v. Skipper Construction Co. (P.) Ltd.*

11. In view of the above, the said writings cannot be treated to be an authorised material within the meaning of Ordinance 1.2 (c) nor any punishment could have been awarded to the petitioner on the aforesaid basis. In view of the aforesaid, the petitioner having not possessed any unauthorised material, he did not indulge in any unfair means and the action of the respondents cancelling the result of the petitioner and debarring him from 2003 examination is wholly unjustified.

12. In view of the foregoing discussions, the decision of the examination committee dated 21.10.2002 cancelling the B.A. II result of the petitioner of 2002 and debarring the petitioner from 2003 examinations is quashed. University is directed to declare the result of the petitioner of B.A. II of 2002 forthwith.

13. The writ petition is allowed accordingly.