
(2013) 08 MP CK 0056
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5221 of 2012

Smt. Gulab Prinze

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Citation : (2013) 08 MP CK 0056

Hon'ble Judges : Vimla Jain, J;Rajendra Menon, J

Bench : Division Bench

Advocate : Abhishek Goswamy, for the Appellant; Nirmla Nayak, learned Govt. Advocate and Shri Pushpendra Kaurav, learned counsel for Respondent nos. 2 and 3, for the Respondent

Final Decision : Disposed Off

Judgement

1. Challenging the order of respondent nos. 2 and 3 in cancelling the examination of the petitioner, who had appeared in the Post Graduate Diploma in Computer Application Examination, conducted in the year 2010-11, the petitioner has filed this writ petition. The petitioner was a student, who was pursuing a course in the Post Graduate Diploma in Computer Application and was student of ACCA, College, Jabalpur. The college is affiliated with the Makhan Lal Chaturvedi National University of Journalism and Communication, Bhopal. The petitioner appeared in the examination which was conducted for the academic session 2010-11 with Roll No. 243462 and was allotted examination Centre in Narmada College, Sadar, Jabalpur. After the petitioner appeared in the examination and when the result was declared, petitioner's result was shown to be cancelled on account of using of unfair means. Inter alia contending that the petitioner has not indulged in using unfair means, his result has been withheld in a illegal manner and before taking the action impugned, no show cause notice or opportunity of hearing was granted, the petitioner has filed this writ petition.

2. On notice being issued, the respondents have filed reply and it is pointed out by the respondents that as per the Rules and Regulations applicable, if the

candidate is found to be using unfair means in the conduct of examination, then the procedure for taking action is regulated by the appropriate procedural regulation as contemplated in Annexure R-1. It is said that with regard to the petitioner in the examination, which was conducted in May-June 2011, it was found that the petitioner was using unfair means and therefore, his entire result was cancelled. It is said that from the petitioner a plastic scale was seized in which certain written material was available and therefore, holding the petitioner to have used unfair means with the help of the scale, which was seized, action was taken by the appropriate examination committee, as is evident from the report submitted by this committee, available at page no. 17 of the return filed by the petitioner.

3. Shri Pushpendra Kaurav, learned counsel for respondent nos. 2 and 3 has submitted that as the petitioner was found using unfair means in the examination and the material i.e. the scale had certain answers scribbled on, was seized from the petitioner, accordingly the impugned action is taken.

4. Be that as it may be after considering the aforesaid submissions and after taking note of the requirement of Rule i.e. 1 Serial No. 1, Category-B of Annexure R-1, which reads as under:

Carrying into the examination room/hall any book, paper, notes or any other material whatsoever likely to be used directly or indirectly by the candidate in connection with the examination.

5. this court on the last date of hearing directed the University concerned to produce the material seized from the petitioner alongwith the report of Invigilator authority so that the dispute in question can be adjudicated in more appropriate manner. Even though time was granted to the University to produce the material to show as to what was the material seized, what was report submitted by the Invigilator Officer and what was written in the scale, how it is related to the examination.

6. A perusal of the regulation of rules, which is reproduced herein above goes to show that what is prohibited is carrying into the examination room/hall any book, paper, notes or any other material whatsoever likely to be used directly or indirectly by the candidate in connection with the examination. That being so, merely because a scale was seized from the possession of the petitioner and something was written on the scale, it does not make the act of the petitioner punishable. It is further required to be seen as to whether the material seized was having something pertaining to the examination which was being conducted and what was scribbled was some material helpful for solving the question, which was asked in the examination.

7. In the reply filed by the respondents and during the course of hearing nothing is brought to the notice of this court on the basis of which, a finding can be arrived at to the effect that the material seized from the petitioner did contain certain writing, notes etc. which was useful for solving the paper in question and

it would have helped the petitioner in solving the question. That apart the basic requirement of following the principle of natural justice in as much issuance of a show cause notice or proper opportunity of hearing before recording a finding against the petitioner is also not followed.

8. Taking note of all these facts, we are of the considered view that the action has been taken against the petitioner in an arbitrary manner, which is unjustified. Accordingly, order Annexure P-6 and last communication made cancelling the examination of the petitioner are quashed and the respondents are directed to declare the result of the petitioner and issue mark sheet to him in accordance with law.

9. With the aforesaid, the petition stands allowed and disposed of. C.C. as per rules.