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**(1970) 08 P&H CK 0026**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Second Appeal No. 377 of 1964**

The Punjab University, Chandigarh and Others

APPELLANT

Vs

Prem Chand Handa

RESPONDENT

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**Date of Decision :** 21-08-1970

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11, 9  
Evidence Act, 1872 — Section 17, 21

**Citation :** AIR 1971 P&H 177

**Hon'ble Judges :** R.S. Narula, J;C.G. Suri, J

**Bench :** Division Bench

**Advocate :** S. Sarhadi and Harmit Singh, for the Appellant;

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## Judgement

R.S. Narula, J.—Prem Chand Handa, respondent was a student of the 4th year class in the Daoba College, Jullundhur and had in 1958 been elected as the President of the Students Union of that College. Vide order dated December 9, 1959 the Principal of the College suspended the respondent pending investigation of certain charges of misbehaviour against him. On December 10, 1959 he was rusticated from the College for one year. His appeal to the Vice Chancellor against the order of his rustication did not bear any fruit. After the expiry of the period of one year the University allowed the respondent to join the college in the 4th year class. In January 1961, agitation was started in the college. Printed posters were being distributed in the College on January 24, 1961 like Exhibit D-6 inciting the students to go on strike. Mr. S. K. Soni , D. W. 5 reported to the Principal as recorded in chit Exhibit D-8 as below :-

"At about 10.40 a.m. today, S. Jasbir Singh told me that Mr. Prem Chand Handa IV Year student of the College is in possession of some hand bills containing some objectionable material. I along with S. Jasbir Singh followed him and noticed him personally throwing the said hand bills in the upper verandah. After that he came down. After that I along with S. Jasbir Singh reported this matter to you.

Sd/- S.K. Soni Lecturer in Chemistry 24-1-1961."

On being questioned about the same the respondent denied all knowledge about the posters. On his person being searched by Jasbir Singh member of the staff of the College, at the instance of Shri G. D. Khanna, D. W. 7 the Principal of the College, a bundle of posters Exhibits D-11 to D-37 were found under the respondent's armpit. Exhibit D-11 a memorandum of the recovery was prepared in the following words -

"Prem Chand Handa, a student of IV Year Class of this college was at first denying vehemently all knowledge about the poster found in the college today. But when his person was searched by Shri Jasbir Singh at the instance of the Principal, a small bundle of posters was found under his armpit. On counting, the number of posters was found to be thirty-three. The above episode happened in our presence in the Principal's office at about 11 a.m. today the 24th January 1961."

The inventory Exhibit D-7 bears the signatures of Shri Piyare Lal Sharma, D. W. 6, Shri S. K. Soni, D. W. 5 and three other members of the staff namely Amba Prasad, Jasbir Singh and O. P. Chowdhury. Signatures of the respondent were obtained on the reverse of each one of the posters recovered from him to fix their identity. On being questioned about the same the respondent made the following statement in the presence of the above mentioned members of the staff which statement has been marked Exhibit D-5 (at a few minutes past 11.00 a.m. on January 24, 1961) :-

"I hereby solemnly declare that the posters lying with me are collected by me and not published and distributed by me. If it will be found that the posters were published by me any punishment can be given to me. 33 posters were found on my person in the presence of Prof. Amba Prasad, Pyare Lal, O. P. Chawdhury, S. K. Soni and S. Jasbir Singh and I have signed all of them.

Sd/- Prem Chand Handa 24-1-1961."

Respondent was thereupon afforded an opportunity to show cause against his being punished for this objectionable activity. He was given one days time and was asked to appear before the College authorities on January 25, 1961. Whatever explanation was given by him was considered by the authorities and after consideration of the same the staff of the College recommended his expulsion from the College in the following words vide Exhibit D-9 -

"Prem Chand IV Year, Roll No. 206, who has been guilty of distributing objectionable hand bills inciting the college students to go on a strike, and who was given a chance to explain his conduct before us, has failed to give any satisfactory explanation.

We, therefore recommend his expulsion from the College.

Dated 25-1-1961."

The memorandum making the above quoted recommendation bears the signature of as many 13 members of the College Staff. The principal of the College accepted the recommendation Exhibit D-9 and wrote to the Registrar of the appellant No. 1, University on January 28, 1961, that the respondent had been guilty of gross misconduct and in view of the same he had been expelled from the College for two academic years with effect from 28th January, 1961 under rules for rustication and expulsion. Before the order of expulsion could be notified by the appellant -University the respondent filed a writ petition (C. W. 223 of 1961) dated February 6, 1961, in this Court. A certified copy of that petition which was produced in the trial Court has been marked "Y" for purposes of identification. In paragraphs 17 and 18 of that petition the respondent stated as below :-

Paragraph 17:-

"That the principal-respondent No. 1 after levelling a false charge of distributing and keeping leaflets charged the petitioner on 24-1-1961 and asked for the explanation on 25-1-1961."

Paragraph 18 :-

"That the petitioner appeared before the Principal-Respondent No. 1 on 25-1-1961, as ordered and explained the whole situation and also proved his innocence ." After referring to the respondent's version of the whole affair he prayed in the writ petition for the issuance of an appropriate writ or order quashing the Principal's order of the respondent's expulsion. Vide order dated February 16, 1961, Exhibit D-38, a Division Bench of this Court, (G. D. Khosla, C. J., and S. S. Dulat, J.) dismissed respondent's above said writ petition in limine. Thereafter on February 22, 1961 the appellant-University published the order Exhibit D-41 about the respondent's expulsion from the Deoba College, Jullundhur City for a period of two academic years with effect from January 28, 1961 for gross misconduct.

2. It was in the circumstances explained above that the suit from which this second appeal has arisen was filed by the respondent on May 10, 1961 praying for a decree declaring the order of respondent's expulsion dated January 28, 1961 to be against "natural justice, mala fide, capricious , ultra vires , illegal, unjust, arbitrary, without authority, harsh, vindictive, outcome of malice, revenge and void and ineffectual," and for a permanent injunction directing the defendants (who are the (i) Punjab University, Chandigarh, (ii) Shri G. D. Khanna, Principal Daoba College, Jullundhur (iii) The Arya Sikasha Mandal, Jullundhur, managing body of the College and (iv) the Principal of the Daoba College, Jullundhur, to maintain the respondents name on the rolls of the college and to allow him to attend the 4th year class and to take his B. A. Examination in 1961. The suit was resisted by the defendants. After stating all relevant facts the defendants denied that principles of natural justice had been violated or any opportunity to show cause had not been allowed to the defendant. From the

pleadings of the parties the trial Court framed the following issues:-

1. Whether the Civil Court has not the jurisdiction to try the suit ?
2. Whether the suit is not maintainable in view of the dismissal of the writ petition preferred by the plaintiff in the High Court ?
3. Whether expulsion order is invalid for the reasons stated in Paras 14 and 19 of the plaint ?
- 4A. Whether defendant No. 2 was not the Principal at the time of the expulsion order as alleged, if so to what effect ?
- 4B. Whether the plaintiff cannot take up the plea covered in issue No, 4A ?
- 4C. Whether the plaintiff is non suited in view of the judgment of the appellate Court dated 31-8-1961 ?
- 4D. Whether the written statement is properly signed and verified, if not to what effect ?

4. Relief.

3. The court of Shri Ranjit Singh Sood, Sub Judge First Class, Jullundhur decreed the suit of the respondent by its judgment dated October 19, 1962. The learned Subordinate Judge held that the education authorities while conducting enquiries into the cases of misconduct of their students exercise quasi-judicial functions and the Civil Court is competent to scrutinise their acts to find if they are arbitrary, mala fide and opposed to principles of natural justice. On facts he found that no proper opportunity was afforded to the respondent during the course of the enquiry to present his case and to prove his innocence. He further found that the acts of the Principal of the college were not bonafide and they were against the principles of natural justice as propounded by their Lordships of the Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , inasmuch as the Principal had not performed his duty of giving opportunity of a hearing to the respondent and had not issued any show cause notice to him. The learned Sub Judge went somewhat out of the way by also passing remarks regarding the adequacy of the punishment awarded by the Principal. He observed that "in any way the punishment is not commensurate with the offence alleged to have been committed by the plaintiff." We may avail of this opportunity to straightaway observe that though a Civil Court has jurisdiction to decide whether an order of expulsion of a student is in violation of the principles of natural justice or not, it has no jurisdiction to go into the question of adequacy of punishment, provided the punishment awarded is within the four corners of the relevant statute or regulation.

4. The trial Court had on August 17, 1961 issued a temporary injunction asking the University and the College Authorities to permit the respondent to take B. A. Examination which was to be held in September 1961, and to issue a Roll No. to

the respondent in time to enable him to sit in the examination. The order however, directed that the result of the examination would not be notified till the disposal of the suit.

5. An appeal was preferred by the University against the injunction issued by the trial Court. In that appeal an application for suspending the operation of the temporary injunction during the pendency of the appeal was also submitted. The application for suspending the operation of the injunction during the pendency of the appeal was disposed of by an order dated August 31, 1961 of Shri C. S. Tiwana of which a certified copy is placed on the record and its marked Exhibit D-39. The learned Senior-Sub-Judge held that the trial Court did not take into consideration as to whether there was a prima facie case for the issue of a temporary injunction. In the course of his order he observed that the only remedy provided to the person affected by the order of the Principal is of a revision to the Vice Chancellor and then he can bring the case to the notice of the Syndicate whose decision would be final according to the regulations of the University. He further stated that there is no law which provides students to have the matter examined by a Civil Court. With those observations the learned Senior Subordinate Judge passed a well reasoned order suspending the operation of the injunction, issued by the trial Court during the pendency of the appeal filed by the University.

6. An appeal filed by the University and other defendants against the decree of the trial Court was dismissed by Shri Harish Chandra Gaur Senior Sub-Judge Julundhūr, on October 31, 1963. He upheld the decision of trial Court on the question of the jurisdiction of a Civil Court to go into the matter like this, as well as the finding regarding the proceedings culminating in the order of punishment being quasi-judicial. On the question of adequate opportunity having or not having been allowed to the respondent the learned Senior Sub-Judge held that the statement Exhibit D-5 had been got signed from the plaintiff-respondent by exercising undue influence upon him by the Principal and that he doubted the genuineness of the record of proceeding Exhibit D-9 on the ground that Pyare Lal D. W. had stated that there was no record of the proceedings of the College held on January 24, and January 25, 1961 and the two meetings were informal. The learned Senior Sub-Judge further went into the merits of the claim of the respondent and found that the action taken by the Principal was not bonafide and had been taken into violation of the principles of natural justice as the Principal had failed to give opportunity of hearing to the respondent and the Principal had issued no show cause notice of the proposed punishment to the respondent.

6-A. The plaintiff-respondent has chosen to remain absent in spite of service of the notice of appeal on him. A memorandum of appearance dated October 3, 1966 had been filed by Shri K. C. Nayyar, Advocate on behalf of the respondent. No one, however, appears for the respondent throughout yesterday when the case was being heard and no one has appeared even today when the judgment is being dictated in the Court. This judgment of ours, is therefore *ex parte* against

the respondent.

7. Mr. Ajit Singh Sarhadi who appears for the defendants-appellants has sought to raise four arguments in this case. He has contended that :-

(i) The Civil Court has no jurisdiction to try the suit which has given rise to this appeal;

(ii) The claim of the plaintiff was barred by principles of *res judicata* on account of the earlier judgment of the learned Senior Sub Judge dated October 31, 1961, Exhibit D-39;

(iii) The principles of natural justice not having been violated in this case, Civil Court could not have granted any relief to the respondent by travelling into the merits of the charges; and

(iv) The judgment of the lower appellate Court on the question of fact relating to adequate opportunity not having been granted to the respondent before passing the impugned order against him is vitiated as the same is based on misreading of evidence.

8. We have no hesitation in upholding that the first finding of the two Courts below (which is based on the pronouncement of their Lordships of the Supreme Court in *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, ) to effect that the proceedings for punishing a student either on account of his using unfair means or for some other adequate reason are quasi-judicial and that therefore the well known principle of natural justice - *audi alteram partem* must be followed by the competent authorities before such a punishment is awarded by the educational institutions. We therefore hold that in view of the allegations that had been made by the respondent in the plaint about principles of natural justice having been violated, the Civil Court had the jurisdiction to try the suit.

9. We are not inclined to agree with Mr. A. S. Sarhadi's contention regarding this plaintiff having been debarred by the principles of *res judicata* from getting his claim adjudicated upon because of certain observations made by Shri. C. S. Tiwana Senior Sub-Judge, Jullundhur, in his order dated August 31, 1961. It is well settled that observations about the existence or otherwise of a *prima facie* case in an interim order dealing with granting or otherwise of a temporary injunction are subject to just exceptions and never purport to decide the merits of the controversy between the parties. The order Exhibit D-39 was not even an order granting or setting aside the injunction but merely stayed the operation of the injunction granted by the trial Court during the pendency of the appeal preferred against the same by the University. Nothing stated therein on the matters in issue between the parties operate as *res judicata*.

10. We however, agree with him that in a somewhat prolix judgment the learned Senior Sub-Judge has levelled unnecessary and unjustified criticism against the testimony of the Principal of the College and Shri S. K. Soni due to misreading of

the documents and their statements. In any event the solitary question which calls for adjudication on the facts of the case regarding the granting of opportunity to the plaintiff-respondent was, in our opinion concluded by the respondent's own categorical admissions contained in paragraphs 17 and 18 of the writ petition which admissions have already been reproduced verbatim in an earlier part of this judgment. The averments made in the aforesaid paragraphs of the writ petition themselves leave no doubt about adequate opportunity having been granted to the respondent before punishing him. Nor has the respondent stated that he has asked for any further or other opportunity or that any such opportunity was ever refused to him. There is no doubt that the plaintiff-respondent was not specifically confronted with his admissions contained in his writ petition when he gave evidence to the contrary while in the witness box though he admitted having filed that petition. Confronting him would have been necessary according to the law laid down by the Full Bench of the Lahore High Court in *Firm Malik Des Raj Faqir Chand v. Firm Piara Lal Aya Ram* AIR 1946 Lah 65 (FB), It had been held that previous admissions of a party could not be taken into account against him if he appeared in the witness box but was not confronted with the same. The law laid down by the Lahore High Court in *Firm Malik Des Raj Faqir Chand's* case AIR 1946 Lah 65 (FB) (supra) has since been disapproved by their Lordships of the Supreme Court in *Bharat Singh and Another Vs. Bhagirathi*, . Their Lordships have held that admissions are substantive evidence by themselves in view of Sections 17 and 21 of the Evidence Act, though they are not conclusive proof of the matters admitted. It was made clear that the purpose of contradicting the witness u/s 145 of the Evidence Act is quite different from the purpose of proving the admission. It was further observed that while a previous statement used to contradict a witness does not become substantive evidence and only serves the purpose of throwing doubt on the veracity of the witness, the weight to be attached to an admission made by a party is a matter different from its use as admissible evidence.

11. In the peculiar circumstances of this case, we attach great weight to the admissions contained in paragraphs 17 and 18 of the respondent's writ petition which were never sought to be withdrawn by the respondent even after a certified copy of the petition had been filed in the trial Court and specific reference had been made thereto. The Courts below have not considered those admissions at all though they, in the circumstances of this case, appear to us to be of substantial evidentiary value. Even otherwise, the criticism levelled against the testimony of Mr. Soni, D. W. 5 on the ground that there is some inconsistency between the time mentioned in Exhibit D-8 on the one hand and the sequence of events deposed to by him in Court is misconceived. Exhibit D-8 does not even purport to have been written at 10.40 a.m. It is a mere memorandum of what had happened at 10.40 a.m. prepared by Mr. S. K. Soni later in the day. This is fully consistent with the testimony of Mr. Soni. There is no justification whatever for the finding of mala fides recorded by the Court below against the principal of the college. The finding of the lower appellate court about writing Exhibit D-5

having been obtained from the respondent by the Principal under undue influence is not based on any evidence. Nor is there any valid reason to doubt the genuineness of the memorandum Exhibit D-9. Pearey Lal D. W. is no doubt correct in saying that no record of the proceedings against the respondent was maintained. Exhibit D-9 is a mere memorandum and cannot be a "record of proceedings" in strict terms. The judgment of the lower appellate court is based on such surmises and conjectures and is wholly unsustainable.

12. In the nature of the things, educational like the Universities have to be left to themselves in the matter of enforcing discipline and unless a patent case of violation of principles of natural justice or contravention of some statutory provision is made out, the Courts should be loath to interfere with the orders punishing students for their serious defaults.

13. For the foregoing reasons, we allow this appeal set aside and reverse the judgment and decree of the Courts below and dismiss the suit of the plaintiff-respondent with costs throughout.

C.G. Suri, J.

14. I agree.

15. Appeal allowed.