

(1983) 04 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10495 of 1982

Vijai Kumar Gupta

APPELLANT

Vs

The Meerut University, Vice Chancellor and Others

RESPONDENT

Date of Decision : 04-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 04 AHC CK 0007

Hon'ble Judges : Satish Chandra, C.J;B.D. Agrawal, J

Bench : Division Bench

Advocate : N.S. Kulshreshtha, for the Appellant; A.K. Yog, for the Respondent

Judgement

B.D. Agrawal, J.—The Petitioner is a student of Meerut College, Meerut appeared in B.A. (Part II) Examination, 1981 conducted by the Meerut University. On April 7, 1981, he was caught using unfair means in answering English Literature (Paper-I). The Petitioner was again caught adopting unfair means in answering English Literature (Paper-II) on April 20, 1981. In connection with the English literature (Paper-I) he appeared before the Sub-Committee of the University on October 5, 1981. Thereafter on November 16, 1981, the Petitioner appeared before the Sub-Committee in relation to the other examination paper. The Petitioner submitted an application to the Meerut University through the Meerut College for appearing in B.A. (Part II) Examination, 1982. In column 8 of this application, he stated that his examination in B.A. (Part-II), 1981 had been cancelled upon the charge of adopting unfair means. The application was received in the College on or about November 27, 1981. Admit Card was issued to the Petitioner in the ordinary course. He appeared in Military Science (Practical) held in March, 1982 and in the written examination commencing in April 1982. On 5th April, 1982, the Petitioner received two communications from the University in separate covers. In one of them, it was stated in regard to English literature (Paper-I) that his entire examination, 1981 was cancelled. In the other relating to English literature (Paper-II), the communication said that

his entire examination of 1981 was cancelled and further he was debarred from appearing in any University Examination upto 1982. Despite this communication, the Petitioner appeared in the rest of the papers of B.A. (Part-II) Examination, 1982. The results were announced on July 30, 1982. The result of the Petitioner was however, withheld. He made representation on August 7, 1982 but to no effect. Aggrieved, the Petitioner approached this Court by this petition under Article 226 of the Constitution.

2. Dispute does not exist on the point that in B.A. (Part-II) Examination, 1981 held in April, 1981 the Petitioner was caught adopting unfair means on two different dates. The Examiner in each of these cases reported that he made use of unauthorised material in answering specific questions see Annexures C.A.I. and C.A. II. In each of these cases on being caught the Petitioner had begged to be excused for the future.

3. Learned Counsel for the Petitioner contends that since Admit Card for B.A. (Part-II) 1982 was issued to the Petitioner vide Annexure-I, he could not be debarred from appearing by a communication subsequently received. We have given careful consideration to the submissions but are unable to agree. The decision to debar the Petitioner from B.A. (Part-II) Examination 1982 had been taken on November 16, 1981. Admittedly, the Petitioner has had the opportunity of appearing before the sub-committee on October 5, 1981 and again on November 16, 1981. The communication relating to English literature (Paper-I) is dated 15th February, 1982, the other is dated 24th March, 1982. Both are signed by the Assistant Registrar for and on behalf of the Registrar, Meerut University, Meerut on 25th March, 1982 (See Annexures II and III to the writ petition). Both of them were received by the Petitioner under registered cover on 5th April, 1982. There is nothing on the record to conclude that the decision to debar the Petitioner from the 1982 Examination was taken by the authorities after granting him leave to appear or subsequent to the issue of the Admit Card. It is not that the University may have permitted him to appear and then decided later to reject the permission. In the application made by him, the Petitioner noted, that his 1981 Examination in B.A. (Part-II) had been cancelled on account of use of unfair means (Annexure C.A. III to the counter affidavit). The Petitioner abstained from disclosing the source of this information or the date when he came to know of the cancellation. Assuming as contended by the Petitioner's learned Counsel that by the time he submitted the application, the Petitioner was not aware that he had been debarred from 1982 Examination, he cannot claim to have acquired legal right in the matter. In our opinion, there is force in the Respondent's contention that the Admit Card was issued to the Petitioner by the office in the ordinary routine and that this was not a conscious act of the University apparently since the decision to debar the Petitioner had been arrived at on 16th November, 1981 itself and there was no review made of that decision at any subsequent stage.

4. In the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, the

Appellant was allowed to appear at LL. B. Part II Examination. Later the University informed the Appellant that since his percentage was short in Part II his candidature stood cancelled. The Appellant contended that once he was allowed to appear at the LL. B. Part II Examination, his candidature could not be withdrawn for any reason whatsoever, in view of the mandatory provision of Clause 2(b) of Ordinance X of the Kurukshetra University. The relevant clause of the Ordinance reads as under:

"2. The following certificates signed by the Principal of the College/Head of the Department concerned, shall be required from each applicant:

(a) that the candidate has satisfied him by the production of the certificate of a competent authority that he has passed the examinations which qualified him for admission to the examination; and

(b) that he has attended a regular course of study for the prescribed number of academic years.

Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course of lectures before the end of his term."

5. In view of this statutory provision the Supreme Court held:

The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the Appellant was allowed to take the examination rightly or wrongly then the statute which empowers the University to withdraw the candidature of the applicant has worked it self out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear.

6. The Supreme Court further observed that it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. The University authorities had time and opportunity to scrutinise the form in order to find out whether it was in order. It was neither a case of *suggestio falsi*, or *suppressio veri*. The other argument for the Respondent that the Appellant had not obtained prior permission of the employer was negated on the ground that there was no statutory provision which required that candidates attending the evening law class who are in service should first get the prior permission of their superior officers. A decision of the High Court of Madhya Pradesh viz. *Premji Bhai Ganesh Bhai Kshatriya Vs. Vice Chancellor, Ravishankar University and Others*, was cited with approval. That related to scrutiny as to requisite attendance of the candidates and it was held that the discretion having, been clearly exercised in permitting the Petitioner to appear, it could not later be withdrawn. The factual position and the relevant provisions in the case of *Shri Krishan (supra)* were thus

materially different and consequently, this does not assist the Petitioner. These special features of that case were noticed also recently by another Division Bench of this Court of which one of us was a member in the case of Atul Kumar Singh v. State of U.P. Writ Petition No. 14415 of 1982 decided on March 14, 1983.

7. In the result, the petition fails and is dismissed. There will be no order as to costs.