

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.21688 of 2015

Date of decision: 20.11.2015

Rachit Ohri

...Petitioner

Versus

Guru Nanak Dev University, Amritsar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Ms. Navdeep, Advocate for the petitioner.

Mr. Amrit Paul, Advocate for the respondents No.1 and 2.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 9.9.2015 (Annexure P/3) whereby he has been debarred for a period of two years by the respondent-University on account of resorting to unfair means while sitting in the B.Sc.(Economics) Semester-IV in May, 2015.

Counsel for the petitioner has vehemently submitted that the Clause 8 of the Ordinance of the respondent-University was not complied with and separate answer book was not supplied for attempting balance of the paper. Reliance was also placed upon Clause 12 to submit that in case the material which was inadvertently found in the possession or accessible to the candidate was not used then candidate could be debarred from passing that paper. Reliance has been placed upon Annexure R-1/4 to submit that the candidate had not copied from the material as the question was not set in the question paper.

Counsel for the respondent-University on the other hand has placed reliance upon the alternative remedy which is available to the petitioner by way of statutory appeal to the Vice Chancellor under Ordinance No.20 of the Unfair Means Ordinances.

It has time and again been held that jurisdiction under Article 226 of the Constitution of India should not be exercised once there is an alternate remedy available under the Statute. In view of the specific alternative remedy available, it would be more appropriate for the petitioner to avail his alternate remedy.

The Apex Court in **City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others, (2009) 1**

SCC 168 laid down the principles whereby, this Court would exercise its remedy under Article 226 of the Constitution of India. It was specifically held that this Court had to consider whether the petitioner has an alternative and efficacious remedy for the resolution of the dispute.

Paragraphs 29 and 30 of the judgment reads as under:-

“29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors. The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

In such circumstances, this Court is of the opinion that the

present writ petition is not maintainable and accordingly, the present writ petition is dismissed with liberty to the petitioner to seek his alternative remedy of appeal as provided under the Unfair Means Ordinances of the respondent-University.

Needless to say that since the matter was pending here, the issue of limitation will not be taken up against the petitioner if he files the appeal expeditiously.

November 20, 2015
Pka

(G.S.SANDHAWALIA)
Judge