

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1733 of 2015 (O&M)
Date of Decision: 08.12.2015

Rachit Ohri

....Appellant

Vs.

Guru Nanak Dev University, Amritsar and othersRespondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Ms.Navdeep, Advocate for the appellant.

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

Mr. Prateek Pandit, Advocate for respondent No.3.

S.S. Saron, J

Mr. Amrit Paul, Advocate has put in appearance on behalf of respondents No.1 and 2. The memo of appearance filed by him in Court today is taken on record.

Mr. Prateek Pandit, Advocate has put in appearance on behalf of respondent No.3. The 'vakalatanama' filed by him in Court today is taken on record.

Service is complete.

Learned counsel for the appellant submits that the appellant is to appear in two remaining papers of the Vth Semester of B.Sc. (Economics) which are to be held on 9.12.2015 and 13.12.2015; therefore, the appeal may be taken up today or an interim relief of appearing in the said papers be given to the appellant in the facts and circumstances of the case.

Learned counsel for the respondents have no serious objection to the hearing of the appeal.

We have heard learned counsel for the respective parties and with their assistance gone through the records of the case.

The appeal has been filed by the appellant Rachit Ohri against the judgment and order dated 20.11.2015 passed by the learned Single Judge in CWP No.21688 of 2015 whereby his writ petition assailing the order dated 09.09.2015 (Annexure P-3) by which he has been declared disqualified for entering into any examination of the Guru Nanak Dev University, Amritsar (respondent No.1) ('University' – for short) (in all cases) for two years, has been dismissed by holding the writ petition to be not maintainable and giving him liberty to seek alternative remedy of appeal in accordance with the Ordinances of the respondent No.1 - University.

The appellant after completing his 10+2 examination got admission in B.Sc. (Economics) in Lyallpur Khalsa College, Jalandhar (respondent No.3) ('College' – for short). He appeared in the Semester I, II and III examinations and passed in all of them. At present, the appellant is a Vth Semester student of B.Sc. (Economics) for the Session 2015-16 in the respondent No.3-College. The respondent No.3-College is affiliated with respondent No.1-University.

The appellant appeared in the B.Sc. (Economics) of the IVth Semester in the subject of Economics on 14.05.2015. While he was attempting his question paper along with other students at about 11.10 am, Supervisor of the Examination Centre during routine checking picked up something from the floor. The Supervisor then came out from the examination room and after ten

minutes an official entered the examination room and started conversing with the teacher who was on duty in the examination room. Thereafter, the official and the teacher came near the appellant and asked him to sign some documents. It transpired that the appellant was in possession of certain incriminating material, which could help in the examination paper.

The respondent No.1-University issued a show cause notice dated 15.07.2015 (Annexure R-1/5) levelling the charge that the recovered incriminating material from the appellant during the course of examination resembled with the syllabus. It is stated in the said show cause notice that as per the report received from the Centre Superintendent on 14.05.2015, the appellant had been found using unfair means during the course of examination, which had been mentioned in the notice. Therefore, he was asked as to why action should not be taken against him under Ordinance 11.1 (b) along with Ordinance 10 (a) of the Guru Nanak Dev University Calendar 2008 Vol. II ('Calendar' – for short). In this connection, the appellant was advised to appear before the Standing Committee in its meeting on 24.07.2015 at 9.00 am at the Senate Hall of the University, Amritsar. In Para 3 of the show cause notice dated 15.07.2015 (Annexure R-1/5), certain lines which are material to the case have been scored of.

The lines that have been scored of in the show cause notice, according to Ms. Navdeep, Advocate for the appellant clearly show that the appellant has not been given opportunity to present witnesses in his favour, which he was to bring at his own expense before the Standing Committee; besides, reports of the Centre

Superintendent, Members of flying squad and the copy of candidate's Statement were not supplied and with these not being supplied grave prejudice and injustice has been caused to the appellant inasmuch as he has been denied opportunity to effectively defend himself. A reference is also made to the report (Annexure R-1/4) of the subject expert regarding use of unfair means, which mentions that the appellant of course had material related with the syllabus but he had not copied anything from the material as question was not being set in the question paper. It is submitted that in such a case the material even if it is taken to have been recovered from the appellant, he was liable to be proceeded against in accordance with Ordinance 12 of the respondent No.1-University Calendar as the alleged recovered material was only due to inadvertence for which an opportunity of explaining was liable to be given by the Standing Committee (Unfair Means Committee) of the respondent No.1-University.

During the course of hearing, Shri Amrit Paul, Advocate learned Counsel for respondents No.1 and 2 submits that the lines that have been scored of in the show cause notice dated 15.07.2015 (Annexure R-1/5) are due to inadvertence. He, however, submits that the appellant in any case has an alternative remedy of appeal before the Vice Chancellor under Ordinance 20 of the Calendar. Therefore, the appellant is liable to be relegated to the alternative remedy of appeal before the Vice Chancellor of the respondent No.1-University and the present appeal merits dismissal.

We have given our thoughtful consideration to the

contentions of the learned counsel for the parties. A perusal of the show cause notice shows that certain lines have indeed been scored of in Para 3 of the show cause notice. Para 3 of the show cause notice highlighting the scored of portion reads as follows: -

"If you want to present any witness in your favour, you can bring him at your own expenses before the Standing Committee. If you do not appear before the Standing Committee or do not bring any witness, then no other opportunity will be afforded and your case will be decided on the basis of charges."

Besides, in the column of Enclosure, again the following lines have been scored of:-

"Copies of the reports of Centre Superintendent, Members of flying squad and the copy of candidate's Statement."

The underlined portion of the show cause notice dated 15.07.2015 (Annexure R-1/5) have indeed been scored of and there is indeed no valid reason or justification forthcoming for scoring of the said portion.

In the circumstances, we are of the view that indeed the appellant has been deprived of the opportunity of producing the witnesses that he may have wanted to produce and with the reports of the Centre Superintendent, Members of flying squad and the copy of candidate's statement not being supplied would by itself constitute a prejudice as it deprives the appellant an effective opportunity of defending himself. There has thus been a violation

of the principles of natural justice and the rule of *audi alteram partem*, which has resulted in prejudice to the appellant. The requirement of supplying documents on which the Standing Committee (Unfair Means Committee) basis its conclusions so as to disqualify the appellant for entering into any examination of the respondent No.1 – University (in all cases) for two years, are substantive provisions which partake the character of being mandatory in nature and not merely procedural. In case of violation of procedural provisions, it is to be noticed that these are meant for affording a reasonable and adequate opportunity to a candidate facing an unfair means inquiry in an examination to give him a reasonable and adequate opportunity to defend himself. Violation of a procedural provision does not normally vitiate the inquiry automatically in case it is shown that no prejudice had been caused. This, however, would not be the position in cases falling in the category of not being given an effective and a proper opportunity to a candidate facing unfair means proceeding to defend himself by non-supply of the documents on the basis of which the Standing Committee (Unfair Means Committee) has reached its conclusions to disqualify the appellant for entering into any examination of the respondent No.1 – University (in all cases) for two years.

It may, however, be noticed that in case an inquiry is found to be faulty it would not be proper to automatically quash the inquiry in its entirety but the matter is required to be remitted to the Standing Committee (Unfair Means Committee) to follow the procedure from the stage at which the fault had been committed and then proceed according to law.

In Managing Director, ECIL, Hyderabad v. B. Karunakar, AIR 1994 SC 1074, it was held that when the inquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee as regards the charges levelled against him. That right, it was held is a part of the employee's right to defend himself against the charges levelled against him. A denial of the inquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. Since the denial of report of the inquiry officer in a departmental inquiry is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. It was held that the delinquent employee would be entitled to copy of the report even if the statutory rules did not permit the furnishing of the report or are silent on the subject. It was further held that the theory of reasonable opportunity and the principles of natural justice had been evolved to uphold the rule of law and to assist the individual to vindicate his legal rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Therefore, in all cases where the inquiry officer's report is not furnished to the delinquent employee in disciplinary proceedings, the Court and Tribunals are to cause the copy of the report to be furnished to the aggrieved employee and give the employee an

opportunity to show how his or her case was prejudiced because of the non-supply of the report. It was observed that the Court/Tribunal is not to mechanically set aside the order of punishment on the ground that the report was not furnished and the Court should avoid resorting to short cuts. It was further held that where after following the procedure the Court/Tribunal set aside the order of punishment, the proper relief that should be granted is to direct the reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report.

In State of Punjab v. Dr. Harbhajan Singh Greasy JT 1996 (5) SC 403, it was held that it is now well-settled when the inquiry was found to be faulty, it would not be proper to direct reinstatement with consequential benefits. The matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law.

Therefore, we are of the view that by not giving the appellant an opportunity to produce his witnesses in the inquiry against him and by not supplying him the reports of the Centre Superintendent, Members of flying squad and the copy of candidate's statement, there has been denial of fair opportunity to the appellant to present his case. Besides, it has deprived him the opportunity to show that in any case, his case would be covered by Ordinance 12 of the respondent No.1-University Calendar.

Ordinance 12 of the Calendar reads as follows:-

"If during a University examination, a candidate is found having in his possession or accessible to him papers, books or notes which could be of assistance to him in the examination but he has not made use the inquiry officer's report was based on the alleged admission made by the respondent in the said case. However, unfortunately the inquiry officer had not taken the admission of the respondent in writing. Subsequently, the respondent denied having made any admission. As against the denial of the delinquent only the statement of the inquiry officer was there which was not supported by any statement in writing taken from the respondent. of them, and if the committee is satisfied that these papers, books or notes, as the case may be, remained with the candidate out of inadvertence, he may as a disciplinary measure and without any implication of moral turpitude, be debarred from passing in that paper."

The report (Annexure R-1/4) of the subject expert regarding use of unfair means, does mention that the appellant of course had material related with the syllabus but he had not copied anything from the material as question was not being set in the question paper. According to learned counsel for the appellant in such an eventuality the incriminating material even if it is taken to have been recovered from the appellant, he was liable to be

proceeded against in accordance with Ordinance 12 of the respondent No.1-University Calendar as the alleged recovered material was only due to inadvertence for which an opportunity of explaining was liable to be given by the Standing Committee (Unfair Means Committee) of the respondent No.1-University. This aspect would indeed require consideration by the Standing Committee (Unfair Means Committee) and the appellant would be entitled to represent and show that the incriminating material even if it is to be taken was in his possession was inadvertently in his possession.

The learned Single Judge dismissed the writ petition of the appellant with liberty to avail the alternate remedy of appeal as provided under the Ordinances of the respondent No.1-University. However, we are of the view that there is a defect in the show cause notice dated 15.07.2015 (Annexure R-1/5), which has been issued and has denied to the appellant a fair opportunity of representing against the same and thereby resulting in prejudice to him. The defect in scoring of certain lines in the show cause notice, as noticed above, in fact is also fairly accepted by the learned counsel appearing for respondents No.1 and 2. Therefore, the alternative remedy of appeal would not *per se* be a bar to the exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

Accordingly, the appeal is allowed and the judgment and order of the learned Single Judge is set aside. The order dated 09.09.2015 (Annexure P-3) declaring the appellant disqualified for entering into any examination of the respondent No.1-University (in all cases) for two years, is set aside. The Standing Committee

(Unfair Means Committee) of the respondent No.1-University shall, however, proceed against the appellant from the stage of issuing correct show cause notice by giving him opportunity to produce witnesses at his own expense and by supplying him copy of reports of Centre Superintendent, Members of flying squad and copy of candidate's statement; besides, the appellant shall be entitled to show that the incriminating material that was recovered was due to inadvertence and his case in any case is covered by the Ordinance 12 of the Calender of the respondent No.1-University.

Learned counsel for appellant submits that the appellant has been allowed to appear in the internal examination of the Vth Semester of B.Sc. (Economics) by way of interim orders and he has appeared, and now two papers i.e. on 09.12.2015 and 13.12.2015 are to be held for which he be allowed to appear on his own risk and responsibility. The appellant shall be entitled to appear in both the Vth Semester examination papers of B.Sc. (Economics) at his own risk and responsibility and his appearing in the said examination papers would not confer any right on him and the same shall be subject to final outcome of the inquiry. There shall be no order as to costs.

(S. S. Saron)
Judge

08.12.2015
A.Kaundal

(Amol Rattan Singh)
Judge

Note: To be referred to reporter: Yes