

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 14th July, 2015**

+ **W.P.(C) 3550/2014**

DHARMENDER GREWAL **Petitioner**

Through: Mr. Sumit Kumar, Advocate with
Mr. Palav Agarwal, Advocate.

Versus

UNIVERSITY GRANTS COMMISSION **Respondent**

Through: Mr. Arjun Harkauli, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner appeared in the National Eligibility Test (NET) held by the respondent University Grants Commission (UGC) on 29th December, 2013 and has remained unsuccessful therein. It is the case of the petitioner that he remained unsuccessful because in paper I of the said examination, though, the Test Booklet containing questions distributed to him was of Code 'Y' but in the OMR answer sheet of the said Test Booklet, he erroneously shaded the code of his Test Booklet as 'X' instead of 'Y' and as a result whereof his answer sheet was read by the Optical Mark Reader as answering the questions in Test Booklet 'X' and which resulted in his having very low marks in the said paper. It is the case of the petitioner that had his OMR answer sheet been read with the correct Test Booklet Code

‘Y’, his answers would have been found to be correct, making him successful in the said examination.

2. The petitioner has filed this petition seeking a direction to the respondent UGC to re-check his OMR answer sheet of the aforesaid paper, with the correct code.

3. Notice of the petition was issued and pleadings have been completed.

4. I have heard the counsels.

5. The counsel for the petitioner has raised three contentions in support of his claim. Firstly, it is contended that the OMR answer sheet, besides being required to be signed by the candidate, is also required to be signed by the Invigilator under the following endorsement:

“I hereby Certify that I have checked the following information of the Candidate Name, Roll Number, Subject Code, Coordinating Institution and Test Booklet Code of Paper-I”.

it is argued that even if the petitioner had committed mistake in shading the wrong code in OMR answer sheet, it was the duty of the Invigilator to have corrected the said mistake and thus, the mistake besides being of the petitioner, was also of the Invigilator appointed by the respondent UGC and the petitioner cannot be penalised for the mistake of the Invigilator. Secondly, it is contended that OMR answer sheet, besides

requiring to be shaded at the correct code of the Test Booklet, also bears a number and the mistake should have been detected by the Optical Mark Reader from the said number also and if had been detected, the petitioner again would have been correctly marked. Lastly, it is contended that the machine cannot be allowed to take over the job in entirety and such human error should be permitted to be corrected by human.

6. I am not inclined to, in exercise of writ jurisdiction under Article 226 of the Constitution, grant the relief sought by the petitioner simply for the reason that the examination in which the petitioner had appeared is not a once in a lifetime examination in which the petitioner has lost a chance to appear for ever. It is not in dispute that the said examination is held twice a year. If the petitioner is meritorious, there should not be any doubt in his mind of his ability to clear the same. When, (a) the grievance with which the petition is filed is attributable to the petitioner himself; and, (b) the injury is not irreparable and the petitioner can regain what he has lost owing to his own mistake, the question of invoking Article 226, in my opinion, does not arise.

7. The language of Article 226 shows that the issuing of writs or directions by the Court is founded only on its decision that the right of an

aggrieved party has been infringed. The jurisdiction under Article 226 can be invoked only to protect an existing right and not to confer a new right. Unless a right to the relief claimed is established, no writ, direction or order can be issued under Article 226. Reference if any required in support thereof, can be made to *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo* AIR 1964 SC 685 and to *The Rajasthan State Industrial Development and Investment Corporation Vs. Diamond and Gem Development Corporation Ltd.* (2013) 5 SCC 470 where it was held that the primary purpose of a writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. The petitioner here, has not shown any right against the respondent UGC or otherwise in law, to have his OMR answer sheet to be read vis-a-vis Test Booklet of Code 'Y' when he himself had marked the said OMR sheet with Code 'X'. Similarly, the petitioner has not shown any obligation of respondent UGC to correct the mistake of the petitioner. The petitioner has also not shown lest established any right to have his OMR answer sheet re-read by Optical Mark Reader or otherwise with the correct Code 'Y'. In the absence thereof, invocation of Article 226 is misconceived. Of course, the writ remedy is designed to promote justice. However, the grant or refusal of the writ is at the discretion of the Court and which the Court has to exercise

taking into consideration a wide variety of circumstances, *inter-alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

8. It cannot also be lost sight of that the examination concerned is to test the eligibility of the petitioner to be a teacher. A teacher has the task of shaping the future of the students and the teacher is not expected to commit a mistake as aforesaid. A teacher susceptible to such mistakes can be fatal to the students and the system of education. The possibility of the petitioner, if allowed to get away with such mistake, not realising his mistake or developing a casual attitude cannot be ruled out. A teacher, which the petitioner aspires to be, has to lead by example and be a role model for the students and I am of the opinion that the petitioner will be a much better teacher if proves his mantle by taking and clearing the examination. The petitioner, if allowed to get away with his mistake is unlikely to inculcate the need for care, caution and attention in his prospective pupils also.

9. The Supreme Court in *State of Maharashtra Vs. Prabhu* (1994) 2 SCC 481 held that a teacher who is expected to instill discipline in students

and prepare them for future, if found assisting or permitting copying in examination, cannot be considered to be a proper person who can be entrusted with such duties and responsibilities as are required to be discharged and such a person would be ineligible for appointment. The same sentiment was repeated in *Manager, Nirmala Senior Secondary School, Port Blair Vs. N.I. Khan* (2003) 12 SCC 84 where it was observed that the minds of students are like clay which needs to be shaped into beautiful moulds by the teachers and to a great measure the behaviour, character, reputation of the teachers leaves imprints in the minds of the students. If the conduct, behaviour and reputation of teachers is full of blemish that would not be for the interest and in the welfare of the students. Later, in *Sushmita Basu Vs. Ballygunge Siksha Samity* (2006) 7 SCC 680 it was also held that the profession of teaching is not an employment in the sense of it being merely an earner of bread and butter, it is a noble profession. The Supreme Court proceeded to hold that a teacher fulfils a great role in the life of the nation; he is the 'guru'; it is the teacher, who moulds its future citizens by imparting to the students not only knowledge but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. All this was reiterated in *State of Orissa Vs. Mamata Mohanty* (2011) 3 SCC 436 where

it was also observed, that it is essential to maintain high academic standards, discipline and academic rigour, if the country is to progress and that we cannot afford any negligence in applying criteria of merit in the selection of teachers. Appointment of qualified and efficient teachers was held to be *sine qua non* for maintaining high standards of teaching in any educational institution.

10. As far as the mistake attributed to the Invigilator is concerned, the same does not in any way dilute or take away from the mistake of petitioner. The petitioner, from the rules of the examination has been unable to show that upon the mistake made by examinee escaping the invigilator also, the petitioner's mistake is to be ignored. Rather, the rules place the onus squarely on the examinee.

11. It is also not the case of the petitioner that the Optical Mark Reader was to read the OMR answer sheet in the context of the number given thereon and not the code filled by the examinee or that in the event of inconsistency between the two, the number was to prevail over the code. If the Optical Mark Reader was designed to read the OMR answer sheet vis-a-vis Test Book as per the code, the argument today that it should have read vis-a-vis number, is entirely misconceived.

12. The scheme of the examination, which remains unchallenged, having provided for the marking to be done by Optical Mark Reader, the petitioner cannot also demand manual checking of answer sheet. There is thus no merit in the last contention also.

13. The petition is dismissed. However, the same will not come in the way of the petitioner taking the examination again, if otherwise eligible therefor.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 14, 2015

bs..

(Corrected & released on 25th July, 2015)