

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14118 of 2015
Date of decision: 29.07.2016

Pargat Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. R.K. Rana, Advocate,
for the petitioner.

Mr. Inder Pal Goyat, Addl. A.G., Punjab.

Mr. Vipul Jindal, Advocate,
for respondents no. 2 and 3.

Ms. Sandeep Kaur, Advocate,
for Mr. G.S. Nehal, Advocate,
for respondent no. 5.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the communication dated 23.09.2014 (Annexure P-3) whereby, his result of B.A. Part-I held in the year 2014 was declared as reappear in the subject of Physical Education.

It is the case of the petitioner that after that he filed an application under the Right to Information Act, 2005 to get information he was informed that the examiner-respondent no. 5 had recorded that though the petitioner was present but he has not performed the practical. Resultantly, he had served a legal notice dated 19.03.2015 (Annexure P-5) upon the respondents.

In the reply to the legal notice, stand taken by the university

was that the award of the practical could not be supplied as it was a secret award and could not be provided. In the meantime, the petitioner had been allowed to attend the B.A. Part-II degree course. Thereafter, he filed the present writ petition in July, 2015 and in August, 2015, he was allowed to attend classes of B.A. IIIrd year, subject to the final decision. The stand of the university is that the petitioner did mark his presence in practical, however, he neither performed the practical examination nor took part in the viva and no award was, thus, given by the examiner in the award list. Reliance was placed upon the communication dated 16.09.2014 (Annexure R-1) of respondent no. 5 to this effect. It is accordingly held out that there were no mala fides and the petitioner, for reasons best known to him, did not appear in the examination after marking his presence.

In the replication filed by the petitioner, the stance taken is that Annexure R-1 is a procured document to secure the defence and it was only to save the examiner. The petitioner has also filed various affidavits of candidates who had appeared with him in support of the fact that he had given the practical examination.

The concerned examiner was also impleaded as respondent no. 5. A similar reply has also been filed by the examiner-respondent no. 5 to submit that the award list for practical examinations (Annexure R-2) did not show that any marks had been awarded to the petitioner in the said list against the roll no. 28959. In the reply of the respondent-college, it has been averred that the petitioner had been issued roll no. 28959 and his presence was duly marked in the presence sheet of practical of Physical Education.

It is not disputed that when result (Annexure P-3) was

communicated to the petitioner, he had already lost the chance to sit in the supplementary examination in September, 2014 and, therefore, was offered that he could sit in the said examination in April, 2015. A perusal of Annexure P-1 would go on to show that the presence of the petitioner was marked by the Superintendent of the center on 19.03.2014 alongwith the examiner of the practical paper on the said date. The vernacular of Annexure P-1 would go on to show that there was a specific column wherein roll number of the students who had remained absent was to be compulsorily given. The petitioner's roll number did not figure in the said column. If the petitioner had appeared in the practical but not given the same, it would have been the bounden duty of the examiner and the superintendent of the center to record so in the presence sheet (Annexure P-1) regarding this fact. The examiner has only given his report on 16.09.2014 (Annexure R-1) regarding the fact that the petitioner did not given his practical. At an earlier point of time on 05.07.2014 (Annexure P-2), the result of the petitioner had been shown as Award later. The said report is 6 months later from the date of the examination and, therefore, reliance upon the same by the university, in such circumstances, cannot be held to be justified.

It is contended by counsel for the petitioner that the petitioner, in the meantime, has also passed his second and third year and only on account of the present litigation, his result is not being declared.

Resultantly, this Court is of the opinion that the petitioner is entitled to sit in the practical examination which is to take place in September/October of this year for the subject of Physical Education (Practical) of B.A. Part-I. The respondent-university will issue necessary

admit card without charging any examination fees and permit the petitioner to sit in the said examination. Thereafter, the result of the said examination and the final examination will be declared expeditiously.

With the above said observations, the present writ petition stands allowed.

29.07.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/ reasoned	Yes/No
Whether reportable	Yes/No