

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

**CWP No.14273 of 2016
Reserved on:16.11.2016
Decided on : 09.12.2016**

Parveen Kumar

... Petitioner

Versus

Maharishi Dayanand University & another

... Respondents

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

Present: Mr.Kuldeep Sheoran, Advocate, for the petitioner.

Mr.Amit Rao, Advocate, for
Mr.Anurag Goyal, Advocate for respondent No.1-University.

Mr.Brijinder Kaushik, Advocate, for respondent No.2.

G.S. Sandhawalia, J.

Challenge in the present writ petition is to the order dated 28.09.2015 (Annexure P5) vide which the respondent-College revised the result of the petitioner and asked for DMC of 6th semester of the Bachelor of Science examination (B.Sc), passed in May, 2014 and the degree issued by the University. The petitioner was also informed that the revised result could be seen on the University website dated 11.07.2015 (Annexure P4). As per the revised result dated 20.02.2015 (Annexure P6), entire examination of the petitioner had been cancelled (EEC), for the course in question.

The pleaded case of the petitioner is that he had passed his B.Sc in May, 2014 under Roll No.2212228 from the respondent-University and his result was declared on 11.07.2014 (Annexure P3). Thereafter, he had passed his Bachelor of Education course from Satish Public College of

Education, Rewari, affiliated to the respondent-University under Roll No.9583681 as a regular student. The result dated 11.07.2015 (Annexure P4) was appended. Accordingly, this Court was approached on the ground that no opportunity of hearing was granted and no notice was ever issued to him, which was against the principles of natural justice.

In the reply filed by respondent-University, plea taken was that petitioner had not approached this Court with clean hands and concealed the fact that in May, 2014, while appearing in the examination of the 6th semester of Math (Linear-Algebra), in the course of B.Sc, he was caught red-handed by the flying squad of respondent-University while copying in the said paper. An unfair means case was registered against him, which was very much in the knowledge of petitioner. The petitioner had failed to pursue his UMC case and the intimation of this fact was sent by the answering-respondent, by way of the online system in all the matters of examination by way of displaying all sorts of students' related information on its website. It was the petitioner who was required to see on the University website as to on which date and before which Committee his UMC case was scheduled for hearing but he failed to do so. He did not appear before the UMC Committee on the scheduled date and time and copy of the information was displayed on the website (Annexure R1/1) to show that his case was listed on 01.09.2014 before the Standing Committee.

The matter was listed before the Standing Committee in absentia and his entire examination had been cancelled. It was pleaded

that due to omission on the part of the University, the UMC of the petitioner could not be entered in the result of the petitioner and the result had been declared wrongly and the DMC had been sent to the college in routine. The petitioner, accordingly, had collected the DMC from the college and sought admission to B.Ed course during the session 2014-15 and qualified the same. When the omission came to the notice of the University, a letter was immediately written to the college for the return of the DMC. No direct communication was sent to the students by the respondent-University and all such notices/circulars/information regarding examination/admit cards, had been uploaded on the University website. An objection was also taken that he could file objections to the Controller of Examination for re-consideration of his case within 30 days of the receipt of the decision of the Academic Committee but the same was not availed and this Court was approached directly.

The sole issue which, thus, arises for consideration, in view of the above pleadings and facts, is whether the University was justified in cancelling the result of the petitioner, without giving him an opportunity of hearing and whether mere publication on the website would be sufficient notice, as such, to the petitioner. The ancillary issue would also be as to what is the relief which can be granted to the petitioner, at this stage, since, admittedly, there has been a mistake on the part of the University also to issue the DMC and to permit the candidate to obtain a subsequent degree also from the University itself.

A perusal of the original record which has also been placed on

record, by way of photocopies, would go on to show that as per the roll number of the petitioner was one of the roll numbers which came up before the Standing Committee on 01.09.2014 and eventually, the entire examination of the petitioner stood cancelled. From the photocopies of the material appended with the reply along with the originals which was produced, it would be apparent that the petitioner had in his possession one hand written paper and 2 photostat papers which the examiner noticed, had been used in copying on the answer-sheet. The unfortunate part is that the University has nowhere been able to depict that a notice had been issued to the petitioner for having in his possession incriminating material which he had used, as per the report of the detector dated 19.05.2014.

Counsel for the University submitted that the information displayed on the website was sufficient notice, as such. However, counsel was unable to show from the Ordinance of the University or the rules that the same would be sufficient compliance of the principles of natural justice. The petitioner had to be put to notice of the case, as such, and one also cannot accept the argument of counsel for the petitioner that the petitioner was unaware of the pendency of UMC, as such and the innocence which is sought to be portrayed, cannot be accepted. The material which has been shown to the Court would substantiate the report of the detector that it was used for copying in the said subject. Even otherwise, sufficient hand-written and photostat copies of the material which itself, as per the Ordinance, is a misconduct and would be covered by the Unfair Means Case. As per the Calendar Vol-II Part B (Annexure

R1/5), the Centre Superintendent could take action against the examinee who is found using unfair means, as per Clause 4 of the said chapter. Clause 5 further provides that if a candidate is found or suspected to be guilty, he can be allowed to take the remaining part of the question paper on a new answer book, which can be supplied on demand. This is to be subject to the decision of the University which it may take in the case of the use of unfair means. The Superintendent can also obtain explanation of the candidate in writing. The use of unfair means is to be reported to the Committee, at the earliest and along with the explanation of the candidate, if any. The factum of the refusal to given any explanation is also to be reported in the report etc. Clause 5 & 6 reads as under:

“5. If a candidate is found to be or suspected to be guilty of using unfair means in the examination, the Superintendent may take away his answer-book and permit him, if he so desires, to answer the remaining part of the question-paper on a new answer-book which shall be supplied to him on demand. The candidate may also appear in the rest of the examination in the subsequent papers at his own risk and subject to the decision the University may take in his case for use of unfair-means. The Superintendent may also obtain the explanation of the candidate in writing.

6. The superintendent of the examination centre shall report to the University on the form prescribed by the University, at the earliest, each case where use of unfair-means in the examination had been suspected or discovered with the explanation of the candidate concerned, if any. If the candidate refuses to give any explanation this fact shall be recorded in the report. In case the candidate refuses to part with his answer-book when asked to do so, no new answer-book be given to him and he be asked to leave the examination hall.”

Similarly, the Committee is to consider the reports of the

Superintendent before arriving at a decision and take the evidence of any person under Clause 11. Similarly, in Clause 13, there is a provision that if the candidate denies the allegations against him or if the Committee otherwise thinks it necessary, it shall fix a date and time for holding the enquiry and a notice is to be given to the candidate by registered post, which shall not be less than 7 days from the date of its despatch. The Committee is required to meet at a place specified in the said notice for the purpose of holding the enquiry. The candidate is to be present and to be heard and after granting such hearing, the findings are to be recorded about the guilt of the candidate. Clauses 10 to 13 read as under:

“10. A candidate who is awarded punishment by the Standing Committee on unfair means on having been found using unfair means may submit an application to the Controller of Examinations for reconsideration of his case within 30 days of the receipt of the decision of the committee along with a fee of Rs. 1000/-. Such a reconsideration will be allowed only once.

11. The committee shall consider the reports of the Supervisor/ inspecting staff before arriving at decision. If it considers necessary the committee may take the evidence of any person. In no case the candidate shall be allowed to represent himself by an advocate or any other person.

12. xxx xxx xxx

13. In case a candidate denies the allegation(s) against him or if the Committee otherwise thinks it necessary, it shall fix a date, time and place for holding the enquiry and give a notice to the candidate by registered post. Sending such notice by registered post to the candidate at the address given by him in his examination admission application shall be deemed to be a discharge of the University liability as to notice even if the candidate did not receive the letter or that he was not available at the said address. No adjournment of the meeting may be granted to the candidate on any account. On the date and time fixed in the

notice which shall not be less than seven days from the date of its despatch, the Committee shall meet at the required place specified in the said notice for the purpose of holding the enquiry and the said candidate shall be allowed to be present, and heard in the same. The Committee after granting such hearing to the candidate as it may deem necessary, record its finding about the guilt of the candidate.”

A conjoint reading of the same would, thus, go on to show that while considering the report, a decision is to be taken and then evidence of any person can be recorded. Necessarily, for this, registered notice also is to be sent to the candidate. In the present case, as noticed, no such exercise has been carried out by the University. By merely displaying the list on the website, it has sought to disqualify the candidate, by cancelling his entire examination, which would be for the year concerned and would be treated as a failure for B.Sc 3 years.

This procedure which has been followed is in apparent contradiction to the prescribed procedure. Nothing was shown to this Court that the Ordinance, as such was amended, to provide that just a website notice was sufficient notice to the candidate. In view of the specific wording of Clause 13, as such, which provides that registered notice is to be sent and even 7 days time is to be given before the hearing of the candidate is to be done. Accordingly, this Court is of the opinion that the procedure prescribed, as such, has not been followed at all by the Committee. Thus, the basic principles of *audi alteram partem* have been violated and the adverse decision of withdrawing the degree, has been taken.

The Apex Court in '**Gorkha Security Services Vs.**

Government of NCT of Delhi and others' (2014) 9 SCC 105 held as under on the principle of violation of natural justice while setting aside the order of black listing of the appellant. The relevant paragraphs of the said judgment read as under:-

“29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power pre-judicially affecting another must be in conformity with the rules of natural justice.

30. We are conscious of the following words of wisdom expressed by this Court through the pen of Justice Krishna Iyer in the case of **Chairman, Board of Mining Examination and Anr. v. Ramjee, 1977 (2) SCC 256**:

"If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of

natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter.... We cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity."

31. When it comes to the action of blacklisting which is termed as 'Civil Death' it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT."

However, it is also to be noticed that there is a provision provided in the Ordinance to approach the Controller of the Examination for reconsideration under Clause 10, as reproduced above. But the fact remains that we are dealing with a candidate whose academic career has been put to halt on the fault of the University itself, on 2 accounts; firstly, it has failed to follow the principles of natural justice and violated the same blatantly, without even putting the candidate to notice. Secondly, compounding has happened by allowing the petitioner to sit in another examination in the B.Ed course, which the petitioner, thereafter, successfully passed from the same University and without detection for a period of more than one year. The DMC had also been issued in November, 2015 (Annexure P4), though the result of the earlier examination had already been withdrawn, prior to that, on 17.09.2015 by the University. At this stage, to relegate the petitioner to his alternative

remedy, before the Controller of the Examination, would, in fact, further delay the academic career of the petitioner. Rather, in view of the conduct of the University, the petitioner is entitled to seek and claim estoppel, as such, against the University. However, the fact remains that the petitioner himself is guilty of unfair means and therefore, this Court will not further be a party to his misconduct, by permitting him, as such, to go scot-free, only on account of the fault of the University.

As per Clause 8 (i) reproduced below the cancellation of the entire examination would be mean to be treated as a failure in the B.Sc 3rd year examination, and the petitioner would thus have to give all the examinations for the said year. The said clause reads as under:-

“8. Committee shall have the power to:

(i) Cancel the particular paper or the entire examination in which he has been found guilty of use of unfair means, such cancellation of paper will mean award of zero mark in the paper and cancellation of the entire examination will be treated as failure in the examination.”

Accordingly, this Court is of the considered opinion that the result of the petitioner only in the said subject is liable to be cancelled and he should be treated as having failed in the said subject. The petitioner will then, accordingly, be given additional opportunity to sit in the examination of 6th semester in Maths (Linear-Algebra) by treating him as a re-appear candidate and the University shall give him an additional chance, as is admissible to a re-appear candidate. If the petitioner clears the same, then the result would be revised and a fresh DMC shall be issued to him, for the B.Sc degree. The petitioner will surrender his earlier certificate

issued to him and he will be issued a fresh one, provided he clears the said subject.

The present writ petition stands partly allowed, in the above-stated terms.

Original record be handed over to the counsel under proper receipt.

DECEMBER 09, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes