

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

**CWP No.25828 of 2015
Reserved on:16.11.2016
Decided on :30.11.2016**

Parveen Kumar

... Petitioner

Versus

Maharishi Dayanand University & another

... Respondents

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

Present: Mr.S.K.Redhu, 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. Sandhawal, 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, 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. As per the result, entire examination of the petitioner had been cancelled (EEC), for the course in question, as per the website dated 20.02.2015.

The pleaded case of the petitioner is that he had passed his B.Sc in May, 2013 under Roll No.2212220 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 Major Nafe Singh Kungariya College of Education, Bhiwani, affiliated to the University

under Roll No.9511250 as a regular student. Vide the impugned communication, issued by respondent No.2, he had been asked to deposit his DMC and degree. 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. In the examination held in May, 2014, petitioner was caught red-handed by the flying squad of respondent-University while copying in the examination of Paper-2nd of Chemistry subject. An unfair means case was registered against him, which was very much in the knowledge of petitioner. The University had adopted online system in all the matters of examination by way of displaying all sorts of students' related information on its website and therefore, the information had been displayed on the website (Annexure R1/1). The matter was listed before the Standing Committee in absentia and his entire examination had been cancelled. Result of the petitioner had been wrongly declared and DMC was also sent to the concerned college in routine. Resultantly, when the omission came to its notice, letter was written to the Principal of respondent No.2-College for returning the DMC along with other similarly situated students. All the DMC's were returned except that of the petitioner. Petitioner had not availed of his remedy of approaching the Controller of Examination for reconsideration of his case. The Academic Council had appointed annually the Committee to deal with cases of unfair means. The ordinance of punishment which had been prescribed was referred to, which was

Calendar Vol-II Part B (Annexure R1/2).

In view of the stand taken by the University, it had been directed on 31.05.2016 that an affidavit be filed by the petitioner stating whether the petitioner had not used unfair means and was also not caught at that time as the positive case of the respondent is that the petitioner was caught red handed. In pursuance of the same, affidavit dated 02.07.2016 has been filed by the petitioner. Same reads as under:

“1. That the deponent has filed above mentioned case in this Hon'ble Court which was listed on 31.05.2016 and respondents have taken specific stand that the deponent was asked to appear before the Standing Committee on Unfair Means constituted for the B.Sc. 6th Semester Examination held in May, 2014 but he did not appear before the said committee due to which his result was cancelled and he was asked to submit his DMC which was inadvertently issued to him. The Hon'ble bench vide order dated 31.05.2016 directed to submit a specific affidavit stating clearly that he had not used Unfair Means and was also not caught at that time.

2. That the deponent appeared in B.Sc. 6th Semester Examination in May, 2014 under Roll No.2212220. He did well in his examination and passed his B.Sc. 6th Semester Examination in May, 2014. His result was declared on 11.07.2014.

3. That during the Examination of 6th Semester in May, 2014 neither he was caught for using Unfair Means nor he was ever informed for appearing before the Standing Committee on Unfair Means Cases constituted for the B.Sc. 6th Semester Examination held in May, 2014 as alleged by the respondents.”

A perusal of the affidavit would go on to show that specific averment had been made that neither the petitioner was using unfair means nor he was ever informed to appear before the Standing Committee. Resultantly, the original record was called for.

A perusal of the same would go on to show that the petitioner has only answered question No.5 which was copied from the recovered material, in possession of the petitioner, on to his answer-book, as per the report of the Centre Superintendent. The reading of the material and the answer given confirms this fact.

Keeping in view the above facts and in view of the fact that the petitioner has given a specific affidavit that he was not caught using unfair means, this Court is of the opinion that the issue as to whether the principles of natural justice have been violated or not, are not liable to be gone into, as noticed vide order dated 04.10.2016. Once there has been concealment and a wrong affidavit has been filed and apparently, from the record itself, it would be clear that the candidate had resorted to unfair means and the material was recovered from him which had been used in the answer-sheet, this Court is of the opinion that the discretionary jurisdiction, under Article 226 of the Constitution of India, is not liable to be exercised.

It has been time and again held that once a petitioner comes to this Court on the basis of wrong facts and by giving wrong affidavit, then he would not be entitled for any hearing on merits. The Apex Court in **M/s. Prestige Lights Ltd. Vs. State Bank of India, 2007 (8) SCC 449** laid down the principles as to whether this Court should exercise its extraordinary discretionary writ jurisdiction where the party does not disclose true and complete facts. Relevant portion of the judgment read as under:-

“32. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High

Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R v. Kensington Income Tax Commissioners*, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:

"It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the

appellant-Company. Collusive action has been taken with a view to deprive the respondent-Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court."

Resultantly, keeping in view the above discussion, the present writ petition is, hereby, dismissed. The original record be returned to counsel for the respondent-University, under proper receipt.

NOVEMBER 30th, 2016

sailesh

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No

**(G.S. SANDHAWALIA)
JUDGE**