

Sr.No.208

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

**CWP No. 14506 of 2016(O&M)
Date of decision:25.05.2017**

Rajat Rastogi

.....Petitioner

versus

Punjab Technical University and another

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Vivek Arora, Advocate
for the petitioner.

Mr. J.S.Lalli, Advocate
for the respondents.

Rakesh Kumar Jain, J.(Oral)

The petitioner has prayed for a writ in the nature of mandamus directing the respondents to issue Mark Sheet of Ist and 3rd semester attempted(through Department of Correspondence Studies) under Roll No. 820733067.

In short, the case set up by the petitioner is that he took admission in the MBA course of two years in 2008 comprising of four semesters. He took examination of all the four semesters but the result of 1st and 3rd semesters was not declared by the respondent and even after clearing the fourth semester the degree has not been awarded to him.

It is averred in the reply that the petitioner was found guilty of using unfair means during the examination as the University had received two answer sheets with the same Roll Number of the paper purported to have been attempted by the petitioner in 1st and 3rd semester and to find out as to whether the petitioner has been involved in the unfair means, a committee was constituted at the instance of the Controller of Examination.

The said Committee in its proceedings held on 13.11.2013 recommended that the Centre Superintendents, Invigilators and concerned candidates should be asked to explain as to under what circumstances two answer books pertaining to one candidate was sent to the University for evaluation, why there have been several discrepancies in the records as well as in the concerned answer books and why in respect of some answer books the examination staff on duty did not put his or her signatures or has tampered the records or changed the records. The committee observed several discrepancies in respect of records of dates of Examination and the dates recorded by the candidates on the answering books(in some cases have been different), some answer books have been found to be without the date stamp/Controller stamp or both. However, in the same meeting the Committee recommended to the Vice Chancellor that since two answer books have been deposited in respect of each concerned candidate, therefore, both should be cancelled and a full enquiry into the conduct of the concerned examination centres be ordered. The minutes of the meeting, sent to the Vice Chancellor for approval on 11.03.2014, were approved on 26.03.2014 and ultimately, the result of the petitioner was cancelled but he was kept in dark, therefore, the petitioner had to file this petition for seeking a direction for declaration of his result of Ist and 3rd semester.

Counsel for the petitioner has submitted that since the respondents did not declare his result of 1st & 3rd semester, therefore, petition was filed only for seeking a direction but now the respondents have disclosed that his examination has been cancelled on the ground that he indulged in unfair means at the time of taking examination and thus, his examination has been cancelled, therefore, directed the order of

cancellation may be set aside on the ground that the petitioner was not associated with the enquiry and there is a violation of principal of natural justice.

In reply, counsel for the respondent has submitted that the petitioner has not approached this Court with clean hands. It is submitted that not only the petitioner sought information under the Right to Information Act, 2005 about the status of his examination and declaration of result to which a reply was given on 19.08.2014 that this case is under investigation because University has received two answer sheets of one paper of March, 2013 exam bearing Roll Number of the petitioner but also when the petitioner sent a legal notice through his advocate on 22.12.2015, it was duly replied by the University on 18.02.2016 in which all these details of the case pending against the petitioner before the UMC Committee and that the petitioner is involved in the unfair means case because of receipt of two answer sheets of same roll number was disclosed. It is also submitted that all these facts were though in the knowledge of the petitioner as these facts are earlier to the filing of this petition on 25.06.2016 yet the petitioner did not disclose these facts in his petition and only sought a writ in the nature of mandamus.

It is thus, submitted by counsel for the respondents that the petitioner is guilty of *suppressio veri suggestio falsi* and therefore, his petition be dismissed with costs. It is also submitted that the petitioner is guilty of playing a fraud with the Court and relied upon a decision of the Supreme Court rendered in the case of “**S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by L.Rs. and Ors.**” AIR 1994 SC 853.

Counsel for the petitioner has submitted that the petitioner

might not have received the reply to the legal notice, therefore, all these facts have not been mentioned.

I have heard learned counsel for the parties and after examining the available record with their able assistance, am of the considered opinion that there is a calculated fraud played by the petitioner upon the Court in suppressing all the aforesaid facts which were well within his notice brought by the University even by way of answering his application filed under the Right to Information Act, 2005 and also by giving reply to the legal notice served upon by his counsel. Therefore, the concealment of these facts from Court only for the purpose of getting favourable order is nothing short of fraud played upon the Court.

Thus, in these facts and circumstances, the petitioner has lost all sympathy and equity of Court much less the discretion, and thus, the present petition is hereby dismissed with costs of ₹50,000/- which shall be paid by the petitioner to the respondent University. In case, costs of ₹50,000/- is not paid within a period of one month then the University shall proceed against the petitioner in accordance with the law for recovery.

25th May, 2017

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No