

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

CWP No.8401 of 2016

Date of Decision:20.04.2017

Rachit Ohri

.....Petitioner

Vs.

Guru Nanak Dev University, Amritsar and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Ms. Navdeep, Advocate for the petitioner.

Mr. Amrit Paul, Advocate for respondents No.1 to 3.

RAKESH KUMAR JAIN, J.(Oral)

The petitioner, a student of Lyallpur Khalsa College, Jalandhar while appearing in the IVth Semester Examination of B.Sc. (Economics) on 14.5.2015 was detected by the Centre Supervisor having incriminating material. He was searched and allegedly four pages of the material relating to the syllabus was recovered from his pocket. The petitioner was thus debarred for a period of two years by the University vide its order dated 9.9.2015. The said order was challenged by the petitioner by way of CWP No.21688 of 2015. The writ petition was dismissed, leaving the petitioner to avail the alternative remedy of appeal provided under the Unfair Means Ordinances of the University. The petitioner, instead of availing the remedy of appeal, challenged the order dated 20.11.2015 by way of an Intra Court Appeal bearing LPA No.1733 of 2015. The said appeal was allowed by the Appellate Court and the order of the learned Single Judge was set aside.

The order dated 9.9.2015 passed by the University disqualifying the

petitioner in entering into any examination of respondent- University for two years was also set aside. The Standing Committee (Unfair Means Committee) of the University was allowed to proceed against the petitioner from the stage of issuing correct show cause notice by giving him opportunity to produce witnesses at his own expenses and by supplying him copy of reports of Centre Superintendent, Members of Flying Squad and copy of candidate's statement, besides, he was also held entitled to show that the incriminating material which was recovered was due to inadvertence and that his case, in any case, is covered by the Ordinance 12 of the Calender of the University. The said order dated 8.12.2015 passed by the Appellate Court was followed by the University and a corrected show cause notice was issued on 22.12.2015 (Annexure P.6) to the petitioner to show as to why action be not taken against him under Ordinance 11.1(b) along with Ordinance 10(a) of the GNDU Calendar-2008 Volume-II. Opportunity was given to the petitioner to bring/ present any witness(es) in his favour and was also allowed to bring the said witness(es) at his own expenses and produce before the Standing Committee in the hearing which was fixed for 29.12.2015. The petitioner was also allowed to produce any documentary evidence which he may desire in his defence. He was also informed that the Centre Room Supervisor and the Centre Superintendent would also be present before the Standing Committee on 29.12.2015 to give their statements in his presence and he was also allowed to cross-examine them. The petitioner was also informed through the said show cause notice that if he fails to bring any witness/evidence in the said meeting i.e. 29.12.2015, then no further opportunity would be afforded to him and the

case would be decided on the basis of charges and available record and ex-parte statements of the Centre Room Supervisor and the Centre Superintendent. The proceedings are dated 8.1.2016 of the Standing Committee (UMC). In those proceedings, the petitioner first cross-examined Ms. Rajni, Centre Room Supervisor and thereafter, Raghbir Singh, Centre Superintendent. He was also cross-examined by Raghbir Singh, Centre Superintendent. The entire proceedings were recorded in the presence of the petitioner and signed by the Members of the Standing Committee. While cross-examining Ms. Rajni, Centre Room Supervisor, the petitioner basically asked her about the place from which the incriminating material was recovered. The Centre Room Supervisor categorically replied that it was recovered from his pocket. However, she could not tell as to from which pocket it was recovered but it was specifically mentioned by her that it was recovered from his trouser's pocket. In the cross-examination of Raghbir Singh, Centre Superintendent, the petitioner specifically asked that he was not asked by him to take the second answer-sheet to which the Centre Superintendent replied that he had asked him to take answer-sheet but he just put signature on EC-20 Form and the incriminating material recovered from him and then left the examination centre. In respect to the issue of tick marking the relevant serial of EC-20 Form, the Centre Superintendent specifically stated that though he had signed the EC-20 Form but inadvertently he had not tick marked the serial number. In his cross-examination, the petitioner was specifically asked as to whether the Centre Superintendent or Centre Room Supervisor had any personal animosity with him to which the petitioner said 'No' but also said

`they may have'. It was also recorded that the petitioner did not bring any witness in support of his evidence that the case set up by the respondent-University was false and actually the incriminating material was not recovered from his pocket and was not signed by him. Rather, the petitioner has admitted that he has signed the incriminating material and also EC-20 Form. On the basis of the proceedings, the Standing Committee (UMC) observed there was no cogent reason or evidence to disbelieve the report and statements of the Centre Room Supervisor and Centre Superintendent as they performed their duty honestly and also observed that the penalty already awarded by the Standing Committee in its meeting held on 24.7.2015 shall stand. Thereafter, the petitioner filed the statutory appeal in terms of Ordinance 20. The Vice Chancellor of the University asked for the report from the Standing Committee, UMC and the Branch of the University dealing with the UMC cases. The Committee and the Branch of the University submitted their respective reports to the Vice Chancellor on the basis of which the Vice Chancellor took his decision and maintained the order of punishment awarded to the petitioner while dismissing the appeal. The Vice Chancellor passed an addendum to the speaking order on 27.4.2016 regarding audio and video recording of the proceedings dated 8.1.2016 by the Standing Committee of the UMC as the petitioner had alleged that since the meeting was held in the Senate Hall of the University Campus, therefore, the audio and video recording should be made available. In this regard, the Vice Chancellor has observed that actually the meeting dated 8.1.2016 was held in the Syndicate Room of the University and not in the Senate Hall of the University in which there is no such provision. Thus,

aggrieved against order dated 28.1.2016 by which the petitioner has been declared disqualified to appear in any examination conducted by the University for two years and order dated 22.4.2016 by which his appeal has been dismissed by the Vice Chancellor, the present petition has been filed.

Learned counsel for the petitioner has vehemently argued that there is non-compliance of the statutory provisions of Clause 7.1, 7.2 and 8 of the University Calendar 2008, Volume II. She has submitted that while reporting the case of unfair means detected by or in the presence of the Instructor, both the Instructor and the Centre Superintendent were required to sign incriminating papers found in possession of the candidate and those papers should have also been sent to the vice chancellor in case the Centre Superintendent had refused to do so. She has also submitted that when the answer book in which the use of unfair means is alleged is seized by the Superintendent, the student concerned should have been permitted to answer the remaining part of the question paper on separate answer book whereas in the present case, neither the incriminating papers allegedly recovered from the possession of the petitioner were signed by the Centre Superintendent nor any opportunity was given to the petitioner to continue with the examination on a separate answer book and there is no detail that the petitioner has either denied to take the separate answer sheet for attempting the paper after the UMC case was made against him.

On the other hand, counsel for the respondents has submitted that in the statement made by the Centre Superintendent, he has admitted that inadvertently he could not tick mark the relevant serial number while certifying the EC-20 Form. However, the Centre Superintendent has

specifically stated in his cross-examination that he had asked the petitioner to take second answer-sheet but he just put his signature on the EC-20 Form and the incriminating material found from him and left the examination Centre.

It is also submitted that the petitioner himself has stated in his cross-examination that neither the Centre Superintendent nor the Centre Supervisor or any supervisory staff was having any personal animosity with him. It is further submitted that after the appeal was allowed by this Court against the order of learned Single Judge, due opportunity was given to the petitioner but he did not bring his witness to substantiate his case that the incriminating material was not found from his pocket but was lying on the floor and brought to him by the Centre Supervisor and his signatures were taken forcibly. It is also submitted by the respondent that the case of petitioner has also been considered by the Standing Committee (UMC) and the UMC Branch of the University in the light of Ordinance 12 and found that it was not an inadvertent act on the part of the petitioner. Both the reports of the Committee (UMC) and UMC Branch of the University were taken into consideration by the Vice Chancellor in the order passed in appeal and a detailed order has been passed holding that except for one or two technical defects in the process of reporting the act of unfair means on the part of the petitioner, the UMC case against the petitioner has been found to have been made out especially when the reporting document, i.e. Form EC-20 was not only signed by the petitioner but also incriminating material was signed by the petitioner without any protest and it has been reported by the subject Expert that the incriminating material is related to

the syllabus which though have not been used by the petitioner because the question was not set out in the question paper. According to the respondent, the mere fact that the petitioner was found in possession of the incriminating material which was related to the syllabus is sufficient to hold that the petitioner had intention to use unfair means during the examination, otherwise, no reason has been given by the petitioner for carrying said incriminating material in his pocket except for denying the same. He has also submitted that the petitioner was not allowed to appear in the paper in which unfair means case has been made out but he had appeared in the other examination.

Counsel for the respondent has also relied upon a decision of the Supreme Court in case of **Controller of Examinations etc. v. G.S. Sunder & Another, 1992(4) JT 204**, in which the Supreme Court has observed as under:-

“10. We have given our careful consideration to the above submission. One thing must be put beyond doubt, in matters of enforcement of discipline, this Court must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examination fairly and properly, know best how to deal with situation of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by court in every case may lead to unhappy results making the

system of examination a farce. For instance, we cannot but strongly condemn copying in the examination which has grown into canker of mass copying. Such unhealthy practice which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent student are not affected. We feel that:

“the hour has come

When we must clear

the education field from

poison and from fear;

We must remould our standards-

build them higher,

And clear the air as though by

cleansing fire,

Weed out the damning traitors to

education,

Restore her to her ancient

Place of awe.”

He has also relied upon a decision of the Supreme Court in the case of **Director (Studies) and others v. Vaibhav Singh Chauhan, 2009(1) SCC 59**, in which it has been held that “there must be strict purity in the examinations of educational institutions. No sympathy or leniency should be shown to candidates who resort to unfair means in the examinations. Malpractices in examinations in educational institutions are to be curbed with an iron hand.”

I have heard learned counsel for the parties and after examining the record with their able assistance, am of the considered opinion that there is no merit in the case of the petitioner because the petitioner after availing the opportunity to defend, pursuant to an order passed by the Division Bench of this Court, could not bring any witness to prove his innocence and could not shatter the veracity of the statement of Centre Supervisor and Centre Superintendent by cross-examining them. The argument of counsel for the petitioner that EC-20 Form does not satisfy as to from which pocket of the cloth worn by the petitioner is concerned, is without any weight because the stand taken by the Centre Room Supervisor in the EC-20 Form and also during her cross-examination is that it was recovered from the pocket of the petitioner. The Ordinance 7 relied upon by the petitioner that the incriminating material has not been signed by the Centre Superintendent is merely a technical defect otherwise he has specifically stated that the incriminating material was brought to him by the Centre Room Supervisor and it was signed none else than the petitioner himself. The petitioner did not lead any kind of evidence to prove that his signatures were not there on the incriminating material or on the EC-20 Form rather the case set up by the petitioner is that his signatures have been taken under threat for which he could not lead any evidence but actually no threat was extended to him especially when he has admitted in his cross-examination that neither the Centre Supervisor or nor Centre Superintendent had any kind of personal animosity with him. Insofar as Ordinance 8 is concerned, the Centre Superintendent has specifically stated in his cross-examination that he was not asked by him for a separate answer-sheet for continuation of the exams

and the petitioner only signed the EC-20 Form and the incriminating material and then left the examination hall. There is no further cross-examination on this point. Therefore, the statement of the Centre Superintendent cannot be disbelieved. Once the objection of the petitioner in respect of Clauses 7 and 8 have been duly answered by the respondent, the necessary inference is that the report of the Standing Committee which comprises of five members cannot be disbelieved and the Vice Chancellor had specifically called for the report of the Standing Committee (UMC) and UMC Branch of the University before taking the decision and after considering both the reports and dealing his case, came to the conclusion that the petitioner was found involved in the act of using unfair means.

No other point has been raised.

In view thereof, I do not find any merit in the present petition and the same is hereby dismissed.

April 20, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No