

(296)                    **IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

CWP No.28012 of 2019

Date of decision: 16.10.2019

Haramritpal Singh

...Petitioner

Versus

Panjab University, Chandigar & Ors.

... Respondents

**Before:     Hon'ble Mr. Justice B.S. Walia.**

Present:     Mr. Vipin Mahajan, Advocate for the petitioner.  
                  Mr. Suveer Sidhu, Advocate for respondent Nos.1 & 3.

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**B.S. Walia, J. (Oral).**

[1]            Prayer in the writ petition is for the issuance of a writ of Certiorari to quash order Annexure P/3 dated 30.07.2019 disqualifying the petitioner from appearing in any University examination for a period of one year under Regulation 5(a) of the Panjab University Calendar Volume-II 2007 as well as order, Annexure P/5 dated 21.08.2019 passed by the learned Vice Chancellor rejecting the appeal filed by the petitioner as also order, Annexure P/10 dated 09.09.2019 vide which the request of the petitioner to reconsider his case in the light of order, Annexure P/6 dated 26.08.2019 passed in the case of similarly situated candidate namely Gurparteeek Singh Sohal has been dismissed by the Registrar of the University.

[2]            Brief facts of the case leading to the filing of the writ petition are that the petitioner appeared in 6<sup>th</sup> semester examination of B.Sc. (Agriculture) under Roll No.16111659 in the subject of "Plant Pathology" conducted on 25.05.2019 at Government College, Hoshiarpur. Another candidate namely Gurparteeek Singh Sohal son of Shri Sukhdev Singh, who

was also a student of 6<sup>th</sup> Semester of B.Sc. (Agriculture), was sitting in the same room in which the petitioner was sitting and was found by the Invigilating Staff to be in possession of mobile phone, where after an announcement was made by the Invigilating Staff that any other candidate, who was in possession of mobile phone, should surrender the same. On hearing the aforementioned announcement, the petitioner who was also carrying mobile phone in his pocket immediately handed over the same to the Invigilating Staff. However, the Committee comprising of the Centre Superintendent, Deputy Superintendent and Assistant Superintendent made out a case of unfair means not only against Gurparteeek Singh Sohal but also against the petitioner.

[3] That thereafter the petitioner was issued notice, Annexure P/1 dated 26.06.2019 by the Assistant Registrar (UMC), Punjab, Chandigarh to appear before him on 08.07.2019. A copy of the report of the Supervisory Staff was attached along with the notice, Annexure P/1 as Annexure P/2. A perusal of the report, Annexure P/2 reveals that a mobile structure with earphone was found from the hand of the candidate and during investigation the Chief Co-ordinator found that the petitioner had mobile structure in his turban and attached earphone with right ear and further that relevant instructions of the University were read out and candidates were warned accordingly before the commencement of the examination to dispossess themselves of any incriminating material.

[4] That, in response to notice, Annexure P/1, the petitioner appeared before the Committee and his statement was recorded that he had himself handed over the mobile phone after taking out the same from his pocket and the same was never recovered from his turban as reported by the Invigilating Staff. Besides, the mobile phone was never used during the examination and

no incoming or outgoing call was found by the Invigilating Staff to have been received or made during the examination period. Thereafter, the petitioner received letter, Annexure P/3 dated 30.07.2019 informing him that the unfair means case pending against him had been decided and he had been disqualified from appearing in any University examination for a period of one year i.e. May, 2019 to Dec., 2019 (two exams) under Regulation 5(a) of the Panjab University Calendar Volume-II 2007.

[5] The petitioner then filed an appeal, Annexure P/4 before the learned Vice Chancellor, Panjab University, Chandigarh but the same was rejected by the learned Vice Chancellor by recording that previous decision of the Standing Committee of the University vide office letter No.523/UMC dated 30.07.2019 would stand.

[6] That thereafter, order Annexure P/6 was passed in the case of Gurparteeek Singh Sohal debarring him from appearing in Mechatronics paper under Regulation 4 appearing at page Nos. 10-14 of the Panjab University Calendar, Volume II, 2007 as a disciplinary measure. Pursuant thereto, the petitioner submitted representation, Annexure P/8 to the Registrar, Panjab University, Chandigarh praying for being treated on the same footing as Gurparteeek Singh Sohal in the matter of award of punishment and for reduction of the punishment awarded to him on the ground that although both were similarly situated, yet Gurparteeek Singh Sohal had been restrained from appearing in only one paper whereas the petitioner had been awarded punishment disentitling him from appearing in any University examination for one year. The representation, Annexure P/8 was followed by reminder, Annexure P/9 dated 02.09.2019 but the same was rejected vide communication, Annexure P/10 dated 09.09.2019 again by a

the Standing Committee would stand in terms of Regulation 5(a) appearing at page Nos. 10-11 of the Panjab University Calendar Volume-II 2007.

[7] Grievance of the petitioner is that the impugned orders have been passed without application of mind and without affording any opportunity of hearing.

[8] Learned counsel for the petitioner by relying upon the decision in **CWP No.1669 of 2013** in case titled as **Balwinder Kaur vs Panjab University, Chandigarh and others**, decided on 14.05.2013 contends that orders passed by the University without giving any reasons and without granting opportunity of hearing are legally unsustainable. Learned counsel has also relied upon the decision in **Yadvinder Singh vs Punjab University, Chandigarh, AIR 1990 PH 309 (P&H)**. Relevant extract of the same is reproduced as under:-

5. *With respect to the learned members of the UMC Standing Committee of the University, I do not agree with them. According to the University authorities, the incriminating slip was recovered from the socks of the petitioner which fact the petitioner has disputed,-- no doubt, before the Vice Chancellor in his representation, for the first time. I have no reason to disbelieve the University staff at the examination centre and disagree with the inferences drawn by the learned members of the Standing Committee about the veracity of the invigilation staff. Still the fact stands that there is an essential ingredient of the misconduct, necessary for sustaining the punishment under Regn.5, which is lacking in the present case. According to Regn.5, for bringing home the misconduct to a candidate, it is necessary to prove that the material was “relevant to the subject of the examination”. If, on the other hand, the incriminating material “could be of assistance” only to the candidate,*

*then the case would be covered under Regn.4 and not under Regn.5. In that case, the candidate is only to be debarred from passing in that paper alone; which exactly is the position in the present case. This would be evident from the subject expert's report as relied upon by the Standing Committee and reproduced below:-*

*"The paper recovered from the candidate (as shown to me) does contain material" which can be of use" for third year B.Sc. Physical Chemistry syllabus of Punjab University."*

[9] A perusal thereof reveals that in order to bring home misconduct to a candidate, it is necessary to prove that the material was "relevant to the subject of the examination" but if the incriminating material "could be of assistance" only to the candidate, then the case would be covered under Regulation 4 and not under Regulation 5 of the Panjab University Calendar, Volume II, 2007.

[10] On query for production of material qua proceedings conducted by the UMC Standing Committee appointed under Regulation 31 of the Panjab University Calendar Volume-II 2007, learned counsel appearing for the respondents/University fairly conceded that apart from the decision to impose punishment as noticed in Annexure P/3 dated 30.07.2019, there is no record containing reasons for taking a decision to impose punishment under Regulation 5(a) of the Panjab University Calendar Volume-II 2007 in the case of petitioner or for that matter in the case of similarly situated candidate. Regulations 4 and 5 of the Panjab University Calendar Volume-II 2007 are reproduced as under:-

*"4. If during a University examination a candidate is found having in his possession or accessible to him papers, books or notes due to inadvertence but which papers, books or notes could be of assistance to him, he*

*may be debarred from passing in that paper as a disciplinary measure.*

5. *If during a University examination, a candidate is found in malafide possession of any material such as-*

- (a) Paper, books or notes; or*
- (b) Written notes on any part of the clothes worn by the candidate or on any part of his body, or table or desk; or*
- (c) Foot-rule and/or instruments like set-squares, protractors, slide rules, etc., with notes written on them;*

*Which is relevant to the subject of the examination, he shall be disqualified from appearing in any University examination for two years, including that in which he is found guilty, if he is a candidate for an examination held once a year, or for four examinations, including that in which he is found guilty, if he is a candidate for an examination held twice a year.”*

[11] Learned counsel for the respondents/University further conceded that no steps were taken to ascertain as to whether any call had been made or received or any SMS or WhatsApp message or e-mail sent or received during the relevant period on the mobile phone in either of the two cases.

[12] A perusal of Regulation 4 of the Panjab University Calendar Volume-II 2007 reveals that if a candidate is found to be in possession of material due to inadvertence but the material could be of assistance to the candidate then in that eventuality, such candidate may be debarred from passing that paper as a disciplinary measure, whereas under Regulation 5, in a University examination if a candidate is found in malafide possession of any material which is relevant to the subject of the examination, such

examination for two years, including that in which he is found guilty and that if he is a candidate for an examination held once a year, or for four examinations, including that in which he is found guilty if he is a candidate for an examination held twice a year. Thus, the distinction between exercise of power under Regulation 4 or Regulation 5 in Chapter II of the Panjab University Calendar Volume-II 2007 is the inadvertent possession of material though it may be of assistance, to debar a candidate from passing in said paper in which he is appearing or the malafide possession but as has been noted above, apart from the cryptic order imposing punishment in exercise of the powers under Regulation 5(a) of the Panjab University Calendar Volume-II, 2007, no proceedings are available nor have been produced from which the reasons for imposing punishment under Regulation 5(a) could have been ascertained. In the circumstances, it is difficult to visualize the yardstick adopted by the unfair means Committee in imposing diametrically different punishments on candidates against whom similar allegations of having mobile phone along with recorder was there.

[13] No doubt, the malice of use of unfair means is not to be allowed under any circumstances and any attempts by a candidate to use unfair means are to be put down strictly. However, the same does not absolve the University Authorities of taking action in accordance with the mandate of law. Although, the matter could have been decided by setting aside the impugned orders and imposing punishment as was imposed in the case of identically situated candidate namely Gurparteek Singh Sohal, yet in view of the fact that there is no record of proceedings on the basis of which punishment has been imposed, it is deemed appropriate to remit the matter to the competent authority i.e. the Standing Committee to consider and decide

the matter on the basis of material by passing a speaking order in accordance

with law under the Regulation applicable as expeditiously as possible preferably within a period of two weeks from date of receipt of certified copy of order. The impugned orders/ action warranted in the facts of the case would be subject to the decision to be taken by the Standing Committee. Writ petition disposed of as above.

(B.S. Walia)  
Judge

16.10.2019  
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.