

278

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

CWP-23962-2023 (O&M)
Date of decision: 01.05.2024

Dev Sehgal

...Petitioner

Versus

Panjab University Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S. Bara, Advocate and
Mr. K.S. Kharbanda, Advocate for the petitioner.

Mr. Arun Kumar Bakshi, Advocate for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for setting aside the order/letter dated 02.05.2023 passed by respondent No.3 whereby the petitioner has been disqualified from appearing in any University examination for two years (four exams) i.e. November/December 2022 to May/June 2024 under Regulation 5(a) appearing at Page Nos.10-14 of P.U. Cal. Vol.2007. Challenge has also been made to the order dated 25.09.2023 (Annexure P-18) vide which the University even after the passing of order by this Court on 06.09.2023 has passed the same order and awarded the same punishment to the petitioner as awarded by it in the

meeting dated 28.04.2023 and 08.06.2023.

2. On 19.10.2023, learned Senior Counsel had raised the following arguments on behalf of the petitioner:-

“Inter alia, contends that in the earlier round of litigation, this Court had passed a detailed judgment dated 06.09.2023 in CWP-15471- 2023 after taking into consideration the fact that the petitioner had raised the plea that the disqualification of a similarly placed student, namely, Abhishek Ranjan, had been reduced to the examination in question and after also taking into consideration the arguments of the petitioner to the effect that, for Regulation 5 of the Panjab University Calender Volume-II, 2007 to apply, it was incumbent upon the authorities to give a finding of “malafide possession”, which was not given in the impugned order and after considering various other submissions, this Court was pleased to set aside the order and directed the competent authority to reconsider the matter after taking into consideration all the said aspects. It is further argued that after considering the judgment of the Hon'ble Supreme Court on the issue, it was further observed by this Court that reasons are required to be stated and communicated to the petitioner which would show application of mind and that the observations which had been made and the factors take into account by the Court while passing the said judgment were required to be taken into consideration before passing a fresh order. It is submitted that the impugned order dated 25.09.2023 is as cryptic as the previous orders and does not deal with any of the submissions made by the petitioner or the observations recorded by this Court in the detailed order dated 06.09.2023. It is submitted that the petitioner was permitted to attend the Classes of 7th Semester, vide order dated 06.09.2023, on the conditions as were mentioned in paragraph

31 of the detailed order of this Court and prayer has been made that the petitioner be permitted to continue to attend the Classes of 7th Semester, subject to the condition that he would not claim any equity for having attended the said classes and would also deposit the fee, in case the same is required and would not claim refund of the same.

Notice of motion for 13.03.2024.

On the asking of the Court, Mr. Arun Bakshi, Advocate, and Mr. Indresh Goel, Advocate, appears and accepts notice on behalf of the respondents No.1 to 3 and prays for time to file reply.

In the meantime, the petitioner is permitted to attend classes of 7th Semester, subject to the condition that he would not claim any equity for having attended the said classes and that the petitioner would deposit fee in case, the same is required and would not claim refund of the same.

October 19, 2023”

3. On 02.12.2023, an application under Section 151 CPC read with Article 226 of the Constitution of India was filed for directing the respondent-University to allow the applicant-petitioner to fill up his examination form for the 7th semester and for allowing him to appear in the examinations which were going to commence from 11.12.2023. Vide order dated 02.12.2023, the said application was disposed of. Relevant portion of the said order is reproduced hereinbelow:-

“3. Learned Senior counsel for the applicant-petitioner has submitted that in fact the order/communication dated 25.09.2023 (Annexure P-18) amounts to contempt of the order passed by this Court in CWP15471-2023, decided on 06.09.2023 (Annexure P-16) as the directions/observations made in the said order have not even been remotely complied

with. It is further submitted that in case the applicant-petitioner is permitted to give final exams of the 7th Semester, then, he would not claim any equity for the same and has submitted that important issues arise in the present writ petition including the question whether the respondent-University can ignore the order passed by this Court in the first round of litigation and the said aspect be adjudicated on the date when the matter is fixed for hearing. It is stated that the applicant-petitioner would approach the Controller of Examination of the respondent-University with the requisite late fee in accordance with the procedure of the respondent-University and has prayed that the respondent-University be directed to accept the examination form and issue a roll number/admit card and permit the applicant-petitioner to sit provisionally for the exams starting from 11.12.2023.

4. Learned counsel for the non-applicant/respondents No.1 to 3 has filed the reply to the present miscellaneous application and while opposing the present application, has referred to the reply to state that the applicant-petitioner does not have a good case on merits.

5. As has been noticed in the order dated 19.10.2023, the impugned order/communication dated 25.09.2023 (Annexure P-18) is not in conformity with the judgment dated 06.09.2023 passed by this Court in CWP-15471-2023 (Annexure P-16) in the first round of litigation. In case, the respondent-University had complied with the directions of this Court given in the order dated 06.09.2023 (Annexure P-16), then, the present situation would not have arisen. On account of non-compliance of the directions given by this Court in the first round of litigation, this Court, after prima facie finding weight in the arguments of the learned Senior counsel for the applicant-petitioner, was pleased to issue notice of motion vide order dated 19.10.2023 and in case, the

relief sought by the applicant-petitioner in the present application is not granted, then, the same would cause irreparable loss to the applicant-petitioner.

6. *Keeping in view the above-said facts and circumstances, more so, the fair statement made by learned Senior counsel on behalf of the applicant-petitioner that the applicant-petitioner would not claim any equity for having appeared in the examinations, the present application is disposed of with the following directions: -*

(i) Applicant-petitioner will fill up the examination form for the 7th Semester manually before the competent authority along with the requisite late fee up till 04.12.2023 at 1.00 PM.

(ii) On the application having been submitted by the applicant-petitioner and in case the same is complete in all aspects, the University Institute of Engineering and Technology, Panjab University (UIET) is directed to accept the said examination form and issue a roll number to the applicant-petitioner provisionally by 08.12.2023.

(iii) Applicant-petitioner would be permitted to sit in the examination for the 7th Semester commencing from 11.12.2023 provisionally, subject to the decision of the present writ petition.

(iv) Applicant-petitioner, as undertaken by learned Senior counsel appearing for him, would not claim any equity for having given the said examination of the 7th Semester.

December 02, 2023”

4. Thereafter, another application bearing No.CM-282-CWP-2024 was filed for permitting the petitioner to provisionally attend the classes of 8th semester which were going to start from 08.01.2024 and also to take the mid term/minor exams of 8th semester which were to commence from

28.02.2024. The said application was disposed of vide order dated 09.01.2024 in the following terms:-

“Keeping in view the above said facts and circumstances and also the factual position recorded in the detailed order dated 02.12.2023 as well as the fact that the main case is now listed for hearing on 13.03.2024, the present application is disposed of with the following directions:-

- i) The applicant-petitioner would provisionally be permitted to attend the classes of the 8th semester subject to the condition that he would not claim any equity for having attended such classes and also further subject to his depositing the fee which he is liable to pay and he would not claim refund of the same irrespective of the decision in the main writ petition.*
- ii) In case the applicant-petitioner meets all the requisite conditions including attendance etc. as per the University norms, then the applicant-petitioner would be permitted to give mid-term minor examinations of the 8th semester which is stated to commence from 28.02.2024. The applicant-petitioner is permitted to sit for the said mid-term/ minor examinations at the risk and responsibility of the applicant-petitioner and the applicant-petitioner would not claim any equity regarding the same.*
- iii) The other two prayers made in the application i.e., for reappearing in the examinations of the 6th semester of B.E. (Mechanical) which is stated to commence from 10.01.2024 and also to give minor examinations for the 7th semester have not been pressed, at this stage.”*

5. Learned Senior Counsel for the petitioner has reiterated the arguments which had been raised and noticed in the order dated 19.10.2023

and in addition to the same, has submitted that since the impugned order dated 25.09.2023 has been passed in violation of the earlier order passed by this Court thus, the said order deserves to be set aside on the said ground alone and the matter deserves to be reconsidered by the authority which had passed the order dated 25.09.2023 and while considering the same, subsequent events, of the petitioner having attended the classes of 7th and 8th semester and also having given exams for 7th semester, be also considered.

6. Learned counsel for the respondent-University has tried to justify the impugned order dated 25.09.2023 by making reference to the reply filed on behalf of the respondent-University and also the documents annexed along with the said reply.

7. In rebuttal, learned Senior Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court passed in case titled as **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others**, reported as **(1978) 1 Supreme Court Cases 405** to contend that an order passed on certain grounds must be judged by the reasons so mentioned and the same cannot be supplemented by fresh reasons in the shape of an affidavit/reply or otherwise.

8. This Court has heard learned counsel for the parties and has perused the paper book.

9. It is not in dispute that the petitioner had earlier filed writ petition bearing No.CWP-15471-2023 in which challenge was laid to the communication/letter/order dated 02.05.2023 issued by respondent No.3, which order is also under challenge in the present writ petition and also to the subsequent communication/letter/order dated 09.06.2023 vide which the

petitioner had been informed that the appeal/request made by the petitioner against the decision taken by the respondent University disqualifying the petitioner from appearing in any University examination for two years (four exams) had been rejected. The said writ petition was partly allowed and the order/communication dated 09.06.2023 was set aside and the respondent authorities were directed to reconsider the matter in light of the observations made in the said order as expeditiously as possible preferably within a period of three weeks from the date of receipt of certified copy of the order. Since, reference to the said order is necessary for the adjudication of the present case thus, a substantial part of the said judgment is being reproduced hereinbelow:-

“8. This Court has heard learned counsel for the parties and has perused the paperbook and is of the opinion that the communication/letter/order dated 09.06.2023 deserves to be set aside and the matter deserves to be reconsidered by the respondent-authorities for the reasons which have been enumerated in the following paragraphs.

9. A perusal of the impugned communication/letter/order dated 09.06.2023 would show that the disqualification has been meted out to the petitioner under Regulation 5(a) of the Panjab University Calendar Volume-II, 2007. The relevant portion of the said Regulations has been annexed as Annexure P-16 (at page 64 of the paper book). Chapter II of the same deals with punishment for use of unfair means. Regulations 3.2, 4 and 5 of the said Regulations, which are relevant for consideration in the present case, are reproduced hereinbelow:-

“3.2. If at a University examination but before the question paper is distributed a candidate voluntarily surrenders to the Superintendent or any other member of the supervisory staff

papers, books or notes in his possession and not found or detected by a member of the supervisory staff, no action may be taken against him, provided he has not made any use of them. But the case shall be reported to the Controller of Examinations.

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.”

10. A perusal of the above-reproduced Regulations would show that in a situation, where a candidate voluntarily surrenders to the Superintendent or any member of the Supervisory Staff, papers/books/notes then, as per Regulation 3.2, no action is required to be taken against the said candidate provided that he has not made any use of them. A conjoint reading of Regulations 4 and 5 would show that two ingredients in the same are common, first being the candidate having been found to be in possession of books, notes etc. and the second being that the said books/notes etc. are of

assistance/relevance to the said candidate for the purpose of the examination in question. Thus, in case the candidate is found in possession of paper/book/notes and the said paper/book/notes could be of assistance/relevance to the candidate in the said paper, the case of the candidate could fall either under Regulation 4 or Regulation 5. Regulation 4 would apply in a situation where the authorities have found that the possession of the paper/books/notes was on account of inadvertence whereas Regulation 5 would apply in a case where the authorities have come to the conclusion that the possession of material was “malafide”. The penalty provided in both the said Regulations is different inasmuch as under Regulation 4, a candidate would only be debarred from passing in the paper in which he is caught as a disciplinary measure whereas under Regulation 5, a candidate would be disqualified from appearing in any University examination for a period of 2 years, including the one in which he is found guilty.

11. *The communication/letter/order dated 02.05.2023 (Annexure P-9), vide which, the authorities have for the first time informed the decision with respect to unfair means case to the petitioner, is reproduced hereinbelow:-*

“A case of alleged use of unfair means in the Examination Centre.

MEMO:

The unfair means case pending against you has been decided and you have been disqualified from appearing in any University Examination for two years (Four Exams) including that in which you are found guilty ie. Nov./Dec. 2022 to May/June 2024 under regulation 5(a) appearing at pages 10-14 of P.U. Cal. Vol. II, 2007.

Sd/- Assistant Registrar (UMC)”

12. *A perusal of the above would show that there is no observation much less finding of the authorities holding/observing that the petitioner was found to be in “malafide possession of any material”*

and thus, necessary ingredients for invoking Regulation 5(a) is missing. It is admitted case of the parties that no other order/decision has been communicated by the respondent authorities to the petitioner other than Annexure P-9 with respect to the decision taken in the unfair means case by the Committee in the first instance thus, nothing has been communicated to the petitioner to show that the respondent authorities had applied their mind to the facts and circumstances of the case in coming to the conclusion that the act of the petitioner would fall under Regulation 5(a).

13. *The petitioner had filed an appeal (Annexure P-10 at page 32 of the paper book) and representation (Annexure P-12 at page 39 of the paper book), in which several issues were raised. Relevant portion of paragraphs 6, 8, 12 and 14 of the said grounds is reproduced here in below:-*

*“6. That on dated 24.12.2022, appellant visited the examination centre for appearing in the exam of Fluid Machinery (Code MEC - 506) of the 5th semester. **When he reached at his sitting place, he found that some written notes were lying there at the table, he picked up the same just to throw outside the room and in this process, the Supervisory Staff caught the appellant by saying that he was using the notes for cheating, whereas it is admitted fact that appellant had not written even a single word on his answer sheet prior to that he was implicated in the UMC case, otherwise the appellant has nothing to do with the notes already lying there on the table. After that, the appellant tried his level best to convince the Supervisory Staff that the appellant has nothing to do with these notes and he was just throwing the same outside the room and also stated that there is not a single word written on the answer sheet. But the Supervisor Staff did not listen the hue and cry of the appellant and the made a UMC case against the appellant.***

Xxx xxx

8. xxx xxx. *The appellant was not even aware about the fact that whether the notes were relating to his subject or not. Even at that time of alleged occurrence, the appellant has not even written a single word on the answer sheet. It shows that appellant has nothing to do with the alleged notes and its all happened due to some misunderstanding.*

Xxx xxx

12. *That the appellant has been continuously attending the classes of 6th semester and had prepared by doing hard work for appearing in the exam, but University deprived the appellant to appear in the exam of 6th semester by passing the impugned order/letter dated 02.05.2023, which caused great hardship and mental agony to the appellant as he was continuously attending the class and prepared himself for the examination and now at this stage, the deprivation of the appellant to appear in the exam will caused great prejudice to the appellant.*

Xxx xxx

14. *That the above said impugned order / letter dated 02.05.2023 is totally illegal, arbitrary, discriminatory and against the principle of natural justice, as by this impugned order / letter dated 02.05.2023, harsh and maximum punishment has been awarded to the appellant, which caused great prejudice to the appellant and will spoiled bright future of the appellant. Therefore, appellant is praying to set aside the above said impugned order/ letter dated 02.05.2023 and appellant may kindly be permitted to appear in the examination of 6th semester which is going to start on 15.05.2023, so that the hard work of the appellant will bring fruits.”*

14. *A perusal of the above paragraphs would show that the petitioner while explaining the incident, had stated that he had reached the place of examination and he had found that there were*

some written notes lying on the table and he picked up the same just to throw the same outside the room and in the process, the supervisory staff caught the petitioner and that he had not written even a single word on his answer sheet and he had given an explanation to the supervisory staff that he had nothing to do with the said notes and he was just throwing the same outside the room. It was further averred that the petitioner was not aware about the fact as to whether the notes were related to the subject or not. On the basis of the said plea, it is the case of the petitioner that his case fell under Regulation 4. The petitioner had also raised the plea that the petitioner had been continuously attending the classes of 6th semester and had worked hard during the same but was deprived of appearing in the 6th semester examination. In paragraph 1 of the said appeal, the petitioner had highlighted that he was a bright student and always got good marks academically and also has a good character and the previous institutions have already issued character certificate to the said effect to the petitioner. In paragraph 4, it was stated that the petitioner had successfully passed the 3rd and 4th semesters examinations for the course of Bachelor of Engineering (Mechanical Engineering) from the Panjab University in the session 2021-22 and had also annexed detailed mark sheets regarding the same. Even with respect to the 5th semester, the first five examinations had been given by the petitioner.

15. *As pointed out by learned counsel for the respondents, the said appeal/representation is to be considered by the Vice Chancellor in accordance with Regulation 32.2. Regulations 32.2 and 32.3 (at page 68 of the paper book) are reproduced hereinbelow:-*

*“32.2. If in a case, the Vice-Chancellor **thinks** that facts, duly reduced in writing have been brought to light within 30 days of the receipt of the decision by the candidate **which, had they been before the Committee, might have led to a decision other than the one arrived at, the Vice-Chancellor may order that such facts be placed before the Committee.***

32.3. The Committee shall then reconsider the case. A unanimous decision of the Committee shall be final. But in the event of a difference of opinion, the case shall be referred to the Vice-Chancellor who may either finally decide the case himself or refer it to the Syndicate for decision.”

16. A perusal of the above Regulations more so Regulation 32.2 would show that in case the Vice Chancellor is of the opinion that any fact which in case was brought to the notice of the earlier Committee could have meted out a decision other than the decision arrived at, then, the Vice Chancellor is empowered to put the same before the Committee for reconsideration. Regulation 32.3 provides that in case, the Vice Chancellor places the matter before the Committee for reconsideration then the Committee “shall” reconsider the case. It is not in dispute that in the present case, after the appeal/representation was made raising the above said grounds, the Vice Chancellor exercised his powers under Regulation 32.2 and placed the matter before the same Committee for reconsideration of the matter.

17. The Committee reconsidered the matter and vide communication/letter/order dated 09.06.2023 communicated the rejection of the same to the petitioner. The said communication/letter/order has been annexed as Annexure P-13 and relevant portion of the same is reproduced hereinbelow:-

“A case of alleged use of unfair means in the examination centre.

MEMO

Request/appeal w.r.t, unfair means case, pending against you has been decide and as no new facts have been given by you hence, the earlier decision conveyed to you vide No.649/UMO dated 2.5.2023, will stand i.e. you have been disqualified from appearing in any University Examination for two years (Four exams) including that in which you are found guilty i.e. Nov/Dec. 2022 to May/June 2024 under regulation 5

(a) appearing at pages 10-14 of P.U. Cal. Vol.II, 2007.

Sd/-

Assistant Registrar (UMC)”

18. It is admitted case of the parties that other than the said communication, no other decision/communication with respect to rejection of the appeal/representation has been communicated by the respondent authorities to the petitioner. In Annexure P-13, there is no observation that the possession of the material by the petitioner was mala fide so as to bring the case within the parameters of Regulation 5. Nothing has been communicated to the petitioner to show that the respondent authorities had applied their mind to the grounds taken by the petitioner in his appeal/representation and the reasons for the rejection of the same and also for not considering the case of the petitioner under Regulation 4. Once, the Vice Chancellor, after applying its mind as per Regulation 32.2 had placed the matter before the Committee then it was incumbent upon the Committee to have reconsider the matter as per the mandate of Regulation 32.3 and could not have simply rejected the case by stating that no new facts have been mentioned without even rejecting the pleas raised in the appeal/representation. By virtue of the impugned letters/communications/orders, the petitioner who is a student of Mechanical Engineering, has been debarred for two years from appearing in any university examination including the examination in which he is found guilty and the same has caused serious prejudice to his future and thus, it was incumbent upon the authorities to have at least communicated the reasons for the said rejection and for applying Regulation 5 and not Regulation 4.

19. In paragraphs 19 and 20 of the writ petition, specific reference has been made to the case of one Abhishek Ranjan which, as per the case of the petitioner, is on a similar footing as that of the present petitioner and in whose case, initially the same disqualification as has been ordered in the case of the present petitioner, was ordered vide communication/letter/order dated 02.11.2022 but in appeal, the

same has been reduced and the said candidate has only been debarred from passing the examination in question. Paragraphs 19 & 20 of the writ petition are reproduced hereinbelow:-

“19. That it is relevant to mention here that a similar matter came up before the University in the B.E. Mechanical Engineering examination held in June/July 2022 and in the said examination a candidate namely Abhishek Ranjan was found with unfair means and he was also awarded the same punishment of de-barring for two years under Regulation 11.2 of Panjab University Calender. The provisions of Regulation 11.2 are reproduced here below for the ready reference of this Hon'ble Court:

11.2. A candidate found guilty of passing on, or attempting to pass on during the examination, a copy of a question set in the paper or the question paper itself, or a part thereof, or a solution of a question set in the question paper, to anyone, shall be disqualified for two years including that in which he is found guilty.

Copy of the order dated 02.11.2022 passed in the case of the said student namely Abhishek Ranjan is annexed herewith as Annexure P-14.

20. That thereafter the said candidate also filed the appeal before the Vice Chancellor and during the decision of the said appeal, the University by taking lenient view, reduced the punishment from debarring for 2 years to debarring from passing in the examination in which he was found with unfair means. Copy of the order dated 12.12.2022 is annexed herewith as Annexure P-15.”

20. The response to the said averments made in the writ petition is in paragraph 4 (at page 47 of the paper book) of the short reply filed on behalf of respondent Nos.1 to 3. Para 4 of the said reply is reproduced hereinbelow:-

“4. That even as per the CWP itself (para 19,) action against

Abhishek Ranjan (non-party to this CWP) was taken under Regulation 11.2 (a different provision) for a different kind of act on different facts.”

21. *Since no parawise reply has been filed thus, the averments in paragraphs 19 and 20 of the writ petition have been rebutted by the plea taken in paragraph 4 and as per the said plea, the stand taken is that Regulation 11.2 is a different provision and action taken is on different facts. Regulation 11.2, which has been reproduced in paragraph 19 of the writ petition and is also reproduced hereinabove, would show that the said Regulation would apply in case the candidate is found guilty of passing on or attempting to pass on during examination a copy of the question set in the paper or the question paper itself or the solution of a question set in the question paper to anyone and for the same, is to be disqualified for 2 years including the one in which he is found guilty. The said Regulation when juxtaposed with Regulation 5 cannot be stated to apply for an act less grave than the act for which a candidate would be liable for under Regulation 5. In the present case, it is not in dispute that the petitioner was caught with the material before writing anything on the paper. Regulation 11.2 would apply in a situation where the act has been done during examination and would also include a situation where the solution of the question set is sought to be given by a candidate to another candidate. For Abhishek Ranjan who was initially disqualified for 2 years including for the exam in which he was caught under Regulation 11.2, a lenient view has been taken in the subsequent proceedings by the competent authority vide communication/letter/order dated 12.12.2022 and the authorities have only debarred him from the paper in which he was caught by applying Regulation 4. The argument of learned counsel for the respondents to the effect that the said instance is completely irrelevant cannot be accepted. The authorities thus, while reconsidering the matter would also consider the case of the said Abhishek Ranjan and the circumstances under which the*

disqualification imposed upon him was reduced and in case the authorities are of the view that there is parity between the two cases then to treat them accordingly.

22. *Even as per the minutes (Annexure R-3 at page 55 of the paper book) sought to be relied upon by the respondents which admittedly were not communicated to the petitioner would also show that the Committee members were stated to be of the view that the petitioner could not copy from the recovered material. Even in the final decision of the said Committee reflected in the minutes, there is no finding that the petitioner was in malafide possession of any material. Relevant portion of the said minutes (Annexure R-3) is reproduced hereinbelow:-*

“RESOLVED

The Committee members were of the view that though he could not copy from the recovered material but the slips were related to the subject matter. therefore, the above examinee Dev Sehgal is found guilty. The committee unanimously decided to disqualify him from appearing in any university examination for two years (Four Exams.) including that in which he is found guilty i.e. Nov/Dec. 2022 to May/June 2024 under regulation 5(a) appearing at pages 10-14 of P.U. Cal. Vol. II, 2007.”

23. *No such finding of “malafide possession” is even reflected in the minutes dated 08.06.2023 (Annexure R-4 at page 56 of the paper book) which also were never communicated to the petitioner. The fact that the petitioner had not written even a single word in the answer sheet before the incident took place and that no cheating was done by the petitioner from the said material is not disputed. The petitioner having passed the first 4 semesters is also not in dispute and even the fact that the petitioner had given five out of six exams of the fifth semester without there being any issue of any unfair means, is also not disputed. There is no earlier instance of the petitioner having indulged in any unfair practices. The result card of the petitioner*

*which has been annexed as Annexure P-1 would show that he had got SGPA of 9.42 in the first semester and SGPA of 9.53 in the second semester and thus, has been performing well academically. The petitioner has already been penalized inasmuch as apart from the fact that the petitioner has not been able to pass the 6th examination of the 5th semester on account of the incident in question, the petitioner, although had attended the classes of the 6th semester, could not give the examinations of the said semester on account of the passing of the impugned order/communication/letter. **Thus, while reconsidering the matter, the competent authority would consider all the said aspects also.***

24. *The Hon'ble Supreme Court of India in **M/s Kranti Associates Pvt. Ltd.'s case** (Supra), while summarizing the principles which are required to be followed while passing administrative orders/decision as well as judicial and quasi judicial orders, have laid emphasis on the fact that reasons are required to be recorded with respect to the same. Paragraph 51 of the said judgment is reproduced hereinbelow:-*

“51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-

737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".”

25. A perusal of the above judgment would show that it was observed that recording of reasons is also necessary while passing administrative orders/decisions so as to rule out any arbitrariness and that recording of the reasons has become an indispensable component of the decision making process even by an administrative body. It has further been observed that reasons given in support of the decision must be cogent, clear and succinct and 'rubber-stamp reasons' are not to be equated with a valid decision making process.

26. Hon'ble the Supreme Court of India in **Chairman Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank's case** (Supra) has held as under:-

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, **but that does not mean that the order of affirmation need not contain any reasons whatsoever**. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. **Whether there was an application of mind or not can only be disclosed by some**

reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

6. *The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudhan Rao (vide SCC para 20: JT para 19), and in M.P. Industries Ltd. v. Union of India, Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India (vide SCC para 6: AIR para 6), etc.*

7. *In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.”*

27. *A perusal of the above order would show that it has been held that even when the Appellate Authority is passing its order and is affirming the decision of the first authority then also brief reasons are required to be given so as to reflect application of mind.*

28. *This Court is aware that the respondent-university at the time of considering the case of a candidate with respect to unfair means is not required to give any elaborate reasons for passing the order of punishment to the candidate, but is at least required to briefly state the facts of the case and the reasons more so, when the matter has been referred by the Vice Chancellor to the Committee for reconsideration and communicate the same to the candidate so as to indicate that the Committee has applied its mind to the grounds raised by the candidate. In the present case, after the Vice Chancellor had placed the matter before the Committee for reconsideration, the only communication/letter/order issued to the petitioner is Annexure P-13 dated 09.06.2023 and a perusal of the same would show that none of the grounds/pleas raised by the petitioner in his grounds of appeal/representation have been considered by the respondent authorities. Regulation 5 has been*

*invoked without there being any observation that the petitioner was found to be in “malafide possession” of material which was relevant for the subject of the examination. The question as to whether Regulation 4 or Regulation 5 would apply in the present case has also not been considered although, in case the pleas taken in the grounds of appeal are taken to be correct then in the prima facie opinion of this Court, Regulation 4 would apply. The said aspects were required to be considered by the respondent authorities which have not been considered in the present case. This Court is aware that the Court in its writ jurisdiction under Articles 226/227 of the Constitution of India is not to act as a Court of appeal and to substitute the opinion of the authority by giving its own opinion on merits, thus, keeping in view the facts and circumstances of the present case, the ends of justice would be met in case communication/letter/order dated 09.06.2023 (Annexure P-13) is set aside and the respondent authorities are directed to reconsider the matter after taking into consideration the observations made in this order. **Accordingly, the present writ petition is partly allowed and the order/communication dated 09.06.2023 is set aside and the respondent authorities are directed to reconsider the matter in light of the observations made in this order as expeditiously as possible preferably within a period of three weeks from the date of receipt of certified copy of the present order.***

29. *Learned Senior Counsel for the petitioner, at this stage, has made a request that since, the seventh semester classes have started thus, the petitioner be permitted to attend the said classes totally at his own responsibility. It is submitted that in case any fee is to be deposited, the petitioner is ready to deposit the same.*

30. *Learned counsel for the respondents has submitted that the permission to the petitioner to attend the classes should not create any equity in favour of the petitioner and the further course of action should depend upon the decision taken by the Committee.*

31. *This Court has considered the said request made by learned*

Senior Counsel for the petitioner and finds the same to be reasonable and thus, the petitioner is permitted to attend the classes of seventh semester subject to the following conditions:-

- i) The petitioner would not claim any equity for having attended the said classes.*
- ii) The petitioner would deposit any fee in case so required and would not claim any refund of the same.*
- iii) The said continuance of the petitioner in the seventh semester would be till the time the decision is taken by the competent authority in pursuance of the present order passed and future course would depend upon the decision taken by the Committee subject to the rights of the petitioner to challenge the same.”*

10. A perusal of the above order would show that various aspects of the case were considered and noticed by this Court, moreso in paras 9 to 23 and in the concluding part of para 23, it was observed that while reconsidering the matter, the competent authority would consider all the aspects which had been mentioned in the said paragraphs. It is not in dispute that the said order was not challenged and has thus, attained finality.

11. In purported compliance of the said order passed by this Court, the competent authority of the respondent University had passed the order dated 25.09.2023, relevant portion of which is reproduced hereinbelow:-

“It is hereby informed that on the direction given by High Court of Punjab and Haryana, Chandigarh in the CWP No. 15471-2023 filed by you, has been considered by the Committee on dated 20.09.2023. The Committee after hearing you thoroughly deliberated and found that the facts have been distorted by changing statements by you. Therefore, the Committee decided that the decision remains the same as given earlier by the Committee members in their meetings held on

28.04.2023 & 08.06.2023 i.e. you have been disqualified from appearing in any University Examination for two years (Four Exams.) including that in which you are found guilty i.e. Nov./Dec. 2022 to May/June 2024 under regulation 5(a) appearing at pages 10-14 of P.U. Cal. Vol. II, 2007.”

12. A perusal of the said order would show that none of the observations made by this Court in the earlier judgment dated 06.09.2023 have been taken into consideration and another non-speaking order has been passed and thus, on the said ground alone, the said order dated 25.09.2023 deserves to be set aside and the matter needs to be reconsidered by the competent authority of the respondent University.

13. The Hon'ble Supreme Court in para 8 of the judgment passed in the case of ***Mohinder Singh Gill*** (Supra), had observed that when an order is passed on certain grounds then its validity must be judged by the reasons so mentioned in the said order and the same cannot be supplemented by fresh reasons in the shape of an affidavit, otherwise, an order which is bad in the beginning would get validated by additional grounds brought out later. Para 8 of the said judgment is reproduced hereinbelow:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

14. Thus, the averments made in the written statement would not cure the defects of the impugned order. Moreover, in the present case, it would be relevant to note that the impugned order is also not in consonance with the order dated 06.09.2023 passed by this Court in the earlier round of litigation and thus, the matter is required to be reconsidered by the respondent University in the light of the earlier order dated 06.09.2023 passed by this Court.

15. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is partly allowed and the order dated 25.09.2023 (Annexure P-18) is set aside and the competent authority of the respondent University is directed to reconsider the matter after taking into consideration the observations made by this Court in the earlier judgment dated 06.09.2023 passed in CWP-15471-2023 within a period of one month from the date of receipt of certified copy of the present order. While reconsidering the matter, it would be open to the respondent University to take into consideration the subsequent events after the passing of the

impugned order including the subsequent events which have been highlighted by learned Senior Counsel for the petitioner to the effect that the petitioner had already attended the classes of 7th and 8th semester and had also given certain examinations.

16. Learned Senior Counsel for the petitioner, at this stage, has pointed out that the examinations for the 8th semester are to commence from 13.05.2024 and has prayed that in case the petitioner meets all the requisite conditions including the attendance etc. as per the University norms then the petitioner be permitted to give the said 8th semester examinations and for the same, the petitioner is ready to pay all the necessary fees & expenses and is also ready to fully cooperate with the respondent University. It is further submitted that there are certain other examinations of the previous semester which also, the petitioner be permitted to give in case the petitioner meets all the requisite conditions including the attendance etc. as per the University norms and has further submitted that giving of the said examination would be at the risk and responsibility of the petitioner and the petitioner would not claim any equity regarding the same.

17. Learned counsel for the respondent University has submitted that the petitioner can appear in the examination as per the University Rules and Regulations.

18. Keeping in view the earlier orders passed by this Court and also the fact that the impugned order dated 25.09.2023 has been set aside by this Court in the earlier part of this order, the following directions are also being issued:-

i) The petitioner would be permitted to give examinations of 8th

- semester in case the petitioner complies with all the requisite conditions including attendance etc. as per the University norms and is also ready to pay all the necessary fees and expenses and the same would be at the risk and responsibility of the petitioner and the petitioner would not claim any equity regarding the same and the same would be subject to the final decision taken by the respondent University.
- ii) It would be open to the petitioner to make a request to the respondent University with respect to the petitioner appearing in the examination of the previous semester and the respondent University, in case of the said request, would consider the same, in accordance with law.

19. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

01.05.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No