

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPAOW no. 227/2001

Date of order: 10.02.2011

University of Jammu & anr. v. Gurcharan Singh & ors.

Coram:

Hon'ble Mr. Justice Dr. Aftab H. Saikia, Chief Justice

Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge

Appearing counsel:

For appellant (s) : Mr. D. S. Thakur, Advocate.

For respondent(s) : Mr. B. L. Chatta, Advocate.

- i) Whether approved for reporting in Law Journals? **Yes.**
 - ii) Whether approved for reporting in Press? **Yes.**
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Dr. Saikia, CJ:

This Letters Patent Appeal has been preferred by the University of Jammu/Appellants against the judgment dated 19.04.2001 passed by learned Single Judge in SWP no. 196/1998 whereby the writ proceedings initiated by both the respondents herein as writ petitioners in the Writ Court challenging the Notification/Order dated 15.12.1997 issued by the University of Jammu/appellants disqualifying the respondents, who took B. Ed.

Examination 1996, for a period of two years from appearing or passing any University examination with a further prayer to declare their result in B. Ed. Examination 1996 (February Session), was allowed setting aside the Notification in question and directing to declare their result within a period of two months' from the date of passing the impugned judgment.

2. This Court on 29.11.2001 admitted this LPA for hearing and also stayed the impugned judgment of the Writ Court.

3. Respondents have also filed Memorandum of Cross-objections to this LPA, copy of which has also been received by the opposite counsel for the appellant, Mr. D. S. Thakur.

4. The brief facts as emerged from the perusal of the pleadings of the parties are that the writ petitioners-respondents herein, serving as teachers in the State of Jammu and Kashmir Education Department since the year 1979 and 1983 respectively, in order to earn higher promotion, appeared in the B. Ed. (Correspondence) Examination conducted by the University of Jammu, appellants herein in the month of February 1996.

5. In the month of June/July 1996 when the result of the said examination was declared, the respondents' result was withheld to their utter surprise. When they approached the concerned authorities to know the reasons for withholding their results, they were informed that by issuance of Notification dated 15.12.1997, their examinations were cancelled as they were found to be indulged in unfair means and, resultantly, were disqualified for appearing or passing any University examination for two years henceforth. Hence the writ petition was filed challenging therein the order impugned mentioned above.

6. Appellants/University of Jammu filed a detailed reply to the writ petition taking the stand therein that even though no report was received by the University from the concerned staff at the examination centre when respondents were appearing in the examination in question, at the time of making the process of coding of the answer scripts of the said examination, the Coding Officer observed some irregularities in the answer scripts of the respondents and reported the same to the Controller of Examination for investigation. In the

meanwhile, the result of the respondents were kept withheld under the unfair means category.

7. It was further stated in the affidavit by the appellants that a proper inquiry was conducted by a duly constituted Inquiry Committee comprising of Senior Academicians as well as officers of the University, viz., (i) Prof. A. N. Sandhu, (ii) Prof. Aman Rathore (Principal) and (iii) Mr. Charanjeet Lal, Deputy Registrar. After cross-examination of the respondents and of supervisory staff, a comprehensive report was submitted with a clear finding that the respondents had resorted to unfair means.

8. It was also contended that the report of the inquiry committee was placed before the competent authority for scrutiny and disposal; and respondents were asked to appear before it to put their defence. After hearing the respondents in person on their appearance and perusing all the relevant record, the Committee came to the conclusion that the respondents were guilty of the unfair means, with the connivance of Assistant Superintendent of the concerned examination centre. The appellants also mentioned that the said Assistant Superintendent of the

examination centre was too penalised officially by barring from all his remunerative assignments of the University for five years with a further reference to his employer for disciplinary action, who later on was put under suspension.

9. In those circumstances, according to the University/appellants, the respondents were not entitled to any relief sought for in the writ petition including the declaration of the result of their B. Ed. Examination (February Session) 1996.

10. The respondents in their writ petition sought for the following relief/reliefs:

*"a) Writ of certiorari thereby quashing the order dated 15.12.1997 passed by the respondents whereby the petitioners have been disqualified for a period of two years from appearing in University Examination.
b) Writ of mandamus commanding the respondents to declare the result of the petitioners for B. Ed examination 1996 (Feb) Session, on its merit and to allow the petitioners to further appear in the exam if need be;
c) Any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case."*

11. The Writ Court after hearing the learned counsel for the parties and after going through the pleadings, vide

impugned order dated 19.4.2001 granted the relief as incorporated hereinabove to the respondents with the findings that there was procedural defect as regards the holding of the inquiry and further inquiry report was not made available to the respondents as well as there was inordinate delay on the part of the appellants in issuing the impugned Notification dated 15.12.1997 when examination was held in February/March 1996.

12. Heard Mr. D. S. Thakur, learned counsel appearing for the appellants as well as Mr. B. L. Chatta, learned counsel appearing for the respondents.

13. Questioning the correctness and legality of the impugned judgment, Mr. Thakur, relying on the affidavit filed before the Writ Court, has forcefully submitted that when the Coding Officer observed some irregularities in the answer scripts of the respondents, the same was reported to the Controller of Examinations and an Inquiry Committee to that effect comprising of some senior responsible officers of the University was constituted to investigate the matter and eventually inquiry report dated 10.7.1997 was submitted. According to him, it was not the requirement of any rule or statute of the University/appellants that such inquiry

report was supposed to make available to the respondents and the Writ Court, accordingly, erred in observing that inquiry report dated 10.7.1997 was not made available to the respondents.

14. It is also argued by Mr. Thakur that there was no inordinate delay as ruled by the learned Single Judge in issuing the Notification cancelling the examination of the respondents. His clear case is that the learned Single Judge has wrongly relied upon Rule 5 of the University Statute which was quoted in the impugned judgment itself wherein some time frame has been specifically mentioned for conduct and completion of inquiry pertaining to unfair means cases, whereas by the revised rules, the University is required to complete this process within a reasonable time and in the instant case, the Notification under challenge before the Writ Court was issued within a reasonable time without causing any delay. Hence, the question of inordinate delay did not arise at all and the finding to that effect is contrary to the provision of law.

15. Per contra, Mr. Chatta, learned counsel for the respondents, has strongly contended that admittedly

when the examination was held in the month of February 1996, the notification cancelling the examination of the respondents were floated only in the month of December 1997, i.e., 15.12.1997, causing a delay of almost two years and obviously there was inordinate delay on the part of the appellants which is duty bound to complete such investigation and inquiry within a time frame as prescribed in Rule 5 of the existing University Statute which was apparently relied upon by the learned Single Judge. He has also submitted that admittedly the inquiry report dated 10.7.1997 was not furnished to the respondents and that amounted to the violation of natural justice. In those premises, no illegality or jurisdictional error was ever committed by the Writ Court in quashing the Notification dated 15.12.1997 and consequently directing the appellants to declare the result.

16. Having heard the arguments and submissions advanced on behalf of learned counsel for the parties at length and also on close scrutiny of the relevant records made available before us including the Draft Statutes governing to unfair means/misconduct in examination,

placed on record by Mr. Thakur, it appears that the alleged involvement of the respondents in adopting unfair means was noticed only in the process of coding the answer scripts by the Coding Officer much after the examination was over and, accordingly, the matter was brought to the notice of the Controller of Examinations, who in turn, constituted an Inquiry Committee to investigate into the entire issue. Inquiry report dated 10.7.1997 was submitted and while conducting the inquiry, the Committee took the mandatory exercise as regards perusal of records including answer scripts, continuation sheets and relevant records and then only came to a clear finding that the respondents adopted unfair means in the examination in question.

17. Thereafter, the said inquiry report was placed before the competent authority for further scrutiny and disposal of unfair means/misconduct cases.

18. The respondents were again asked to appear before the competent authority on 27.11.1997 to defend their position in their respective unfair means cases. Having heard the respondents on their appearance on the appointed day, the competent authority after

considering their replies and on thorough perusal of the report of the Committee, issued the impugned notification.

19. The Writ Court while entertaining the writ petition relied upon Rule 5 which was also quoted in the impugned judgment itself. Rule 5 reads as under :

"In all cases in which the alleged misconduct/unfairmeans of the candidates is for the first time during the course of the examination or examinations taken by him in the University, the following procedure shall be adopted:-

(a) An officer of the University authorized by the Controller of Examinations in this behalf shall, within 10 days after the receipt of the report of the Officer Incharge, send a notice to the candidate to present himself before any Sub-Committee and he shall be asked to defend himself by submitting a written explanation on or before the date fixed for the hearing. The candidate shall also be supplied with the gist of the report of the Supervisory staff along with the notice. If, for reasons to be recorded in writing, it is not possible to fix the date of hearing within 10 days, the Controller of Examinations may fix the date of hearing within one month after the date of receipt of the report of the Officer Incharge."

20. However, on perusal of the Draft Statute, which as per the statement of Mr. Thakur, learned counsel for the

appellants, has been adopted and applied by the University, on being placed before this Court, it is seen that though the same is in draft form, the existing Rule 5 referred to hereinabove pertaining to unfair means cases stands substituted by the following:-

"On receipt of the report, an officer of the University authorized by the Controller of Examinations shall, within a reasonable time, send notice indicating gist of the report to the candidates to present himself before the Committee concerned and defend himself either orally or by submitted a written explanation on or before the date fixed for hearing."

21. According to this new provision, it is clearly said that the University authority shall within reasonable time send notice to the candidate asking him to present himself before the Competent Authority to defend his case either orally or by submitting written submissions on a date fixed for hearing. However, there is no provision whatsoever in the said Statute as claimed by the appellants that inquiry report needs to be submitted to the respondents.

22. Having closely considered the said provisions of the Statute so adopted and relied upon by the University authority, we are of the considered view that no delay

has been caused in issuing the Notification on 15.12.1997 when the examination was held in February 1996 and the unfair means was noticed only at the time of coding process after the examination was over.

23. That apart, non-submission of inquiry report, not being a requirement in the inquiry proceeding, cannot be fatal so as to dislodge the Notification under challenge before the Writ Court.

24. As regards the question of violation of natural justice due to non-furnishing of the inquiry report, as raised by Mr. Chatta, learned counsel for the respondents, Mr. Thakur, learned counsel for the appellants has submitted that although there is admittedly no violation of the natural justice in the instant case, depending upon the facts and circumstances of case to case, the principle of natural justice cannot be put into a straight jacket. In support of his submissions, he has relied on two judgements of the Apex Court, i.e., (1) (1977)2 SCC 256, *The Chairman, Board of Mining Examination and Chief Inspector of Mines and another v. Ramjee*; (2) AIR 1987 SC 593, *R. S. Dass v. Union of India and ors.*

25. As we have already discussed, during the entire process of Inquiry, the respondents were given all reasonable opportunities of hearing to defend their cases in a proper manner. It is not the case of the respondents that they were not given any opportunity of hearing. Only question raised herein that inquiry report was not furnished to them. Since there is no stipulation in any of the provisions of the Statute that inquiry report was required to be submitted to the respondents, this Court does not find any reason to hold that there was violation of natural justice. However, applying the ratio of the case of *R. S. Dass (Supra)*, it can be safely held that it is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provisions, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. These principles do not apply to all cases and situations. (See *R. S. Dass (Supra) (Para 25)*).

26. In *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398: (AIR 1985 SC 1416) a Constitution Bench of the Supreme Court considered the scope and extent of

applicability of principles of natural justice to administrative actions. The Court summarised the position of law on this point and observed as follows:-

"So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if invoking it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi's case (1978) 2 SCR 621: (AIR 1978 SC 597)."

..... ,....."

27. In Paragraph 13 of *The Chairman, Board of Mining's case* (supra), the Supreme Court held as follows:-

"The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard

and compliance with Regulation 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual property being conditioned by the facts and circumstances of each situation, no breach of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating.....”

28. Be it mentioned that by Notification dated 15.12.1997, the respondents' examination was cancelled and they were disqualified from appearing or passing any University examination for the period of 2 (two) years. In other words, the disqualification in question was in force only for two years and on expiry of stipulated time period, the notification automatically lost its force in the year 1999. Records do not show that the respondents, after expiry of 2 years' disqualification period, had made any attempt to take the said examination. By the time the impugned judgment was delivered on 19.4.2001, as it appears, the matter was since rendered infructuous. Besides, the adoption of unfair means in an examination is a serious matter and that too in a B. Ed. Examination taken by the teachers and such action, if found guilty,

cannot be condoned and no lenient view in this context is permissible.

29. In a case of *Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and others v. Vaibhav Singh Chauhan*, reported in (2009)1 SCC 59, the Supreme Court took a serious note as regards malpractices adopted in examinations in the educational institutions. In the said case, respondent, while appearing in third and final year of examination in the academic year 2004-2005 in Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh, a slip was found in his possession in his answer script which contained material relevant to the examination and the invigilation staff took the slip into their possession and, accordingly, malpractices case initiated against him. However, before the Committee constituted to enquire into the matter, he confessed the charge against him and pleaded that he was extremely sorry for the misdeed and would not repeat it again. The learned Single Judge of the concerned High Court in passing the interim order accepted such apology and confession of possession of

the slip. In paragraph 12, the Apex Court ruled as under:-

"The learned Single Judge in the interim order has then emphasised on the fact that the respondent had apologised and had confessed to the possession of the chit. In our opinion this again is a misplaced sympathy. We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand."

30. In view of the above discussions and observations, we are of the view that the appellants have made out a case for interference with the impugned judgement and, accordingly, the same stands set aside and quashed.

31. In the result, the appeal is allowed.

32. However, there shall be no order as to costs.

(Mansoor Ahmad Mir)
Judge

Jammu:

February 10, 2011

Tilak, Secy.

(Dr. Aftab H. Saikia)
Chief Justice

