

AIR 1963 P&H 480

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 1863 of 1963

Ram Chander Singh

APPELLANT

Vs

Punjab University,
Chandigarh

RESPONDENT

Date of Decision: Jan. 14, 1963

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab University Calendar Regulations - Regulation 10, 11
- Punjab University Calendar Rules - Rule 10, 11

Citation: AIR 1963 P&H 480

Hon'ble Judges: Harbans Singh, J

Bench: Single Bench

Advocate: R. Sachhar, for the Appellant; H.R. Sodhi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This petition under Article 226 of the Constitution of India has been filed in the following circumstances: The petitioner Ram Chander Singh had been working as a teacher in the District Board Middle School (now Government School) at Ladwa, district Hissar, between 1954 and 1960. As a private candidate, the petitioner appeared in the M.A. Examination in History Part I in 1960 and was declared successful. In May 1962 he appeared in Part, II at the examination centre D. N. College, Hissar. The fourth and the last paper of the examination was on 18th of May 1962, The petitioner had just written a few lines on the very first page of the answer-book when the Superintendent of the examination hall, Ch. Ranjit Singh came to his seat and enquired if the handkerchief, which was in the hand of the Superintendent at that time, belonged to the petitioner. This handkerchief had some slips of paper in it containing some writing that had relevancy to the questions that were likely to be set in the question paper for the day. The petitioner denied all knowledge about the handkerchief and took exceptions to the Superintendent unnecessarily foisting

a false and Wrong charge against the petitioner. The answer, book was taken from the petitioner and according to the allegations made in the petition, he was asked to leave, file hall and bring his headmaster Shri Shiv Charan Singh.

Thereupon the petitioner left the hall, contacted his friend Shri Raj Kumar Kumra, Development Officer, Life Insurance Corporation, and got a lift on his motor-cycle to Ladwa where he apprised the headmaster of what had happened; and on his request, the headmaster accompanied him and at 4.30 p.m. met the Superintendent. The headmaster assured the Superintendent that the petitioner was a man of integrity and that his suspicions were unjustified. The Superintendent felt satisfied but did not permit the petitioner to finish his paper by giving him extra time. On the following day, i.e., 19th of May, 1962, the petitioner wrote a letter to the Registrar, Punjab University. In this letter he made allegations that the Superintendent was ill-disposed towards him because of some political rivalry and in the last paragraph of his letter he stated as follows:--

"I therefore, humbly pray that justice may kindly be done to me after thoroughly enquiring into the matter. I may add that I should bring to light certain facts and proofs to the effect that I had been victimised and have suffered for no fault of mine."

He did not hear anything from the University for some time till he received an intimation from the Registrar on 4th of September, 1962, that he had been disqualified for the year 1962 and 1963 under regulation 11(c). It appears that there after he filed an appeal to the Vice-Chancellor which was rejected. He then came to this Court.

2. The return filed by the Registrar, Punjab University, indicates that the story of what happened in the examination hall on 18th of May, 1962, as was given by the Superintendent, is slightly different According to this version.

"the Assistant Superintendent (a clerk) suspected that the petitioner had some hand written papers in the handkerchief which lay on the petitioner's table and on which the petitioner had placed his hand firmly. "He reported the matter immediately to Shri Ranjit Singh Superintendent. Both the Superintendent and the Assistant Superintendent then went up to the seat of the candidate (petitioner) and found that he was keeping his hand firmly on the handkerchief. The handkerchief was unfolded and the petitioner was asked for a statement, as envisaged in the regulations. The petitioner refused to make any statement and even to accept the second (answer) book because the first answer-book which he had just started was also taken in possession according to the rules". Along with the return, extracts from the papers found folded in the handkerchief were put and these clearly indicate that the." notes related to the subject of the examination on that day. In any case, whether these papers related to the subject of the examination on that day or not, is a question which is for the University authorities to determine, and this Court cannot go into the same. On the basis of this report, sent by the Superintendent, the Registrar, Punjab University, submitted the case to the "Unfair Means Committee" (hereinafter referred to as the committee), duly constituted by the Syndicate for

examining such cases the committee was of the view that the petitioner had used unfair means, and disqualified him as contemplated under regulation 11(c).

3. The main grievance of the petitioner is that at no stage was the version given by the Superintendent communicated to the petitioner to enable him to give his explanation or proof in support of his contention and that he has been disqualified without being given an opportunity to show cause against the action proposed to be taken against him.

4. On behalf of the respondent University it has been stressed that under the regulations the only opportunity that is provided to a candidate suspected of using unfair means is at the time when he is so suspected and apprehended by the Superintendent, that in this case the Superintendent did offer an opportunity to the petitioner to make a statement before him at the time of the recovery of the written notes from the handkerchief but the petitioner refused to make such a statement and he also refused to accept the second answer-books to continue giving his answers and that this opportunity was a sufficient opportunity, and inasmuch as he did not avail of the same, it cannot be said that he was not given an opportunity to show cause against the action taken.

5. The relevant regulations are regulations 10 and 11 printed at page 83 of the Punjab University calendar of the year 1961, Part 1, and are as follows:--

"10(a). The Superintendent of the examination shall report to the Registrar without delay and on the day of occurrence, if possible, each case where use of unfair means in the examination is suspected or discovered with full details of evidence and explanation of the candidate concerned on the forms supplied by the Registrar for the purpose.

(b) In case the candidate refuses to give a statement he is not to be forced to do so, only the fact of his refusal shall be recorded by the Superintendent and attested by two other members of the supervisory staff on duty at the time of occurrence,

(c) A candidate found to be or suspected to be guilty of using unfair means in the examination shall be permitted to answer, the remaining part of his Question Paper, but on a separate answer-book and the answer-book in which the unfair means is suspected shall be seized by the superintendent, who shall send both the answer-books to the Registrar with his report. This will not affect the candidate's right to appear in the rest of the examination in subsequent papers.

11 (a) * * *

(b) * * * " * * * *

(c). If his (candidate's) possession of such papers, books or notes is found to be mala fide, he shall be disqualified for two years including that in which he was found guilty if he is a candidate for an examination held once a year or for four examinations including that in which he was found guilty, if he is a candidate for an examination which is held twice a

year."

Thus, the regulations make no provision for the suspected candidate to know what exact report has been made by the Superintendent to the University and he is afforded no opportunity to give his explanation after seeing the report. It was urged that merely asking the candidate to give his explanation at the time when he is suspected of having used unfair means is no substitute for an opportunity to the petitioner to show cause against the case as reported to the University on "which action is sought to be taken. In the present case, the parties are not agreed even on the point as to whether the petitioner was asked to give his explanation or not, and, in any case, there is a material difference between the version as given by the Superintendent to the University and as was mentioned in the letter addressed to the University by the petitioner.

As was remarked by the Supreme Court in [Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others](#), the decision of committee in a case where unfair means are suspected may lead to very serious results and the committee must be taken to be acting in a judicial or quasi-Judicial manner, and the rules of natural justice do require that the person to be condemned must be given an opportunity of showing cause against the action proposed. In the present case, no doubt, the petitioner knew that he was being suspected of using unfair means by keeping notes relating to the subject of examination with him concealed in a handkerchief, However, it makes all the difference whether the handkerchief was in the hand of the petitioner at the time when it was found by the Superintendent or it was lying on the floor and was picked up by the Superintendent. The explanation that may have been offered by the candidate at the moment may be of considerable importance, for the committee to judge the guilt or otherwise of the candidate, yet, except in a case where there is no controversy about facts, such an explanation can be no substitute for the explanation that the candidate may offer on being told the exact version given by the Superintendent and the supervisory staff from which an inference about his having used unfair means is Sought to-be drawn.

6. On behalf of the respondent-University it was further contended that, In any case, In the present case the explanation of the petitioner was contained in his letter dated the 19th of May, 1962, and this letter was with the university and the same was considered and that this would amount to sufficient compliance with the rules of natural justice. The file of the University relating to this case was pitted before me by the learned counsel for the respondent. The original letter, which was sent by the petitioner to the University on 19th of May, 1962, is not on this file. In the report submitted by the Registrar to the other members of the committee, who appear to be two in number, statements of the Supervisor, the Deputy Superintendent and the report of the Superintendent were reproduced and reference was given also to the pages of the file. With regard to the statement of the candidate it was recorded as under:--

"The boy refused to give the statement and to accept the second answer-book."

Thereafter are the "observations by the office" as follows:-- "The clerk suspected the candidate and informed the Superintendent. The hand-written papers were found with the candidate concerned concealed by him under his handkerchief. The papers contain hints on history written in candidate's own hand. The candidate could not use them due to strict supervision. Hence a case of possession.

Recommended that the candidate be disqualified for 1962 and 1963 under regulation 11(c),"

This report of the Registrar is dated 4th of June, 1962, which was apparently put before and agreed to by one member on 12th of July and by the other, member on 26th of July. It appears that on 7th of June, 1962, i.e., after the date of the report by the Registrar and before the report was put before the members of the committee, the petitioner sent a reminder referring to his original application dated 9th of May, 1962, and enclosing a copy thereof and requesting the Registrar to inform him as to what action had been taken in the matter. This was received in the Registrar's office on 11th of June, 1962.

There is, however, no mention, either of this reminder or about its enclosure having been put before the committee for consideration. One thing is clear from the note of the Registrar that while giving the summary of the statement of the candidate, the only thing mentioned was that he had refused to give the statement. The statement made by him in his letter dated 19th of May, 1962, even if it was somewhere in the office, was not referred to at all. It is therefore, not correct to say that the contents of the letter were put before the committee or considered by it. In fact, it appears that the respondent treated as relevant only the Statement of the candidate that he was asked to make immediately on detection by the Superintendent.

7. Apart from this, what was contained in letter dated 19th of May, 1962, was written by the candidate without knowing exactly what was being alleged against him and the respondent-University was proceeding to take action on a version given by the Superintendent which was substantially different from the one given in this letter. He had further made a request for being given an opportunity to show that he was being victimised. In all fairness to him, therefore, the only appropriate thing for the University was to send a copy of the report submitted by the Superintendent or otherwise bring its contents to his notice and give him an opportunity to show cause against the action on the basis of the report.

As to the manner in which this opportunity should be given, is a matter which is for the University to determine by its regulations or otherwise, it is, however, necessary that the respondent, while performing its duties as a quasi-judicial body in the matter of the kind that is in hand, must conform to the principles of natural justice and give (sic) adequate opportunity to the other party of presenting his case before a decision is taken against him which may adversely affect his future career.

On behalf of the respondent reference was made to a recent decision of a Division Bench of this Court reported in *Surrinder Kumar Bansal v. Punjab University* 1962 PLR 044. In that case, the Supervisor, while taking over the answer-book from the candidate found a hand-written chit under the table of the petitioner which contained writing which was relevant to the subject in which the petitioner was appearing at that time. The matter having been brought to the notice of the Superintendent, the hand-written chit as well as the answer-book were taken into possession and the candidate was asked to explain his conduct whereupon he made the following statement:--

"This paper is not mine and I do not know from where it has come near my seat. It was found after the paper was handed over to the Superintendent." The petitioner was then informed by the Superintendent that the matter would be reported to the University, ultimately the candidate was disqualified and the writ filed by him, alleging that he had not, been given adequate opportunity, was dismissed by the Division Bench holding that the opportunity given was adequate and in accordance with the rules and regulations. While distinguishing the decision of the Supreme Court in [Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others](#), at page 949 it was observed as follows:--

"It will thus be seen that while in the case before the Supreme Court, the students did not know what the allegations against them were and they had been admittedly, given no opportunity whatsoever to explain their position, in the present case the petitioner was caught red-handed with the handwritten chit, regarding which his explanation was immediately taken in his own handwriting, as mentioned above. The handwriting on the chit bore a striking resemblance with that of the petitioner's answer-book. The entire material, as referred to above, was considered by the Standing committee and then action was taken by them against the petitioner. In our opinion, the decision of the Standing committee is in accordance with the provisions of regulations 11 and 10 framed by the Punjab University."

The learned counsel for the petitioner submitted that the present case is altogether distinguishable from the one which was before the Division Bench inasmuch as in that case there was no dispute as to the facts of the case. The chit was found near the table of the petitioner and he had explained that the chit did not belong to him and that he could not say how the chit came there. Thus, there was nothing new in the report of the Superintendent which the candidate did not know and about which he had not given his explanation.

In the present case, however, the version given by the Superintendent is different from the one relating to which the petitioner sought to give some sort of explanation in his letter dated 19th of May, 1962, which explanation also, apparently, was not before the committee when it considered and decided the matter. So far as regulations 10 is concerned, that may be taken to have been complied with in the present case even though there is some dispute as to whether an opportunity to give an explanation was

afforded to the petitioner or not.

The question, however, is whether while acting under regulation 11, a reasonable opportunity had been given, not because there are any regulations with regard to that but because of the principles of natural justice which a body like a University in such circumstances is bound to follow as observed In Board of High School's case AIR 1902 SC 1110. It may be that in some cases, like the one which was before the Division Bench, an explanation given in pursuance of regulation 10 may be considered sufficient compliance with the principles of natural justice and he treated as affording adequate opportunity of showing, cause against the proposed action but in most of the cases and particularly In the present case, the petitioner can be considered to have been given a reasonable opportunity to showcase, only if exact allegations alleged against him by the Superintendent are put to the petitioner and he is given an opportunity to give an explanation and otherwise show cause against the action sought to be taken against him.

8. In view of the above, therefore, I am of the view that in the present case no adequate opportunity has been given to the petitioner to show cause against the action to be taken against him and, consequently, I make the rule absolute and quash the order of the respondent disqualifying him and direct that the respondent will proceed with the case in accordance with the rules and regulations in the light of the observations made above. There will be no order as to costs.