(1990) 04 AHC CK 0024

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No"s. 8380 and 8746 of 1986

Mohammad Azaz and others		APPELLANT
	Vs	
Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad and another		RESPONDENT

Date of Decision: April 12, 1990

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: AIR 1991 All 362 : (1991) 1 UPLBEC 44

Hon'ble Judges: U.C. Srivastava, J; S.H.A. Raza, J; B.L. Loomba, J

Bench: Full Bench

Advocate: S.C. Misra and S.N. Bajpai, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

U.C. Srivastava, J.
A Division Bench of this Court finding itself unable to agree with another Division Bench decision in another writ petition, which too was directed against the cancellation of the result of the 1986 examination conducted by the Madhyamik Shiksha Parishad, opposite party No. 1, (for short "Board"), in these two petitions has referred the following questions for being decided by a larger Bench :

(1) Whether the case of Sanjai Srivastavav. Madhyamik Shiksha Parishad Writ Petn. No. 7396 of 1986 decided on 11-11-1987 at Lucknow Bench was correctly decided?

(2) Whether the principle of discrimination laid down in Arvind Kumar Pandey v. Secretary Board of High School and Intermediate Education UP 1985 UPLBEC 55 and in the Uma

Shanker Dube v. Board of High School and Intermediate Education U. P. 1986 UPLBEC 500 can be extended to cases where several students are required to explain in respect of a mathematical equation how their final answer is correct when the intermediate steps are either wrong or missing?

(3) Whether in such cases the case of each student will have to be separately examined to see whether reasonable opportunity to defend was provided?

(4) Whether a joint petition can be maintained by several students who were not charged with using unfair means by copying answers from the answer books of each other? And

(5) Whether joint petition can be maintained by several students who were charged with using unfair means in different questions and in papers of different subject?

2. Out of these two petitions, the first petition is by 19 students of Government Inter College, Rae Bareli. Though they appeared in the Intermediate Examination but their result was withheld. As a matter of fact, result of 223 students was withheld. An enquiry was held against these students for using unfair means in the examination by giving them a questionnaire and after taking their reply the decision was taken by the Board. Out of these 19 petitioners, 12 were charged with using unfair means in answering question No. 4 of Science IInd Paper while the rest were charged that their answers did not contain any intermediate steps but they arrived at correct answer. The charge against 4 petitioners viz. 3, 5, 7 and 18 was that their answer in Science IInd Papar tallied with answers of other students and that they copied from a common source. One of the petitioner was charged with using unfair means in Mathematics 1st Paper and another petitioner was charged with using unfair means in three papers. The ground of challenge in the petition is that the Board has practised discrimination and thereby violated Art. 14 of the Constitution of India. The main thrust of the argument of petitioners against the Board is that the Board has adopted double standard in deciding their cases and the action of the B6ard is illegal, discriminatory and arbitrary A number of students who were charged for the Same offence was exonerated including some of the students who were caught red-handed.

3. The other writ petition was filed by five students who were also students of the same college and appeared in the Intermediate examination. The charge against them was also of using unfair means and similar enquiry was held. Petitioner No. 1 was charged with using unfair means in answering question No. 1 of Chemistry II Paper, petitioners Nos. 2 and 3 were charged with using unfair means in answering question No. 4(ka) of Physics II Paper. Petitioner No. 4 was charged with using unfair means in answering question No. 4(kha) of Physics I Paper and the last one was charged for using unfair means in answering question No. 10(ii) of Chemistry I Paper.

4. In writ petition filed by Sanjai Sri-vastava viz., W.P. No. 7396 of 1986 (reported in 1989 Ed Cas 32), the students appeared in the High School examination and were the students

of the same Institution. In the said case the charge was that the petitioners indicated correct answers but the intermediate steps were either incomplete or incorrect. In that case representations made by some of the students were entertained by the Board which declared the result. In Sanjai Srivastava"s case, it was pointed out that while the result of some of the students was declared as the plea of discrimination was accepted by the Division Bench but the result of the petitioners was not declared even though they had also made similar representations. In this regard the petitioners relied upon the case of Uma Shanker Dabey v. Board of High Court and Intermediate Education U.P. at Allahabad 1986 UPLBEC 500.

5. Apart from other cases reliance was placed on Arvind Kumar Pandey v. The Secretary Board of High Court and Intermediate Education, U.P. at Allahabad 1985 UPLBEC 55. In this case, although answers were correct but were arrived without following steps. It was held that from it alone it cannot be concluded that the petitioner indulged into copying by noting down the answers from the copy of other students. Paper being of Mathematics, mere fact that the answers were identical, inference of copying cannot be drawn. There is no discussion, in that short judgment, as to whether steps were taken in the answer or not. It may be that steps in the answer of other students were not there and his result having been declared, it was not possible to hold as to who copied from the answer of the other candidates.

6. In Uma Shanker Dubey v. Board of High School and Intermediate Education U.P. at Allahabad 1986 UPLBEC 500, as one student was given benefit of doubt for a similar charge of common mistake in Mathematics paper, order of cancellation of the result was held to be discriminatory as no reason for discrimination was recorded by the Board.

7. The other two cases viz., Shailendra Pratap Singh v. Board of High School and Intermediate Education 1984 UPLBEC 570 and Rajnish Kant Sazena v. U.P. Board of High Scholl and Intermediate Education Allahabad 1985 UPLBEC 731, though are on the question of unfair means but are not directly on the question of discrimination.

8. The doctrine of equality embodied in Art. 14 of the Constitution is applicable to the public authority also applies in the case of punishment given to similarly placed persons who are discriminated in such matters. In the case of Sengara Singh and Others Vs. State of Punjab and Others, it was found that there was arbitrary picking and choosing for reinstatement after mass dismissal and as such it was held that same was violative of Art. 14 of the Constitution of India. The court observed (at pp. 1502 and 1503 of AIR) :

"There is not an iota of evidence which would distinguish the case of the present appellants from those who were the bene- ficiaries of the indulgence or the Committee and the largess of the State. The net result has been that the present appellants have been arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated. This discrimination is writ large on the record and the Court cannot overlook the same..... Now if the indiscipline of a large number of personnel

amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and, therefore, we are satisfied in putting all of them in same bracket."

The dismissal orders in the said, case were quashed.

A Division Bench of this court in the case of Dr. Satish Kumar Agarwal v. Principal and Chief Superintendent S. N. Medical College & Hospital Agra 1985 UPLBEC 835 : (AIR 1985 Ail 306) through Hon''ble K. N. Singh J. as he then was, observed (at p. 309 of AIR) :--

"The doctrine of equality embodied in Art. 14 strikes at arbitrariness in State actions and it ensures fairness and equality of treatment. It requires that the State action should not be arbitrary but must be based on some rational and relevant principle which is not discriminatory. The Principal of a Government College is a functionary of the State and he is, like the State, bound to act in a reasonable and fair manner by giving equal treatment to the students who may be placed alike. Even in discretionary matters, or in grant of privilege or largess the State or a public functionary cannot act arbitrarily or practice discrimination. The doctrine of equality as embodied in Article 14 would strike the State''s action or the action of the public functionary if it is discriminatory even in granting largess by the State. The discretion of the Government or a public authority is not unlimited, inasmuch as the Government or the public authority or public functionary cannot grant largess in discriminatory manner or at its sweet will. Even in grant of largess or in exercising discretion the State is bound by the rule of equality as enshrined in Art. 14 of the Constitution."

In the said case four students similarly placed were charge-sheeted and charge against them related to a single incident but apology of one student was accepted and others was not accepted. The order of Principal was quashed. In the matter of T.V. Choudhary connected with SLP filed by E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another, the complaint was that the Government singled out an officer for adverse action i.e. suspension pending enquiry and let off delinquent officers. The Court in its interim order observed :--

"If the Court is prima facie satisfied that the plea is substantiated by the record produced by the Government, it is competent to advice the Government to take similar adverse action against the other culpable officers also, otherwise it would revoke the adverse order made against the aggrieved officer." .

9. Accordingly, in the matter of punishment to students when there is charge of mass copying, punishing some and letting off others and awarding higher punishment to some and minor punishment to others without recording any distinguishing feature will be arbitrary and discriminatory action within Art. 14 of the Constitution. It may be that in some cases students made representations against the punishment and others submit to it and do not make any representation at all. It may be that in one case the representations may satisfy the Board that the intermediate steps contained in his answer book were correct or what is alleged to be mistake is not in fact a mistake and even that although there was error in one of the steps, the error was got corrected on mental calculation in subsequent steps and that is why the answer was correct while may fail to satisfy the Board regarding steps taken by them or the conclusion arrived at by them because their cases in solving the question or equation so far intermediate steps are concerned, are incomplete or incorrect indicating that the student does not know the principle and methodology of solving the equation or question and from some source the correct answer could be made known to such student. It may be that in such cases, the intermediate steps are wanting either because the correct answer could be arrived at without mentioning the intermediate steps or that there may be some slips which may not be very material and the explanation in this behalf may be convincing. All the cases cannot be dealt with at same par and every case requires separate scrutiny. We are of the view that so far as the principles laid down in Arvind Kumar Pandey"s 1985 UPLBEC 55 (spura) and Uma Shanker Dubey"s 1986 UPLBEC 500 (supra) cases are concerned; the same will not necessarily apply in all cases, equally and those who have not represented at all against the punishment cannot claim or get. the benefit which became available to those who have represented against punishment. Every case will depend on its own facts and the nature of representation made by him and the satisfaction of the Board on the representation.

10. Accordingly so far as discrimination in the matter of similarly placed students in whom no distinguishing feature has been pointed out or existing, non-awarding of punishment or magnitude of the punishment may be discriminatory action and to this extent the case of Sanjai Srivastava v. Madhyamik Shiksha Parishad (1989 Ed Cas 32) (supra) was correctly decided. But in case no representation was made at all and the student wants to get benefit which ultimately was given to other students on the nature of the representation and the satisfaction of the Board on the representation, as observed above, may differ and to this extent the decision in Sanjai Srivastava v. Madhyamik Shiksha Parishad 1989 ESC 32 (supra) cannot be correct.

11. Coming to the question of joinder of parties, it is to be noticed that students who have been punished for using unfair means in different papers or different subjects too have joined in filing writ petition and they were not sitting in the same room or the subjects in which they were found using unfair means, examination took place simultaneously on the same date. There may be identity of interest in only some of the students, but identity of interest in all the students is not similar. When students sitting in the particular room are

chargesheeted for resorting to mass copying, the persons having jural relationship or having similar cause of action can join each other, but persons having different cause of action and the identity of interest not being the same, they cannot join each other to file a joint writ petition. In this connection reference may be made to the case : Mota Singh and Others Vs. State of Haryana and Others, , wherein different truck drivers filed a joint writ petition. It was observed (at p. 485 of AIR) :--

"..... it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of court-fee simply because they have joined as petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court-fee on his petition. It would be a travesty of law if one were to hold that as each one uses highway, he has common cause of action with the rest of truck pliers..... Having regard to the nature of these cases where every owner of truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action ..... Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition."

12. The Full Bench of this Court after considering a number of cases in the case of Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, held :--

"A single writ petition under Article 226 of the Constitution by more than one petitioner, not connected with each other as partners or any other legal subsisting jural relationship, is maintainable where the right of relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction, the petitioners are jointly interested in the cause or causes of action."

13. In the case of using unfair means by a number of students on different dates and in different subjects, there is no jural relationship between the students using unfair means in different subjects and in different centres or even in the same centre. A joint writ petition by persons having no such relationship is not maintainable though joint writ petition can be maintained by a small group for whom the cause of action is the same or it can be said that there is some jural relationship.

Our reply to the questions is as follows :--

(1) That the case of Sanjai Srivastava (1989 Ed Cas 32) (supra) was correctly decided subject to what is stated in paras 9 and 10 above.

(2) The principle of discrimination laid down in Arvind Kumar Pandey v. Secretary, Board of High School and Intermediate Education U.P 1985 UPLBEC 55 and other cases cannot be extended to cases where several students are required to explain in respect of a mathematical equation how their final answer is correct when the intermediate steps are either wrong or missing.

(3) In such a case, each student will have to be separately examined.

(4) A joint writ petition cannot be maintained by several students who are not charged with using unfair means by copying answers from the answer books of each other.

(5) Joint petitions cannot be maintained by several students who are charged with using unfair means in different questions and in papers of different subjects.

14. Order accordingly.