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**(1998) 07 AHC CK 0045**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 12731 of 1998

Rajesh Misra

APPELLANT

Vs

University of Allahabad & Ors.

RESPONDENT

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**Date of Decision:** July 3, 1998

**Hon'ble Judges:** Binod Kumar Roy, J

**Final Decision:** Dismissed

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### **Judgement**

B.K. Roy, J.

The petitioner, a student of Ishwar Saran Degree College affiliated to the Allahabad University, has come up with a prayer to call for the records of the examination concerning 1997 Examination of B.A. Part II in which he had appeared but his result has been cancelled and quash the communication made by the Deputy Registrar (Examination) through registered letter dated 2398 informing him that in accordance with the provisions contained in "ORDINANCES ON THE USE OF UNFAIRMEANS AND CAUSING DISTURBANCES IN EXAMINATION" of the University of Allahabad, his result of B.A. II Examination of 1997 has been cancelled by awarding punishment for attempt/using unfair means at the said examination.

2. The parties have exchanged affidavits and the University has also produced the relevant records.

3. A perusal of the record of the University shows following facts : On 881997 the petitioner had appeared in the 1st Paper of Ancient History of B.A. Part II, 1997 Examination. The flying squad of the University entered the Examination Hall and recovered Pages 33 to 48 of Aakansha Sure Series (B.A. II Year), Allahabad University Examination, 1997 Ancient History 1st Question Paper from the desk or chair of the petitioner. Before the Principal of the Ishwar Saran Degree College, Allahabad the petitioner filled up the form prescribed in relation to use of unfair means or attempt to use such means. To the question mentioned in Clause IV (1) (b) as to whether those materials were recovered from your desk or chair?, the petitioner answered in his pen in the affirmative, though in regard to other questions as to whether they

were recovered from him or his person ? and whether why he had kept those materials ? his answers were in the negative. To the question as to whether he had taken any help from them? he answered that he does not know. A charge was framed that 14 printed pages were recovered from him. These printed Gages admittedly relate to the curriculum, notice dated 18111997 was sent to the petitioner stating the charge. The petitioner sent his reply stating that neither he had kept any type of Nakal nor had he attempted to copy it; that while he was giving his examination peacefully the flying squad came and the boys seated nearby started throwing their Nakal; that the Members of the Squad came and harassed him ; that when they refused to accede to his request despite a lot of requests, he took another copy and started writing. The Committee appointed under Ordinance 1.4 of "ORDINANCES ON THE USE OF UNFAIR MEANS AND CAUSING DISTURBANCES IN EXAMINATION" of the University of Allahabad considered the document and in terms of Ordinance 1.5 cancelled the result of the petitioner.

4. Sri VC. Mishra, the learned Counsel appearing in support of the writ petition contended as follows:

(i) The order of cancellation not having been served on the petitioner it remains merely a proposal and thereby ineffective in law.

(ii) From the document appended as Annexure1 to the writ petition, which is sought to be quashed, it appears that the result of the examination of the petitioner has been cancelled on the grounds of use of unfair means and of causing disturbances in the examination of the University whereas the charge was only in relation to keeping documents and accordingly it is not sustainable.

(iii) Since the petitioner was not served a copy of the report of the Principal he could not defend himself adequately and properly before the Committee and thereby principle of natural justice have been violated.

(iv) Even assuming that the action taken by the University was valid, the only punishment awarded to the petitioner was cancellation of 1997 Examination of B.A. Part II whereas the petitioner has been deprived of his rights to appear in the Examination which is in progress this year.

5. Sri A.B.L. Gaur, the learned Counsel appearing on behalf of the Respondents, on the other hand, contended as follows:

(i) The fact that the incriminating document, which was undisputedly relevant for the purposes of examination in question, was recovered from the desk/chair of the petitioner during examination by the flying squad, as having been admitted by the petitioner in his pen, on this ground alone the petitioner is not entitled to any discretionary relief from this Court and, accordingly, this writ petition is liable to be dismissed.

(ii) The punishment was awarded on account of keeping the incriminating document in his possession which he admitted and not on the ground of causing disturbances in the examination in question. Perhaps there is some misconception in the mind of Sri Mishra in making out such a point in view of the long title of the Ordinance namely "ORDINANCES ON THE USE OF UNFAIR MEANS AND CAUSING DISTURBANCES IN EXAMINATION" of the University of Allahabad.

(iii) Opportunity was granted to the petitioner but he failed to prove his defence.

(iv) True it is that the petitioner's examination was cancelled for the year 1997 but no one had prevented him in filling up his forms for this year's examination and the allegations made in Paragraph 3 of his rejoinder to the counter are incorrect and in any view of the matter too vague to be accepted besides that such a statement has been made only today and not earlier. Since the petitioner was a student of Degree College the forms were sent by the University to his College and it was required to be obtained from the Principal and not from the University and it is not the case of the petitioner that he ever contacted his Principal who has also not been impeded by a Party.

6. I find substance in the contentions of Mr. Gaur and accept them.

6.1. The record discloses the answer of the petitioner in his own pen in the affirmative to the question as to whether the materials were received from the desk or chair of the petitioner. This categorical admission of the petitioner is a deathblow to his stand taken in the writ petition and the rejoinder as well as to the other question which he answered in his own pen though in negative. In fact there is no pleading of the petitioner either in the writ petition and/or even in the rejoinder filed today to the counter of the University that this statement of the petitioner was incorrectly made by him or under any confusion.

6.2 In order to do complete justice to the petitioner, since he is present in Court, I showed him his answers furnished in writing on 8/1/1996 the day on which the incident took place and he fairly stated that they are his.

6.3. It is important to bear in mind that it is not the case of the petitioner that either the Principal or the members of the flying squad had any bias against him.

7. From the statements made in Paragraph 5 of the writ petition the petitioner admits of the receipt of the letter dated 18/1/1997 and sending of his reply. The letter dated 18/1/1997 contained the charge. Thus there was no violation of the principles of natural justice.

8. Exercise of jurisdiction under Article 226 is discretionary. In view of the admission of the petitioner himself I am of the view that he is not entitled to the grant of this discretionary relief.

9. The petitioner has come up with a grievance through his rejoinder filed today that he was not permitted to fill up the form of B.A. II Examination for the year 1998 on the ground that the matter is sub juice before this Court which has commenced from 17th June, 1998. The petitioner has not stated as to on what date he had gone to which of the Respondent Nos. 1 to 3 for filling up his forms for 1998 B.A. II Examinations and who had refused to supply him forms allegedly on the ground that the matter is subjoined before this Court. He has not imp leaded his Principal, who supplies the forms and forwards them to the University. It does not appear to me from the record of this case that the petitioner made any real attempt before the previous Vacation Judges of the Court pressing such a grievance. The statement made is too vague to be accepted. Laws help those who are vigilant. It is true that the petitioner stands suffered because now he cannot be allowed to appear in the aforementioned examination but for this situation it is he who is to be blamed. All what I can say now is that if the petitioner desires to appear in any future Exanimation, as per the law, he shall not be deprived by the University or its authorities on account of cancellation of his B.A. Part II Examination, 1997.

10. In the result this writ petition is dismissed, but without there being any order as to cost.

11. The office is directed to serve a copy of this order on Sri A.B.L. Gaur, the learned Counsel for the Respondents within one week from today for compliance of the observationcumdirection made. Petition dismissed.