

Manjeet Singh Dole v. Guru Nanak Dev University, Amritsar  
(G. R. Majithia, J.)

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burden of the two issues should have been on the workman, who has approached the authority under the Payment of Wages Act. It is for the workman to prove that the alleged deductions have been wrongly made by the employer. Consequently, this petition succeeds; the impugned order is set aside and the burden of both the issues is shifted on the workman. There will be no order as to costs.

(4) Since further proceedings were stayed at the time of motion hearing by this Court, the parties are directed to appear before the said Authority on September 19, 1989.

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R.N.R.

Before G. R. Majithia, J.

MANJEET SINGH DOLE,—Petitioner.

versus

GURU NANAK DEV UNIVERSITY, AMRITSAR,—Respondent.

Civil Writ Petition No. 9963 of 1990.

19th December, 1990.

*Constitution of India, 1950—Art. 226—Guru Nanak Dev University Calendar, Vol II, 1986—Ord. 10(j)(h) & 13 read with Ord. 11—Spot checking at examination Centre—Report as to open use of unfair means by candidates—Petitioner's answer-sheet sent for scrutiny to subject-expert—Mere opinion that he copied from answer-sheet of another candidate—In the absence of material on record, Standing Committee cannot disqualify him from appearing in any University examination for one year—Decision of Standing Committee holding the petitioner guilty of misconduct is illegal.*

*Held*, that a candidate can be held guilty under Ordinance 10(h) if he is found copying from some objectionable material found in his possession or copying from the answer sheet of another candidate or assisting other candidate to copy from the objectionable material in his possession or from his answer book. There is no allegation much less proof that any objectionable material was found from the possession of the petitioner from which he had copied while answering the question paper or that he assisted another candidate from copying from the objectionable material or from his answer sheet. The Standing Committee could arrive at the conclusion on evidence

before it. The counsel for the University could not refer to any evidence on record on the basis of which the Standing Committee has arrived at the conclusion that the charge against the petitioner for use of unfair means in the examination under Ordinance 10(h)(j) read with Ordinance 11 of the Ordinances stood proved. The Standing Committee, thus, disqualifying the petitioner from appearing in any University examination for one year has acted illegally.

(Para 3)

*Petition under articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the records of the case and after a perusal of the same:—*

- (a) *issue a writ in the nature of Certiorari, quashing the impugned order (Annexure P-2) by which the petitioner has been disqualified from appearing in any University examination, under Ordinances 10(h)(j) and 13 of Guru Nanak Dev University, Amritsar, Volume II, 1986;*
- (b) *issue any other writ, order or direction that this Hon'ble Court, may deem fit under the facts and circumstances of the case;*
- (c) *service of advance notices on the respondents be dispensed with;*
- (d) *the petitioner be exempted from filing the certified copies of the Annexures;*
- (e) *the cost of the petition be awarded to the petitioner.*

*It is further, prayed that this Hon'ble Court may be pleased to stay the operation of the impugned order (Annexure P-2) during the pendency of the writ petition, or pass any other ad interim order that this Hon'ble Court may deem fit under the facts and circumstances of the case.*

Mr. S. P. Jain, Advocate, for the Petitioner.

Mr. H. S. Gill, Advocate, for the Respondent.

#### JUDGMENT

G. R. Majithia, J.

(1) This judgment will dispose of Civil Writ Petition Nos. 13506, 14658, 15296 of 1989, 3063 and 9963 of 1990 since common question of law arises for determination in all these cases.

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(2) Reference to relevant facts has been made from Civil Writ Petition No. 9963 of 1990. The petitioner appeared in Physics-A paper of T.D.C. Part III examination held on April 24, 1989 in Lyallpur Khalsa College, Jullundur Centre No. 24. The Flying squad visited the centre and reported that during the course of examination the candidates openly used unfair means. Respondent No. 1 sent the answer sheet to the subject expert who opined that the scrutiny of the answer book revealed that the candidate during the course of examination copied from the answer sheet of another candidate/from a common source. The controller of the examinations informed the petitioner to appear before the Standing Committee. The Standing Committee on the basis of the report of the subject expert held that the petitioners were guilty of misconduct falling within the purview of Ordinance 10(j)(h) and Ordinance 13 read with Ordinance 11 of the Ordinances contained in Guru Nanak Dev University Calendar, Volume II, 1986 and disqualified the petitioner from appearing in any university examinations for a period of one year. It did not impose the minimum punishment prescribed under Ordinance 11 but disqualified the petitioner from appearing in any university examination of respondent No. 1 under each count for a period of one year and the disqualification was to run concurrently.

(3) The Standing Committee after examining the answer sheets of the examinees found that the answers to certain questions tallied with the answer sheets of other candidates and on that basis jumped to the conclusion that the charge against the examinees under Ordinance 10(h)(j) read with Ordinance 11 of the Guru Nanak Dev University Calendar, Volume II, 1986 stood proved. The Committee did not opine that any material was recovered from the possession of the examinees or that the examinees received help from some source while answering the question paper. Ordinance 10(h)(j) reads thus :—

- “(h) (i) copying or attempting to copy from the objectionable material found in his possession; or
- (ii) copying or attempting to copy from another candidate; or
- (iii) assisting another candidate to copy from the objectionable material in his possession or from his answer book;
- (iv) receiving help or attempting to receive help for answering the question paper from any source in any manner, inside or outside the examination hall.

A candidate can be held guilty under Ordinance 10(h) if he is found copying from some objectionable material found in his possession or copying from the answer sheet of another candidate or assisting other candidate to copy from the objectionable material in his possession or from his answer book. There is no allegation much less proof that any objectionable material was found from the possession of the petitioner from which he had copied while answering the question paper or that he assisted another candidate from copying from the objectionable material or from his answer sheet. Ordinance 10(h) of the Ordinances postulates that a candidate will be held guilty for using unfair means in the examination if he receives help for answering the question paper from any source in any manner inside or outside the examination hall. There is no material on record which can even remotely suggest that the petitioner received help from some material while answering the question paper. The Standing Committee could arrive at the conclusion on evidence before it. The learned counsel for the University could not refer to any evidence on record on the basis of which the Standing Committee has arrived at the conclusion that the charge against the petitioner for use of unfair means in the examination under Ordinance 10(h)(j) read with Ordinances 11 of the Ordinances stood proved. The Standing Committee to say the least is expected to act fairly and not arbitrarily. In the instant case, there is no escape from the conclusion that the Standing Committee has acted illegally. The order of disqualifying the petitioner under Ordinance 10(h)(j) read with Ordinance 11 of the Ordinances of Guru Nanak Dev University Calendar, Volume II 1986 cannot be sustained and the same is quashed.

(4) The writ petitions are accordingly allowed but with no order as to costs.

*J.S.T.*

*Before : G. C. Mital & S. S. Grewal, JJ.*

KAMAL KANT AND OTHERS,—*Petitioners.*

*versus*

STATE OF HARYANA AND ANOTHER,—*Respondents.*

*Civil Writ Petition No. 7991 of 1990.*

5th February, 1991.

*Punjab Civil Service (Judicial Branch) Rules, 1951 as amended by the State of Haryana—Rls. 7, 8, 10(i) & (ii) of part 'C', 1, 7 & 8 of*